



A.S.No.303 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on:	Judgment delivered on:
01.09.2022	04.01.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.No.303 of 2016 and
C.M.P.No.6219 of 2016

Krishnasamy Gounder (Died)

Kalaichamy

.. Appellant

Vs.

1.Eswari

2.Ponnuthai

3.Saraswathi

.. Respondents

(2nd appellant, viz., Saraswathi transposed as 3rd respondent in A.S.No.303 of 2016 vide order of this Court dated 08.06.2022 made in C.M.P.No.13839 of 2016 in A.S.No.303 of 2016)

Prayer: This First Appeal is filed under Section 96 of C.P.C., against the judgment and decree dated 04.12.2015 made in O.S.No.166 of 2012 on the file of the I Additional District and Sessions Court, Coimbatore.



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For Appellant : Mr.D.Ravichander
For RR 1 & 2 : Mr.N.Sridhar
for Mr.R.Bharath Kumar
For R3 : Mr.R.Murali

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

Initially the 3rd respondent viz., Saraswathi was shown as 2nd appellant. Subsequently, by the order of this Court dated 08.06.2022 made in C.M.P.No.13839 of 2016, she was transposed as 3rd respondent. The appellant is 2nd defendant, the 3rd respondent is 3rd defendant and their father Krishnasamy Gounder was the 1st defendant in O.S.No.166 of 2012 on the file of the I Additional District and Sessions Court, Coimbatore, filed by the respondents 1 & 2 for partition and permanent injunction.

2.Challenging the preliminary decree granted to respondents 1 & 2 that they are entitled to 2/5th share jointly in the suit property and permanent injunction restraining the appellant from encumbering the share of respondents 1 and 2, the appellant filed the present appeal.



Case of the respondents 1 & 2:

3.The respondents 1 & 2 are daughters of Krishnasamy Gounder, the 1st defendant in the suit in O.S.No.166 of 2012, who died pending suit. The appellant herein is son, 3rd respondent is another daughter of the said Krishnasamy Gounder.

3(a).The suit properties are ancestral properties allotted to Krishnasamy Gounder, 1st defendant in the suit in a partition effected on 26.03.1973, between the 1st defendant, his brothers Arumuga Gounder and Pechiappa Gounder. In the partition deed dated 26.03.1973 it has been stated that properties are ancestral properties. The respondents 1 & 2 are in joint possession of the suit properties as coparceners along with 1st defendant, appellant and 3rd respondent. The 1st defendant was carrying on agricultural activities and was giving share to the respondents 1 & 2.

3(b).The respondents 1 & 2 after their marriage are residing in their matrimonial home. They demanded the 1st defendant to partition the suit properties and allot their share. The 1st defendant was avoiding partition of suit properties. The respondents 1 & 2 came to know that the



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1st defendant is trying to create documents to deprive their interest in the suit properties. In the 2nd week of March 2012, the respondents 1 & 2 approached the office of the Sub Registrar, Negamam and found out that 1st defendant by deed of sale dated 16.12.2009 bearing Document No.2056 of 2009 alleged to have sold the suit properties to one M.Thangavel for a sum of Rs.8,54,200/-, who is father-in-law of his son, the appellant herein. The said M.Thangavel, by the another sale deed dated 09.01.2012 executed the same to the appellant herein. The 1st defendant has no right to sell the suit properties. The respondents 1 & 2 are not parties to the said sale deed and the said sale deed is not binding on the respondents 1 & 2. The sale is *void ab-initio* and respondents 1 & 2 have every right to ignore the sale deed.

3(c). Subsequently, the said M.Thangavel by the sale deed dated 09.01.2012 purportedly sold the entire suit properties to the appellant, who is his son-in-law for a sum of Rs.8,54,200/-. This sale deed is also *void ab-initio* and the respondents 1 & 2 have right to ignore the same. The two sale deeds are created with a view to defeat the rights of the respondents 1 & 2 over the suit properties.



3(d).The two sale deeds are bogus and no sale consideration would have been passed. The sale deed in favour of the appellant is suspicious and would not create any right over the suit properties in favour of the appellant. When the respondents 1 & 2 sought an explanation from the 1st defendant, he and appellant challenged them that they cannot get their legitimate shares. The 1st defendant and appellant knowing that respondents 1 & 2 are taking legal proceedings are trying to further encumber on the suit properties to confuse things and avoid proper partition.

