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AS. No.296 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

and

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

AS. No.296 of 2013

and CMP.Nos.20673 and 17697 of 2022

and MP.No.1 of 2013

Annamani

.. Appellant/petitioner

*Versus*

A.Vedachala Naicker (died)

1. V.Pandian

2. A.Madhialagan

3. M.Tamilarasi

4. J.Lakshmi

5. B.Kalaiselvi

6. Mohanavalli

7. Minor Harikrishnan

8. Minor Santhosh Kumar

(Minors are rep. by their mother and

natural guardian 6th respondent Mohanavalli) .. Respondents/Respondents

**PRAYER in AS.No.296 of 2013:** First Appeal filed under Order 41 Rule 1 with Section 96 of C.P.C., against the judgment and decree dated 18.02.2013 made in OS.No.72 of 2006 on the file of the III Additional District Judge, Poonamallee.



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**Prayer in CMP.Nos.20673 and 17697 of 2022** : Petitions filed under Order 41 Rule 27 of CPC to permit the petitioner to produce certain documents as additional documents on the plaintiff side and mark them as Ex.A19 to A24 and Ex.A25 to A30, respectively.

For appellant/petitioner : Mrs.G.Thilakavathy, Senior Counsel  
for M/s.S.Sai Sathya Jith

For respondents/respondents

for RR1 & 4 : No Appearance  
for RR2, 3, 5 to 8 : Mr.V.Raghavachari, Senior Counsel  
for Mr.K.Pasupathy

### **J U D G M E N T**

(Judgment of the Court was delivered by S.S.SUNDAR, J)

The plaintiff in the suit in OS.No.72 of 2006 on the file of the III Additional District Court, Tiruvallur, is the appellant in the above appeal. The suit is for partition of appellant's 1/7th share in suit 'A' and 'B' schedule properties and for future mesne profits.

2. The first defendant, viz., A.Vedhachala Naicker, is the father of plaintiff. The plaintiff and defendants 4 to 6 are the daughters of

A.Vedhachala Naicker and the defendants 2, 3 and one V.Raji are his sons.



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The seventh defendant is the wife of the deceased V.Raji and defendants 8 and 9 are the minor sons of V.Raji. It is the case of the appellant/plaintiff that a joint family consisting of the plaintiff and the defendants are owning several ancestral properties and some of the properties shown in the suit schedule were acquired from the joint family nucleus.

3. In the plaint, it is contended by the plaintiff that the plaintiff and the sixth defendant, got married after the enactment of the Hindu Succession (Amendment Act of 1989) and hence, they are entitled to get equal share in the joint family properties along with the sons of A.Vedhachala Naicker. In the original plaint, the plaintiff claimed 1/6th share in the suit A-schedule and 1/8th share in 'B' schedule properties. The suit A-schedule properties consists of 5 items and the suit B-schedule property is a sum of Rs.3 crores. It is the case of plaintiff that the mother of plaintiff was owning a property in Washermanpet, Chennai and that the first defendant further sold the property and purchased 4 acres of land at Goparasanallur near Poonamallee. It is the further case of plaintiff that the said land was sold for a sum of Rs.27,00,000/- by the first defendant in 1996 and that said sum is augmented to Rs.3 crores, which is shown as 'B' schedule. The first defendant died pending suit on 05.12.2009. Thereafter, the plaint was amended and by referring to Hindu



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Succession Amendment Act, 2005, the plaintiff claimed 1/7th share in all the suit 'A' and 'B' schedule properties on the ground that all the daughters are entitled to equal share in the joint family properties.

4. The suit was contested by the defendants 1 to 4 and 6 to 9 mainly on the ground that the suit properties were purchased by the first defendant out of his own funds pursuant to the decree dated 05.09.1961 passed by the Subordinate Judge, Chengalpattu in OS.No.72 of 1960.

