



A.S.No.243 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.243 of 2010

D.Radhakrishnan

.. Appellant

Versus

Neelaveni Ammal (Deceased)

1. Kamakshi
2. Lakshmi
3. Pattammal
4. Govindaswamy
5. Navaneetham
6. Muthukumarasamy
7. Lakshmi
8. G.Rajendran
9. Hamsa
10. Kanchana
11. Selvi
12. G.Srinivasan
13. Rajammal

.. Respondents

Cause title accepted vide order of Court, dated 28.04.2010
made in M.P.No.2 of 2010 in A.S.SR.No.95439 of 2006

Prayer : Appeal Suit filed under Order XLI Rule 1 of Civil Procedure Code read with under Section 96 of Civil Procedure Code against the judgment and decree, dated 30.06.2006 made in O.S.No.1526 of 1997 on the file of the learned Additional District and Sessions Judge, Chennai (Fast Track Court No.III, Chennai).



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A.S.No.243 of 2010

For Appellant : No Appearance

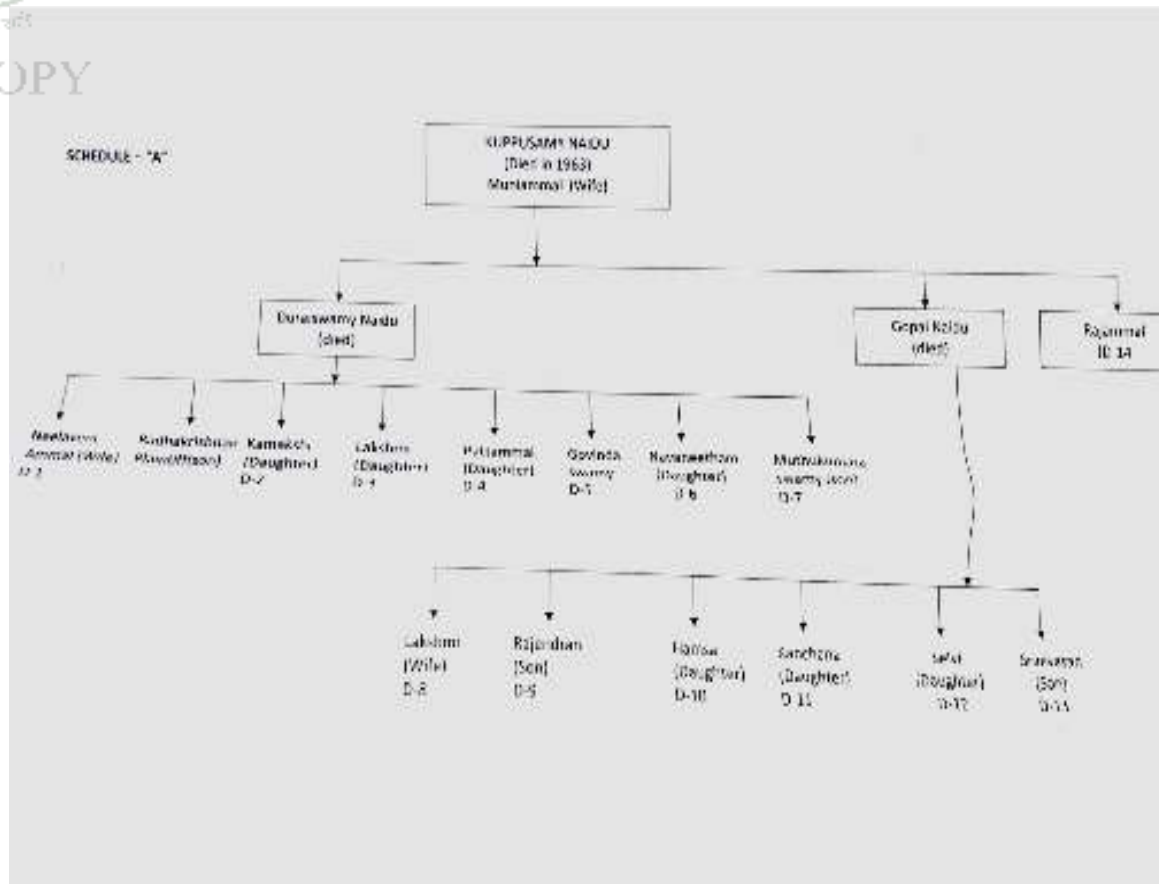
For Respondents : Mr.M.Krishnappan,
Senior Counsel,
Assisted by M/s.R.Swarnalatha,
for RR-4 and 6
: No Appearance for R5