3(e).The suit properties are ancestral properties. The 1st defendant is Kartha of the family. The properties are not partitioned as per amendment to Hindu Succession Act, 2005, the respondents 1 & 2 have got every right to demand partition as they are coparceners along with 1st defendant, appellant and 3rd respondent. The respondents 1 & 2 are in joint possession of the suit properties.

3(f).The 1st defendant died intestate on 11.12.2013. The respondents 1 to 3 and appellant are legal heirs of the 1st defendant and they are entitled equally to 1/5th share of 1st defendant and respondents 1 & 2 are entitled to 1/4th share in the suit properties.



Case of the appellant:

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4.The appellant filed written statement and denied all the allegations of the respondents 1 & 2. The written statement filed by the appellant was adopted by the 1st defendant and 3rd respondent. According to appellant, the suit properties belong absolutely to the appellant. He having purchased the same by the deed of sale dated 09.01.2012, the suit properties belonged to 1st defendant and respondents 1 & 2 are not entitled to 1/5th share in the suit properties as per the amendment to Hindu Succession Act, 2005 on the ground that properties are not partitioned.

4(a).The suit properties were allotted to the 1st defendant in the partition deed dated 26.03.1973 and he is entitled to deal with the properties as he may choose. The allegation that the 1st defendant was doing agricultural work and was giving share to the respondents 1 & 2 is not correct. For the needs and medical expenses of the 1st defendant, he entered into an agreement of sale with one M.Thangavel, as the 1st defendant was in dire need of funds. The said transaction was genuine and true and not a sham transaction. The suit properties were agreed to be sold for sale consideration of Rs.1,76,000/- and the said M.Thangavel,



who is father-in-law of the appellant paid a sum of Rs.1,50,000/- and the balance sale consideration of Rs.26,000/- was paid by him on 07.04.2004. The full satisfaction receipt was issued to him and possession was also handed over to him. On 07.04.2004 itself sale transaction was completed and the said M.Thangavel became owner of the suit properties. The 1st defendant did not execute the sale deed in favour of M.Thangavel. M.Thangavel, in such circumstances filed suit in O.S.No.82 of 2009 on the file of the Sub Court, Pollachi, for specific performance of agreement of sale. Pursuant to the mediation of the well wishers and mediation through Court, the 1st defendant executed the sale deed in favour of M.Thangavel. Subsequently, the appellant gaining required sources, purchased the suit property from M.Thangavel on 09.01.2012. It is not correct that no sale consideration was passed under sale agreement or sale deeds. The sale agreement and sale deeds are genuine.

4(b).The 1st defendant, respondents 1 & 2 and 3rd respondent did not contribute any money for the purchase of the suit properties by the appellant and purchase is not for the benefit of the family. He also denied that sale deeds are created to deprive the rights of respondents 1 & 2. The



suit is not maintainable without seeking the relief to set aside the sale deeds. Only to avoid payment of Court fee, the respondents 1 & 2 have ignored the sale deeds. Even if the suit properties are ancestral properties, the respondents 1 & 2 have no share in the suit properties as they were married much earlier to commencement and coming into force of the Hindu Succession Amendment Act, 1/1990. The contention of the respondents 1 & 2 that properties are not partitioned and that they are entitled to right under Amendment Act of 2005 is not correct. The properties were disposed by the 1st defendant even before coming into force of Amendment Act of 2005 and respondents 1 & 2 did not acquire any right.

4(c).The respondents 1 & 2 are not in joint possession of the suit properties and valuation under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1965 is not sustainable.

4(d).After death of the 1st defendant and amendment of plaint by the respondents 1 & 2 claiming 1/4th share each in the suit properties, the appellant filed additional written statement. After referring to the written statement already filed, the appellant contended that the 1st defendant did



not leave any right in the suit properties at the time of death to be devolved on the respondents 1 & 2 and they did not inherit any share in the suit properties and prayed for dismissal of the suit.

5. Based on the above pleadings, the learned Judge has framed following issues and additional issues:

Issues:

(I) Whether it is true that the suit property absolutely belonged to the 1st defendant?

(II) Whether the plaintiffs have any share in the suit property?

(III) Whether the Sale Deed dated 16.12.2009 (Doc.No.2056/2009) executed by the 1st defendant in favour of M.Thangavel is binding on the plaintiffs?

(IV) Whether the 2nd defendant became the absolute owner of the suit property by virtue of sale deed dated 09.01.2012?

(V) Whether the plaintiffs are entitled for 2/4th share in the suit property?