5. It is contended that item I of A-schedule properties to an extent of 3.80 acres was obtained by the first defendant pursuant to the decree dated 05.09.1961 in OS.No.72 of 1960, which was filed by him for specific performance of agreement of sale. The suit second item in A-Schedule is a small extent of land and it is contended that the said property was purchased by the first defendant out of his own funds. In respect of items 3 and 4 of the suit A-schedule properties, it is contended by the defendants that they are self acquired properties of A.Vedhachala Naicker. In respect of the fifth item, it is admitted by the defendants that a property measuring 12 cents was allotted to the first defendant by a partition deed. It is contended that out of the 12 cents, the first defendant sold 6 cents of land to a third party and in the remaining 6



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cents, an extent of 3 cents was settled by the first defendant in favour of one of his daughter, viz., fourth defendant by a settlement deed. It is further stated that the remaining 3 cents of land was in the possession and enjoyment of the first defendant. As regards first item in 'A' schedule, it is stated that the first defendant sold an extent of 3.30 Acres to a third party and that the remaining 50 cents was settled in favour of all the sons and daughters including plaintiff who was given 2502 sq.ft. Even in respect of third item in suit 'A', the defendants pleaded similar settlement in favour of the defendants excluding plaintiff.

6. The Trial Court on the basis of the pleadings framed the following issues:

1. Whether the plaintiff is entitled to partition for 1/7<sup>th</sup> share in suit 'A' schedule property?
2. Whether the plaintiff is entitled to partition for 1/7<sup>th</sup> share in the B schedule property?
3. Whether the plaintiff is entitled for future mesne profits at the rate of Rs.10,000/- per annum from the date of plaint till the date of deliver as prayed for?
4. Whether the plaintiff is entitled for permanent injunction as sought for in the suit?
5. To what other relief the plaintiff is entitled to?



7. Before the Trial Court, the plaintiff examined herself as PW1 and marked Exs.A1 to A18. On behalf of the defendants, third defendant was examined as DW1 and Exs.B1 to B11 were marked.

8. The Trial Court after analysing the entire evidence found that by a partition under Exs.A11 and A18, the properties were allotted to A.Vedhachala Naicker. It is further held that no document was produced before the Lower Court to infer that sufficient income was derived from the joint family nucleus by the first defendant to acquire any property, which is shown in the suit schedule. Since the suit was filed during the lifetime of the first defendant, who is held to be the absolute owner of all the suit properties, the suit was dismissed by the Trial Court.

9. It was the contention of the plaintiff that the suit B-schedule property is said to be the sale proceeds available in the hands of the first defendant, after selling the property acquired by selling another property of the mother of the plaintiff, viz., Tmt.Padmavathy. However, the Trial Court found that the plaintiff has not filed any document or record to show that the said sale proceeds by selling the properties of the plaintiff's mother was given to the defendants 1 and 3 as contended by her. Since the plaintiff failed to prove that



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the properties of the plaintiff's mother was sold and the sale proceeds to the tune of Rs.3 crores is available with the defendants, the Trial Court held that the plaintiff is not entitled to seek partition of plaintiff B-schedule property. Aggrieved by the above judgment and decree, the plaintiff has preferred the above appeal.

10. The learned Senior Counsel appearing for the appellant raised several grounds. It is admitted that the properties, which are referred to in the suit schedule, are the properties allotted to A.Vedhachala Naicker under Koorchit marked as Ex.A18, dated 10.03.1968.

11. The learned Senior Counsel appearing for the plaintiff contended that the document Ex.A18 is a partition deed, under which, the first defendant was given substantial properties. From the recitals of Ex.A18 partition, we find that the parties to the document have brought several properties under the common roof, even properties that were acquired by the individual parties. Not even a single property that was allotted under the document Ex.A18 is shown to be property of coparcenary. The existence of coparcenary is not evident from this document. Merely because, the properties acquired by the individuals were partitioned, this Court cannot jump into the conclusion that the properties are the properties of coparcenary.



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WEB COPY 12. Under Ex.A18, the mother of the first defendant, is the first party.

The first defendant and his three brothers viz., Kandasamy Naicker, Nataraja Naicker and Dharshana Murthy Naicker are other parties to this document. Though substantial properties were allotted to A.Vedhachala Naicker in the document dated 10.03.1968, it is seen that some of the items, which are divided belonged to Kamachi Ammal, who is the mother of the first defendant. From the document Ex.A18, this Court has to conclude that the parties got properties not as members of coparcenary. We cannot consider the properties, which are allotted to A.Vedhachala Naicker as coparcenary and joint family properties to be shared among his descendants.