JUDGMENT

Claiming the suit properties to be the coparcenary properties of one *Duraisamy Naidu, Gopal Naidu* and claiming himself to be the eldest son of *Duraisamy Naidu*, the appellant / plaintiff filed the suit for partition claiming 7/24th share in the schedule - B and C properties against the respondents / defendants with the following genealogy tree:-



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2. The suit was contested by the respondents / defendants by filing different written statements. *Inter alia*, it was the contention of the respondents / defendants that in respect of the schedule - B and C properties, there were already two registered partition deeds namely, partition deed, dated 07.11.1987 registered as Doc.No.1418 of 1987, whereby, even during the life time of the said *Duraisamy Naidu*, the properties were partitioned. Pursuant thereto, there was also a sale *vide* Doc.No.1858, dated 03.11.1993 and Doc.No.519, dated 24.03.1993. This



A.S.No.243 of 2010

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apart, there was also a further partition on 07.11.1987 between the legal heirs pursuant to the first partition deed.

3. The Trial Court framed totally five issues, inter *alia*, the first issue is whether the appellant / plaintiff is entitled to claim 7/24th share in the schedule - B and C properties. After appreciating the oral and documentary evidence on record, the Trial Court found that the appellant / plaintiff, with knowledge, had suppressed the earlier partition deeds as well as the sale deeds and in view thereof, held that the appellant / plaintiff is not entitled for any share in the schedule - B and C properties as claimed in the plaint and dismissed the suit. Aggrieved by the same, the present appeal is laid before this Court.

4. Before this Court, it is pleaded that the Court below should have found that the schedule - B and C properties, as joint family properties, in the name of the grand father of the appellant, the nucleus being the sale of the ancestral properties at *Thakkamedu*. Once the properties are joint family properties, it is liable for partition and the appellant / plaintiff is entitled to the share. The Trial Court omitted to consider that in the earlier partition,



A.S.No.243 of 2010

the properties stood in the name of *Duraisamy* and *Neelaveni Ammal* were not included in the partition. Therefore, the Trial Court ought to have decreed the suit.

5. Per *contra*, *Mr.M.Krishnappan*, the learned Senior Counsel appearing on behalf of the respondents / defendants contended that the findings of the Trial Court are based on the documentary evidence namely, **Exs.B-1** and **B-2**, partition deeds, both being registered documents, in which the suit schedule property has been dealt with. As a matter of fact, the categorical admission in the cross-examination that **P.W.1** also signed the partition on 07.11.1987 would clearly show that the suit was frivolous. It is further contended that the present suit for partition is filed only because a suit for permanent injunction is filed by the respondents / defendants in respect of the properties allotted to them and the present suit for partition is nothing but a counter blast.

6. I have considered the grounds of appeal and the contentions and upon consideration thereof, the only point which arise for consideration in



A.S.No.243 of 2010

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this appeal is whether the appellant / plaintiff is entitled for 7/24th share in the schedule - B and C properties as claimed by him ?

7. Even though detailed evidence has been let in in respect of the sale of the properties in *Thakkamedu* village, in the teeth of **Exs.B-1** and **B-2** registered partition deeds even during the life time of the appellant's / plaintiff's father, *Duraisamy*, in which the appellant / plaintiff has also signed, it cannot be said that the properties are available for partition. The very fact, that the respective allottees have dealt with their shares by even selling some of the items of the properties to the other respondents / defendants, would fortify that the properties were no longer available for partition. In view thereof, when the Trial Court has adverted to the relevant document and the oral evidence of **P.W.5**, and has found that in view of the earlier partition as well as the sale deeds, the properties mentioned in schedule - B and C properties will no longer be available for partition. No exception whatsoever can be taken in respect of the said findings. The respondents / defendants have proved their case by marking **Exs.B-1** and **B-2**. On the other hand, the appellant / plaintiff answered the cross-examination that he signed in the partition documents only for the purpose



A.S.No.243 of 2010

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of sale of the property, which is evasive. In that view of the matter, the Appeal Suit fails.

8. In the result, A.S.No.243 of 2010 is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

02.06.2023

Index : yes
Speaking order
Neutral Citation : yes
grs

To

The Additional District and Sessions Judge,
Fast Track Court No.III, Chennai.



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A.S.No.243 of 2010

D.BHARATHA CHAKRAVARTHY, J.,

grs

A.S.No.243 of 2010

02.06.2023