(VI) For what other relief?



Additional Issues:

(I)Whether the present suit for partition, without challenging the Sale Deed in favour of M.Thangavel as well as the Sale Deed in favour of the 2nd defendant is maintainable?

(II)Whether the plaintiffs are in joint possession of the suit property?

(III)Whether the valuation of the suit made and Court fee paid by the plaintiff under Section 37 of the Tamil Nadu Court Fees and Suit Valuation Act is sustainable?

6.Before the learned Judge, the respondents 1 & 2 examined themselves as P.W.1 & P.W.2 and marked eleven documents as Exs.A1 to A11. The appellant examined himself as D.W.1 and marked ten documents as Exs.B1 to B10.

7.The learned Judge considering the pleadings oral and documentary evidence, passed a preliminary decree on 04.12.2015 granting 2/5th share in the suit properties to the respondents 1 & 2 and restrained the appellant from alienating or encumbering the suit properties to the extent of share of the respondents 1 & 2.



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8.Challenging the said judgment and decree dated 04.12.2015 made in O.S.No.166 of 2012, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that entire claim of the respondents 1 & 2 is based on Section 6 of the Hindu Succession Act, 2005. The property was alienated in the year 2004 itself before Section 6 of the Act came into force. Section 6 of the Hindu Succession Act, 2005 cannot be applied with retrospective effect. In the year 2004, the agreement of sale was entered into and entire sale consideration was paid and possession was handed over to the purchaser M.Thangavel. The sale of the property was completed in the year 2004 itself. In the year 2004 itself the sale was completed, property was alienated at the time itself and property was not available for partition when Section 6 of the Act came into force and when respondents 1 & 2 filed suit for partition. The suit filed by the respondents 1 & 2 is without cause of action as they cannot maintain their claim as per Section 6 of the Act, when the property was alienated in the year 2004 before Section 6 of the Act came into force. The respondents 1 & 2 admitted the execution of agreement and sale of property by 1st defendant to M.Thangavel. The



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learned Judge ought to have dismissed the suit for not seeking the cancellation of two sale deeds. The learned Judge erred in holding that appellant is in possession of the suit properties as coparcener. The property was sold to third party and the appellant purchased the same from the third party / purchaser and now the appellant is in possession of the suit property as owner. The learned Judge erred in holding that respondents 1 & 2 are in joint possession with appellant. The appellant is in possession of the suit properties as owner. The suit valued as per Section 37(2) of the Tamil Nadu Court Fee Act is erroneous. The respondents 1 & 2 claim partition of the suit properties, claiming suit properties as ancestral properties. The learned Judge ought to have dismissed the suit as respondents 1 & 2 have failed to prove that suit properties are ancestral properties. In support of his contention, the learned counsel appearing for the appellant relied on paragraphs 23, 24, 29 and 30 of the judgment of this Court reported in **2022-3-L.W. 528, [M.Sathishkumar Vs. Subbanna Gounder & Others]** and prayed for setting aside the judgment and decree passed in O.S.No.166 of 2012 and allowing the appeal:

“23. Part of the Hindu Succession Act, 1956 was later amended in December 2004 by Hindu Succession



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(Amendment) Act, 2005. According to this amendment, the discrimination shown between married and unmarried daughters by Section 29-A in Tamil Nadu Amendments has also been taken care of in section 6, as substituted by Amended Act 2005, and no discrimination is made against married daughters. The Union government, in its “statement of objects and reasons” for the amendment, said “the recognition given in the 1956 Act to the rule of devolution by survivorship and its retention of the Mitakshara coparcenary property without including women in it meant that women could not inherit ancestral property in the same way as men”. It said: “The law by excluding the daughter from participating in the coparcenary ownership not only contributes to her discrimination on the ground of gender but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution....”. Therefore, it amended Section 6 to remove the discrimination and confer equal rights on daughters too. It declared that a coparcener’s daughter would become a coparcener in her own right by birth, in the same manner as a son; and would have the same rights that she would have, had she been a son. The amendment came into force on September 9, 2005, but it contained a proviso that it would not invalidate any disposition of property by



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partition or will that had taken place prior to December 20, 2004 — the day the amendment was introduced in the Rajya Sabha. The object of substituting Section 6 of the Hindu Succession Act, 1956 as stated by the Union Government in “the statement of objects and reasons for introduction of the Bill” is extracted herein:-

