



A.S.No.1177 of 2015
& Cross Obj.No.110 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

A.S.No.1177 of 2015
and
Cross Obj.No.110 of 2022

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Thiru Jaichandran
Son of Venkatasubramaniam

.. Appellant

-VS-

1. Thiru.V.Shyam Sundar
Son of Venkatasubramaniam
2. Thiru.Jothi Prasad
Son of Venkatasubramaniam
3. Thiru.V.Sekar
Son of Venkatasubramaniam
4. Thiru.Udayasankar
Son of Venkatasubramaniam
5. Thiru.Swaroop Sundar
Son of Venkatasubramaniam



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6. Tmt.J.Sudha
Wife of Jayabaskar
7. Tmt.M.Jayashree
Wife of Muthuvenkatakrishnan
8. Tmt.Alamelu
Wife of Jaichandran
9. The State of Tamil Nadu
represented by Collector of Cuddalore
Office of the Collectorate, Cuddalore
- 10.The Regional Transport Officer
Cuddalore
Office of the Regional Transport Office
Cuddalore, Nellikuppam Road, Cuddalore .. Respondents

Memorandum of Grounds of First Appeal filed under Order XLI, Rule 1 read with Section 96 of Civil Procedure Code, against the judgment and decree dated 08.07.2015 made in O.S.No.2 of 2008 on the file of the III Additional District and Sessions Judge, Cuddalore at Vridhachalam.

For Appellant	::	Mrs.AL.Ganthimathi Senior Counsel for Mr.L.Palanimuthu
For Respondents	::	Mr.M.L.Ramesh for R6 & R7 Mr.R.Venkatajalapathy for R4 No appearance for R1 to R3, R5, R8 to R10



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1. Tmt.J.Sudha
2. Tmt.M.Jayashree .. Cross Objectors

-VS-

1. Thiru.Jaichandran
2. Thiru.V.Shyam Sundar
3. Thiru.Jothi Prasad
4. Thiru.V.Sekar
5. Thiru.Udayasankar
6. Thiru.Swaroop Sundar
7. Tmt.Alamelu

8. The State of Tamil Nadu
represented by Collector
Cuddalore

9. The Regional Transport Officer
Cuddalore .. Respondents

Memorandum of Grounds of Cross Objection filed under Order XLI,
Rule 22 of the Code of Civil Procedure, against the judgment and decree
dated 08.07.2015 made in O.S.No.2 of 2008 on the file of the III Additional
District and Sessions Judge, Cuddalore at Vridhachalam.

For Cross Objectors :: Mr.M.L.Ramesh

For Respondents :: Mrs.AL.Ganthimathi
Senior Counsel for
Mr.L.Palanimuthu for R1
No appearance for R2 to R9



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COMMON JUDGMENT

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

The fourth defendant in the suit, O.S.No.2 of 2008 on the file of the III Additional District and Sessions Court, Cuddalore at Vridhachalam is the appellant in the first appeal. Defendant Nos.6 and 7 have filed the Cross Objection No.110 of 2022 disputing the quantum of share declared in their favour by the trial Court in O.S.No.2 of 2008. It is submitted by all the counsels that the appeal is confined to item No.10 in the suit schedule and the cross objection is to resolve the shares of defendants 6 and 7.

2. The brief facts that are necessary for the disposal of the first appeal and the cross objection are as follows. The first respondent in the first appeal, as the plaintiff, filed the suit for partition and separate possession of the 8/42 share in all the suit properties and for future mesne profits. It is the case of the first respondent, as plaintiff in the plaint, that the plaintiff and the defendants 1 to 5 are the undivided sons of one Venkatasubramaniam and they constituted a Hindu Undivided Family. It is the plaintiff's further case that the family possessed of considerable properties either inherited



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from the father of Venkatasubramaniam or acquired by

Venkatasubramaniam from out of the income from the ancestral properties.

It is seen from the plaint that the two bus routes plying on the routes Kallakurichi to Cuddalore and Vridhachalam to Ulundurpet along with the buses are described as suit item No.10 of the schedule. The workshop and shed is described as item No.11. A sum of Rs.65,00,000/-, which was lying in fixed deposits in the name of the father, is also shown as item No.12. Item Nos.39 to 47 are the immovable properties shown in the schedule in different town survey fields. The first appeal is in respect of item No.10 of the suit schedule, which is described as two buses with bus routes plying between Kallakurichi and Cuddalore and between Vridhachalam and Ulundurpet. It is the specific case of plaintiff in the plaint that his father Venkatasubramaniam died intestate on 25.01.2004 and the plaintiff and the defendants 2 to 5 are entitled to an undivided $1/6^{\text{th}}$ share. Since the defendants 6 & 7 are the sisters of the plaintiff and the daughters of Sri Venkatasubramaniam, the plaintiff claimed that they are entitled to $1/42$ share each and all others, except the first defendant, are entitled to $8/42$ share. It is the further case of the plaintiff that the first defendant, who is also one of the brothers of the plaintiff, executed a release deed on



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05.12.1988 releasing his interest in the joint family properties for a consideration.