13. It is to be noted that the learned Senior Counsel appearing for the appellant has not brought before this Court the existence of any joint family property, which was treated as coparcenary property in the hands of A.Vedhachala Naicker. In such circumstances, the properties allotted to A.Vedhachala Naicker in Ex.A18 cannot be treated as a joint family properties of a family to which the plaintiff also can claim, by virtue of either the Hindu Succession (Amendment Act of 1989) or under Section 6 of the Hindu Succession Amendment Act 2005. Since the suit is filed during the life time of



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the first defendant, who is the father of the plaintiff, the suit is liable to be dismissed.

14. The learned Senior Counsel appearing for the appellant submitted that the appellant filed applications in CMP.Nos.20673 and 17697 of 2022 for reception of additional documents under Order 41 Rule 27 of CPC. Several sale deeds are sought to be marked as additional documents showing that the first defendant father acquired several properties in the name of his children including the plaintiff. It is also stated in the affidavit filed in support of the petition that the respondents, who are defendants in the suit, failed to bring it to the notice of trial Court about the existence of those documents, to which the plaintiff was not aware. The learned Senior Counsel then pointed out that the father of the plaintiff executed settlement deed in favour of the plaintiff and others without making her aware of settlement. However, execution of settlement in favour of plaintiff is admitted.

15. Per contra, learned Senior Counsel appearing for the respondents 2, 3 and 5 to 8 submitted that the suit I schedule is the absolute properties of A.Vedhachala Naicker as he got the properties by executing a decree obtained by a specific performance. He then submitted that in respect of the properties acquired in the executing decree, the father had executed a settlement deed. It



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is further stated that the plaintiff is also one of the beneficiaries of the settlement deed.

16. It is then contended that the second item in A schedule was assigned in favour of the father and the other properties are the self acquired properties of the first defendant, who gave the same to his 3 sons. Similarly, the learned Senior Counsel appearing for the respondents denied the right of the plaintiff to seek partition in respect of any properties, which are described in the suit schedule.

17. The learned Senior Counsel appearing for the respondents 2, 3 and 5 to 8 is unable to deny the existence of several registered documents, which were obtained in the name of the father or member of the family of A.Vedhachala Naicker in 1980s. These documents show that the family of A.Vedhachala Naicker had extensive properties. Since the suit itself was filed during the lifetime of A.Vedhachala Naicker and it is held that all the properties are the absolute properties of A.Vedhachala Naicker, the plaintiff is not entitled to seek partition. However it is now admitted that the father is no more and he died immediately after the suit was filed. Though all the legal heirs of the first defendant are parties to the suit for partition filed by the



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appellant, she unfortunately has not taken steps to seek amendment of the  
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plaint, so that the relief could have been moulded.

18. It is admitted before this Court that the plaintiff's father did not execute any Will though it is stated that he executed settlement deed and alienated several other properties, which belonged to him. Further, the encumbrance certificates and other documents show the existence of few more properties.

19. The question whether the properties of the father had been alienated or available can be gone into only if proper issues are framed and the parties are given opportunity to lead evidence. In that view of the matter, this Court finds that the plaintiff has to be given an opportunity to file a fresh suit for partition as legal heir of the plaintiff's father A.Vedhachala Naicker. It is open to the respondents to raise any other ground with regard to the existence of other properties on the ground of settlement or other alienations of father A.Vedhachala Naicker. It is also open to the appellant to seek declaration of title if any property is purchased by the father in the name of the plaintiff as it was contended on the basis of one of the documents, which is sought to be marked as additional documents with liberty preserved to the parties as above



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this appeal stands dismissed. Consequently, CMP.Nos.20673 and 17697 of 2022 filed for marking additional documents are also dismissed. MP.No.1 of 2013 is closed. No costs. Consequently, connected miscellaneous petition is closed.

**(S.S.S.R.J.) (P.B.B.J.)**  
**13.03.2023**

Speaking Order : Yes / No  
Index : Yes / No  
pvs

To  
1. The III Additional District Judge, Poonamallee  
2. The Section Officer,  
V.R.Section, High Court, Madras



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**S.S.SUNDAR, J.**  
**and**  
**P.B.BALAJI, J.**

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