“Statement of Objects and Reasons.--The Hindu Succession Act, 1956 has amended and codified the law relating to intestate succession among Hindus. The Act brought about changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women’s property. However, it does not interfere with the special rights of those who are members of Hindu Mitakshara coparcenary except to provide rules for devolution of the interest of a deceased male in certain cases. The Act lays down a uniform and comprehensive system of inheritance and applies, inter alia, to persons governed by the Mitakshara and Dayabhaga schools and also to those governed previously by the Murumakkattayam, Aliyasantana and Nambudri laws. The Act applies to every person who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Pararthana or Arya Samaj; or to any person who is Buddhist, Jain or Sikh by religion; or to any other person who is not a Muslim, Christian, Parsi or Jew by religion. In the case of a testamentary disposition, this Act does not apply and the interest of the deceased is governed by the Indian Succession Act, 1925.”

24. The substituted Section 6 of the Hindu Succession (Amendments) Act, 2005 is extracted hereunder:-

Section-6 as amended by Act 39 of 2005 reads as follows:

6. Devolution of interest in coparcenary property.

(1) On and from the commencement of the Hindu



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Succession (Amendment) Act, 2005*, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub--section

(1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement



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of the Hindu Succession (Amendment) Act, 2005*, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a predeceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation. For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective



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of whether he was entitled to claim partition or not.

(4)After the commencement of the Hindu Succession (Amendment) Act, 2005*, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005*, nothing contained in this sub-section shall affect

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation. For the purposes of clause (a), the expression son, grandson or great-grandson shall be deemed to refer to the son, grandson or great-grandson,



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as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005*.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation. For the purposes of this section partition means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.] As per proviso to unamended Section-6 and Sub Section 3 of the amended Section-6 makes it clear that it is only the interest of the deceased Mitakshara coparcener in the property that would devolve either by testamentary or intestate succession under the Act. The position of law declared by the Hon'ble Supreme Court in various pronouncements regarding the proviso remains unaltered by the amendment of Section 6 by Act 39 of 2005. Sub Section-3 of Section-6 is only a reproduction of proviso to old Section-6.

.. ..

.. ..

29.A coparcener has the right of ownership on the ancestral property from their birth. To form it as an ancestral property, it has to pass down the road for four



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generations with no divisions. So, only great grandchildren of Subbanna Gounder ie., children of plaintiffs and their children have the proper right to the suit property, that too, if the suit property is not divided/partitioned for four generations. In this case, suit property was already partitioned among the family members of Subbanna Gounder/first respondent herein. Hence, the plaintiffs cannot be claimed as coparceners along with Subbanna Gounder.”

30.Once an ancestral property breaks, it becomes a self-acquired property to the coparceners, and it is no longer an ancestral property. It again becomes ancestral as long as it passes right down to three generations without division. In this case, as rightly pointed out by the learned counsel for the respondents 1, 2 and 5 that since the ancestral properties had already been partitioned between the legal heirs of Krishnasamy Gounder ie., family members of the first respondent Subbanna Gounder in the year 1986 itself and he was allotted 'B' schedule property through a registered partition deed dated 22.12.1986, his share/'B' schedule property cannot be treated as ancestral property and it has to be deemed as self-acquired property, therefore, except the first respondent, nobody has got any right or title over the properties. If a property passes through



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four generations ie., Karta and his 3 generations, it is the ancestral property and if the Karta shares his property with his three generations ie., children, grandchildren and great grandchildren, who are coparceners, then that property is termed as coparcenary property. In the case on hand, since already partition effected between the family members of first respondent/legal heirs of Krishnasamy Gounder through a registered partition deed dated 22.12.1986 itself, the share allotted to first respondent in the said partition is treated as self acquired property (coparcenary property) of first respondent and cannot be treated as ancestral property of Hindu Undivided Family. Subsequently, the coparcenary property of first defendant was partitioned between his first generations legal heirs on 08.06.2004. If the property is not divided among the Hindu Undivided Family consists of Karta and 3 generations, then it is considered as ancestral property. However, in the case on hand, since already division of property through a partition deed dated 08.06.2004 was already effected between the first generation of Karta Subbanna Gounder/first respondent herein, the plaintiffs, who are the second generations of Subbanna Gounder/first respondent are not the coparceners of self-acquired property (coparcenary property) of first respondent and hence, they are not



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entitled for any share in the self-acquired property (Coparcenery property) of Subbanna Gounder/first respondent herein.”