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3. It is the case of the plaintiff that the fourth defendant had produced fabricated document as if the plaintiff and the other defendants gave no objections for transfer of bus permits in respect of the two buses shown in item No.10 in suit schedule, which stood in the name of the father Venkatasubramaniam, in favour of appellant. It is also stated that the permits for the two routes originally stood in the name of the father Venkatasubramaniam and that on his death on 25.01.2004, the plaintiff and the defendants 2 to 7 are entitled to have the permits for the routes transferred in their names. It is stated that on account of the forgery by the fourth defendant, the permits of the two vehicles were transferred in the name of the fourth defendant, the appellant. In the plaint, there was a reference to the criminal complaint against the fourth defendant for committing forgery without the knowledge of the plaintiff and the other defendants.

4. The fourth defendant filed his written statement denying the above



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version of the plaintiff. As regards suit item No.10, it is stated that as per the document signed by plaintiff and defendants, the permits were transferred and later the property described in item No.10 was sold in favour of eighth defendant. The trial Court, on consideration of both oral and documentary evidence, decreed the suit declaring 64/336 shares of plaintiff and defendants 2 to 5 and 8/336 shares of defendants 6 and 7 in respect of items 1 to 11, 48 and 49. Aggrieved thereby, the first appeal and the cross objection have been filed by the fourth defendant and the defendants 6 & 7 respectively before this Court. As stated earlier, the first appeal is restricted to suit item 10 and the cross appeal is to resolve the quantum of shares to be allotted to parties and to find whether defendants 6 and 7 are entitled to equal share.

5. We have heard the learned counsel appearing for the parties and perused the materials available on record.

6. From the reading of the whole pleadings, the evidence adduced by the parties and the submissions of learned Senior Counsel appearing for appellant and counsels for respondents, the only issue that arises for



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consideration before this Court in the first appeal is whether the plaintiff is entitled to a decree of partition in respect of item 10 in suit schedule and whether the defendants 6 and 7, the sisters of plaintiff, are entitled to equal share by virtue of Hindu Succession (Amendment) Act, 2005?

7. It is admitted that the appellant was convicted for the offence of committing forgery in getting the two bus permits transferred in his name on the basis of alleged no objection letters given by other sharers including plaintiff. However, the order of conviction is now under challenge before the Hon'ble Supreme Court. It is also admitted that the two buses and the permits originally stood in the name of the father Venkatasubramaniam. Though the first defendant has released his right in respect of the properties of the joint family, no other person has given any release deed in favour of the plaintiff or appellant relinquishing his/her rights in any of the items of the suit properties. Admittedly, the father Venkatasubramaniam died intestate. Merely because the appellant had transferred the permits in his name on the basis of no objection letters alleged to have been given by the plaintiff and the other defendants, the plaintiff cannot claim exclusive ownership in respect of item No.10. Further, the appellant has failed to



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prove that the plaintiff and the other defendants had voluntarily given the no objection letters following the transfer of buses and the bus permits in his favour. Admittedly, the letter stated to have been issued by the plaintiff and the other defendants is not marked as a document in this Court. At least a certified copy of the alleged letter marked in criminal proceedings could have been produced. The terms based on which such no objection certificate was obtained from the plaintiff and the other defendants is not even spoken to by the appellant in the written statement. Even though the conveyance is not required by a written instrument, the transfer of ownership in respect of movable properties cannot be presumed unless there is actual transfer for consideration or by delivery with an intention to transfer ownership for a price paid or promised as per Section 54 of Transfer of Property Act. In the absence of proper pleading and evidence, this Court is unable to countenance the arguments of the learned counsel appearing for the appellant. Mere pleading that the vehicles and permits were transferred, there is no whisper how the transfer was effected. Hence the appellant failed to prove his exclusive ownership in respect of item 10.

8. The second issue that arises for consideration is whether the



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defendants 6 & 7 are entitled to equal share as that of the plaintiff and therefore the cross objection is to be allowed?

9. The cross objection is filed by the two daughters of Venkatasubramaniam on the basis that they are also entitled to equal share. Even though the trial Court has held that the defendants 6 & 7 got married prior to coming into force of Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (Act 1 of 1990), the trial Court has failed to consider the legal implication pursuant to the advent of the Hindu Succession (Amendment) Act, 2005 substituting Section 6 of the Central Act, 2005 (Act 39 of 2005). The Hon'ble Supreme Court in *Vineeta Sharma v. Rakesh Sharma and others*, 2020 (5) L.W.300 has now clarified that the daughters are entitled to a share in the joint family properties as that of a son irrespective of their birth and death of the father before or after the commencement of the Act (Act 39 of 2005).

10. In view of the conclusions we have reached, the first appeal is dismissed. However, the cross objection is allowed holding that the defendants 6 & 7 are also entitled to 1/7th share each in respect of all the



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properties for which the suit was decreed. As a result, the judgment and decree of the trial Court are modified by holding that the plaintiff is entitled to 1/7th share in suit items 1 to 11, 48 and 49. The defendants 6 & 7 are also entitled to 1/7th share each subject to payment of Court fee.

11. With the above modification, the first appeal and the cross objection are disposed of. There shall be no order as to costs.

Index : yes/no

(S.S.S.R.J.,) (C.K.J.,)

Neutral Citation : yes/no

13.06.2023

ss

To

1. The III Additional District & Sessions Judge
Cuddalore at Vridhachalam



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and
C.KUMARAPPAN,J.

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