10.The learned counsel appearing for the respondents 1 & 2 contended that the suit properties originally belonged to Palani Gounder, father of the 1st defendant and grand father of the appellant and respondents. The 1st defendant and his two brothers by deed of partition dated 26.03.1973, marked as Ex.A1, partitioned the properties. In the said partition deed, it has been mentioned that the properties are ancestral properties. One of the items in the partition deed, an ancestral property is allotted to 1st defendant. It is not correct that suit properties are absolute properties of 1st defendant. The respondents 1 & 2 became coparceners as per Section 6 of the Hindu Succession Act, 1956. On the date of amendment coming into force, the suit properties were not partitioned or alienated. Any immovable property more than value of Rs.100/- can be alienated only by registered document. The contention of the appellant that on the date of agreement of sale dated 05.02.2004 and 07.04.2004, the confirmation of sale, M.Thangavel became beneficial owner is contrary to the provisions of law. The agreement of sale, receipt dated 07.04.2004 and sale deed dated 16.12.2009 are sham documents. The 1st



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defendant did not have any right to sell the suit properties as appellant and respondents are coparceners along with the 1st defendant. The respondents 1 & 2 are not parties to the said sale deeds and the same is not binding on them. The sale deed dated 09.01.2012 by which the appellant had alleged to have purchased the suit properties is also sham document. No sale consideration had been paid. The vendor M.Thangavel, who is none other than father-in-law of the appellant did not acquire any title in the suit properties as the sale deed dated 16.12.2009 executed in his favour by the 1st defendant is *void ab-initio*. The respondents 1 & 2 have proved that suit properties are ancestral properties, they have become coparceners as per Section 6 of the Hindu Succession Act, 1956 and that sale deeds dated 16.12.2009 and 09.01.2012 are *void ab-initio* and not binding on them. The learned Judge has considered all the materials on record, by giving acceptable reasons by taking into account the judgments relied on, passed a preliminary decree. In support of his contention, he relied on the following judgments and prayed for dismissal of the appeal.

(i)***AIR 1974 PUNJAB AND HARYANA 18, [Gurdial Singh and***



others Vs. Sewa Singh and others];

“4. We are, however, unable to hold that the sale shall be deemed to have taken place on April 15, 1959, the date of the agreement for sale, as has been held in *Dina v. Gujaba*, AIR 1926 Nag 95, which judgment has been relied upon by the learned Single Judge in support of his decision. The defendant-vendees had to retain their status as tenants till the date of the decree of the learned trial Court and if prior to that date they lost that status with regard to any part of the property, the sale of that part of the property in their favour cannot be said to be in the status of a tenant. According to the agreement dated April 15, 1959, the vendees had the right either to sue for specific performance or for damages, the amount of which was specified. They had, therefore, the option to choose one or the other. Till they made up their mind to choose the relief for specific performance of the agreement. They had to retain their status as tenant. Even it was open to them to compromise the suit till it was decreed by accepting damages and, therefore, till the decree for specific performance was passed in favour of the vendees against the vendors, it cannot be said that their rights as vendors and vendees came into being and were determined by the Court. The plaintiff-appellants are, therefore, entitled to a decree for possession of 5



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big has 6 biswas of land of which the vendee-defendants had lost possession before the decree for specific performance was passed in their favour on payment of proportionate price.”

(ii) *AIR 2012 SUPREME COURT 206, [Suraj Lamp and Industries Pvt. Ltd., Vs. State of Haryana and another];*

“11. Section 54 of TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in *Narandas Karsondas v. S.A. Kamtam and Anr.* (1977) 3 SCC 247, observed:

A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. See *Rambaran Prosad v. Ram Mohit Hazra* [1967]1 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.”

In India, the word ‘transfer’ is defined with reference to the word ‘convey’. The word ‘conveys’ in section 5 of



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Transfer of Property Act is used in the wider sense of conveying ownership... ...that only on execution of conveyance ownership passes from one party to another...."

In Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra [2004 (8) SCC 614] this Court held:

"Protection provided under Section 53A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.

12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54



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and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.”

11. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the respondents 1 & 2 and the learned counsel appearing for the 3rd respondent and perused the entire materials on record.

12. Based on the pleadings and arguments of the learned counsel appearing for the appellant, respondents 1 & 2 and 3rd respondent, the following points have arisen for consideration in this appeal:

- (i) Whether the suit properties are ancestral properties?
- (ii) Whether respondents 1 & 2 are coparceners along with 1st defendant, appellant and 3rd respondent?
- (iii) Whether the suit for partition without seeking to set aside the sale deeds dated 16.12.2009 and 09.01.2012 is maintainable?



Point (i):

(i) Whether the suit properties are ancestral properties?

13. The respondents 1 & 2 have filed suit in O.S.No.166 of 2012 on the file of the I Additional District and Sessions Court, Coimbatore against their father - 1st defendant, their brother – the appellant herein and their sister - 3rd respondent herein claiming 1/5th share each in the suit properties on the ground that suit properties are ancestral properties. On the death of their father, 1st defendant, they amended the plaint claiming 1/4th share each. To prove their case that the suit properties are ancestral properties, they filed the xerox copy of the partition deed dated 26.03.1973, which is marked as Ex.A1. The appellant and 1st defendant did not dispute the said document. By the said partition deed, the 1st defendant, his brothers Arumuga Gounder and Pechiappa Gounder partitioned among themselves the properties which belonged to their father Palani Gounder. In Ex.A1, it has been mentioned that properties are ancestral properties and suit properties are allotted to the 1st defendant. The 1st defendant and appellant did not deny the recitals in partition deed Ex.A1 that ancestral properties are allotted to 1st defendant. The 1st defendant and appellant claimed that suit properties are absolute properties of 1st defendant. The respondents 1 & 2 have no



share in the suit properties. The 1st defendant and appellant having admitted that 1st defendant got the properties as per partition deed / Ex.A1, they failed to substantiate their claim that suit properties are absolute properties of 1st defendant. No acceptable evidence was let in to prove that suit properties are absolute properties of 1st defendant. The learned Judge considered all the materials placed before him, has rightly held that suit properties are ancestral properties by giving cogent and valid reasons. There is no reason to set aside the said finding. Thus, Point (i) is answered in favour of respondents 1 & 2.

Points (ii) & (iii):

(ii) Whether respondents 1 & 2 are coparceners along with 1st defendant, appellant and 3rd respondent?

(iii) Whether the suit for partition without seeking to set aside the sale deeds dated 16.12.2009 and 09.01.2012 is maintainable?

14.To decide this issue, Section 6 of Hindu Succession Act, 1956 as per Central Amendment is to be considered and whether the suit properties are available for partition when the amendment came into effect.



14(a) Originally only son and grand son become coparceners by birth. The daughters are not coparceners. They were entitled to share after the death of their father in the Hindu undivided family as coparcener. In order to give benefit to daughters also, the State Government incorporated Section 29-A, 29-B, 29-C in the Hindu Succession Act, 1956. The State of Tamil Nadu by the Tamil Nadu Act 1 of 1990, incorporated Sections 29-A, 29-B, 29-C in the Hindu Succession Act, 1956. The said amendment came into force with effect from 25.03.1989. It will be useful to extract Sections 29-A, 29-B, 29-C for better appreciation:

“The Hindu Succession Act, 1956:

29-A. Equal rights to daughter in coparcenary property.—*Notwithstanding anything contained in section 6 of this Act,--*

(i) in a Joint Hindu Family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;

(ii) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a



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daughter the same share as is allottable to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allottable to the pre-deceased child of a predeceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the predeceased son or of the pre-deceased daughter, as the case may be;

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;

(iv) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989;

(v) nothing in clause (ii) shall apply to a partition which had been effected before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989.



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29-B. Interest to devolve by survivorship on death.—

When a female Hindu dies after the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, having, at the time of her death, an interest in a Mitakshara coparcenary property by virtue of the provisions of section 29-A, her interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that if the deceased had left any child or child of a pre-deceased child, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation I.--For the purposes of this section, the interest of a female Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

Explanation II.--Nothing contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased, had separated himself or herself from the coparcenary or any of his or her heirs to claim on intestacy a share in the interest referred to therein.

29-C. Preferential right to acquire property in certain cases.--(1) Where, after the date of the commencement of the



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Hindu Succession (Tamil Nadu Amendment) Act, 1989, an interest in any immovable property of an intestate or in any business carried on by him or her, whether solely or in conjunction with others, devolves under section 29-A or section 29-B upon two or more heirs, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred. (2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of, or incidental to, the application.

(3) If there are two or more heirs proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation.--In this section "court" means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on and includes any other court which the State Government may, by notification in the Tamil Nadu Government Gazette, specify in this behalf.".]”



14(b).As per Section 29-A(i), daughter of a coparcener shall by birth will become a coparcener in her own rights in the same manner as a son. As per Sub-section (iv) of Section 29-A, only an unmarried daughter will become a coparcener and a daughter married before amendment came into force will not become coparcener. Further any partition effected before the date of commencement of Hindu Succession (Tamil Nadu Amendment) Act, 1989, will not be affected by introduction of Section 29-A. In order to give benefit to daughters and to remove the gender discrimination between the son and daughter of a coparcener, the Central Government amended Section 6 of Hindu Succession Act, 1956. Section 6 of the Hindu Succession Act, 1956 was substituted by Act 39 of 2005 and it came into force with effect from 09.09.2005. Section 6(1),6(2) and 6(5) as substituted is extracted hereunder for better appreciation:

“THE HINDU SUCCESSION ACT, 1956

6. Devolution of interest in coparcenary property.-(1)

On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right the same manner as the son;



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(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

.....

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.-For the purposes of this section “partition” means any partition made by execution of a



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deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.]”

14(c).As per Section 6(1)(a) of the Hindu Succession Act, 1956, a daughter by birth becomes a coparcener in her own right in the same manner as a son. By substituting Section 6 by Act 39 of 2005, the restrictions imposed in Section 29-A of The Tamil Nadu Hindu Succession Act, 1956 is removed and even a married daughter by birth becomes a coparcener. A daughter to become a coparcener, two conditions must be fulfilled.

(i)Firstly - there must be ancestral property in the Hindu undivided property.

(ii)Secondly – there should not be any disposition or alienation including any partition or testamentary disposition before 20.12.2004.

14(d).In this position of law, it has to be decided whether the respondents have become coparceners along with 1st defendant and appellant.

14(e).It is the case of the respondents 1 & 2 that no partition or



alienation was effected when Section 6 was substituted and came into force. On the other hand, it is the case of the 1st defendant and appellant that the suit properties were sold to one M.Thangavel, who is father-in-law of the 1st defendant on 07.04.2004 itself. According to them, due to financial requirements to buy medicines and meet out the other expenses, the 1st defendant agreed to sell the suit properties to M.Thangavel, father-in-law of the appellant for a total sale consideration of Rs.1,76,000/-. The 1st defendant and the said M.Thangavel entered into an agreement of sale on 05.02.2004 and M.Thangavel paid a sum of Rs.1,50,000/- to the 1st defendant. Subsequently, on 07.04.2004, the said M.Thangavel paid the balance sale consideration of Rs.26,000/- to the 1st defendant. The 1st defendant issued a receipt dated 07.04.2004 confirming the sale and handed over possession of the suit property to M.Thangavel. According to appellant, the said M.Thangavel became beneficial owner on 07.04.2004 itself. But the appellant has taken a different stand that 1st defendant failed to execute the sale deed in favour of the said M.Thangavel and M.Thangavel filed suit in O.S.No.82 of 2009 on the file of the Sub Court, Pollachi against the 1st defendant for specific performance of agreement of sale dated 05.02.2004. As per Lok Adalat award in the said case, the 1st defendant executed the sale deed dated



16.12.2009 in favour of the said M.Thangavel.

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14(f).It is the further case of the appellant that the said M.Thangavel sold the said property to the appellant by the sale deed dated 09.01.2012 for valuable consideration. The appellant has become absolute owner of the suit property and the suit property is not a property of Hindu undivided family. The appellant has marked these documents as Exs.B1 to B4 & B6. On the other hand, it is the case of the respondents 1 & 2 that these transactions are bogus transactions, created only with an intention to deprive their right and not to give them their respective shares. They also took a stand that the 1st defendant is not absolute owner of the suit property and he had only 1/5th share in the suit property. It is the further case of the respondents 1 & 2 that in view of the fact that the 1st defendant had only 1/5th share in the suit properties, the sale deed dated 16.12.2009 executed by the 1st defendant in favour of M.Thangavel is *void ab-initio* and is not binding on the respondents 1 & 2.

14(g).Considering the above materials, we are of the opinion that the contention of the respondents 1 & 2 is acceptable and case of the 1st defendant and appellant that property was sold on 07.04.2004 cannot be



accepted for the following reasons:

(i) M.Thangavel is close relative of the 1st defendant and appellant and being father-in-law of the appellant.

(ii) The 1st defendant and appellant have not given any reason as to why the 1st defendant did not execute the sale deed dated 07.04.2004 itself after the receipt of entire sale consideration and handing over the possession or within a reasonable time and in any event, on or before 09.09.2005 when Section 6 was substituted by Act 39 of 2005.

14(h). From the materials referred to above, it is clear that suit in O.S.No.82 of 2009 filed by M.Thangavel is a collusive suit. The 1st defendant, appellant and said M.Thangavel colluded together, created Exs.B1 & B2 and filed suit in O.S.No.82 of 2009 on the file of the Sub Court, Pollachi. Further any immovable property worth more than Rs.100/- can be alienated only by a registered document. The said M.Thangavel did not acquire any title by Exs.B1 & B2. By an agreement of sale, a purchaser does not get title to the property. Only when a sale deed is executed and registered, he gets title to the property. This is made clear by Section 54 of Transfer of Property Act, which reads as follows:

“Section 54 of the Transfer of Property Act:



54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.”

The Hon'ble Apex Court in the judgment reported in *AIR 2012 SUPREME COURT 206, [Suraj Lamp and Industries Pvt. Ltd., Vs. State of Haryana and another]* relied on by the learned counsel appearing for the respondents 1 & 2 considering Sections 54 and 55 of the Transfer of Property Act, categorically held that “in the absence of deed of conveyance (duly stamped and registered as required by law), no right, title or interest in the immovable property can be transferred.” The Hon'ble Apex Court further held that “a contract of sale does not itself create any interest or charge on the property.”

14(i). In any event, the said Thangavel did not acquire title for the



entire property by Ex.B4 / sale deed dated 16.12.2009, executed by 1st defendant in favour of M.Thangavel as 1st defendant had only 1/5th share in the suit property. The said sale deed was not executed by the 1st defendant as Kartha of the Hindu undivided family and respondents 1 & 2, who were major married daughters at the time of sale deed were not parties to the said sale deed. In view of the same, the said sale, in so far as the respondents 1 & 2 are concerned is *void ab-initio* and they are entitled to ignore the same and file the suit for partition without seeking to set aside the said sale deed.

14(j). It is pertinent to note that any immovable property worth more than Rs.100/- can be transferred and conveyed only by registered documents by paying requisite stamp duty. In the present case, the 1st defendant executed the sale deed in favour of M.Thangavel only on 16.12.2009. In view of legal position, the said M.Thangavel did not get any interest, right or title over the suit property based on the agreement of sale dated 05.02.2004 and the letter dated 07.04.2004 alleged to have been executed by 1st defendant.

14(k). In view of the fact that said property was not partitioned



when Section 6 of the Hindu Succession Act, 1956 was substituted on 09.09.2005 and properties were not alienated as on 09.09.2005, the respondents 1 & 2 have become coparceners by their birth.

14(l). Similarly, the sale deed dated 09.01.2012 / Ex.B6 executed by M.Thangavel in favour of the appellant is also *void ab-initio* in respect of respondents 1 & 2 as the said M.Thangavel did not acquire any interest, right or title over the entire suit properties by sale deed dated 16.12.2009 / Ex.B4.

14(m). Points (ii) & (iii) are answered that suit properties are ancestral properties and 1st defendant was in possession of ancestral property of the Hindu undivided Family consisting of 1st defendant, appellant and respondents 1 to 3. In view of the fact that ancestral property was available for partition as on 09.09.2005, the respondents 1 & 2 have become coparceners and are entitled to 1/5th share each in the suit property.

14(n). For the above reasons, Point (ii) is answered in favour of respondents 1 & 2 holding that they became coparceners along with 1st defendant, appellant and 3rd respondent.

14(o). Point (iii) is answered in favour of the respondents 1 & 2



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holding that respondents 1 & 2 are entitled to ignore the sale deed dated 16.12.2009 / Ex.B4 and sale deed dated 09.01.2012 Ex.B6, as both the documents are *void ab-initio* in so far as the respondents 1 & 2 are concerned as they are not parties to the said documents.

14(p). Accordingly, Points (ii) & (iii) are answered in favour of the respondents 1 & 2.

15.For the above reasons, this appeal stands dismissed. The judgment and decree dated 04.12.2015 passed in O.S.No.166 of 2012 shall stand confirmed. Consequently, the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.S., J)
04.01.2023

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Index : Yes / No
Internet : Yes / No



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V.M.VELUMANI, J.
and
S.SOUNTHAR, J.

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To

- 1.The I Additional District and Sessions Judge,
Coimbatore.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

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04.01.2023