



A.S.No.13 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B. BALAJI

A.S.No.13 of 2009

Shanthalakshmi

Vs.

... Appellant

- 1.Muthusami Gounder (died)
- 2.Thangavelu (died)
- 3.Ponnusamy
- 4.Ilandirayan (died)
- 5.Valliammal
- 6.Kalisamy
- 7.Palanisamy
- 8.Krishnaveni
- 9.Kalaiselvi
- 10.Krithika
- 11.Varun Kumar
- 12.Saraswathi
- 13.Manivannan
- 14.Elango

... Respondents

[R9 to R11 are brought on record as LR's of deceased 1st and 2nd respondents, viz., Muthusami Gounder and Thangavelu, vide order of Court, dated 24.02.2023 made in C.M.P.Nos.21999, 22001 & 22003 of 2022 in A.S.No.13 of 2009]



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[R12 to R14 brought on record as LR's of deceased 4th respondent, viz., Ilandirayan, vide order of Court dated 24.02.203 made in C.M.P.Nos.21987, 21989 & 21990 of 2022 in A.S.No.13 of 2009]

Prayer : Appeal Suit filed under Section 96 r/w. Order 41 Rule 1 of Code of Civil Procedure against the judgment and decree dated 25.04.2008 in O.S.No.364 of 2005 on the file of the Additional District and Sessions Court, Fast Track Court-3 at Coimbatore.

For Appellant	:	Mr.V.Ravi
For R3, R5 to R7 & R12 to R14	:	Mr.V.P.Sengottuvel Senior Counsel for Ms.K.Indu Priya
For R9 to R11	:	Mr.R.Ramanlal Senior Counsel for Mr.V.L.Akshaisajin Kumar
For R8	:	Mr.J.Pothiraj
R1, R2 & R4	:	Died (steps taken)



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J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

The plaintiff in the suit in O.S.No.364 of 2005 on the file of the Additional District and Sessions Court (Fast Track Court No.III), Coimbatore, is the appellant in the above appeal.

2.The appellant is the daughter of 1st respondent, who is the 1st defendant in the suit. 2nd respondent is the brother of appellant and he is the 2nd defendant in the suit. Defendants 3 to 8 are impleaded as they have purchased the suit properties from defendants 1 and 2. The plaintiff filed the suit to declare the decree passed in O.S.No.1070 of 1993 as null and void and for partition of suit properties into three equal shares and allot one such share to the plaintiff/appellant.

3.Learned Senior Counsel appearing for the respondents has filed the Geneology tree and the relationship as found in the Geneology tree is not in dispute. Sri Kulande Gounder had four sons by name V.K.Palanisamy,



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V.K.Muthusamy (1st defendant), V.K.Arusamy, V.K.Rathinasamy and a daughter by name T.P.Ponnammal. It is admitted that plaintiff is the daughter of 1st defendant and granddaughter of Sri Kulande Gounder. Similarly, 2nd defendant is the son of 1st defendant and grandson of Sri Kulande Gounder.

4.It is the case of the plaintiff in the plaint that the suit properties are self-acquired properties of her grandfather Sri Kulande Gounder. Later, the plaintiff pleaded that Kulande Gounder acquired properties by his own earnings as well as out of his income derived from the ancestral properties which he succeeded from his ancestors. It is also stated that the properties are in the enjoyment of Hindu Undivided Family. It is the case of the plaintiff/appellant that, after the death of grandfather Sri Kulande Gounder, there was a partition among the legal heirs of Sri Kulande Gounder and 1st defendant got the suit properties to his share and hence, it is stated that the plaintiff is entitled to a share in the suit properties. It is further stated that the defendants 1 and 2 colluded together in dividing the properties among themselves and obtained a decree in O.S.No.1070 of 1993 on the file of



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Sub-Court, Coimbatore. It is further contended that the plaintiff was born in the year 1957, prior to the purchase of suit properties. Though it is admitted by plaintiff that some portion of suit properties were sold by defendants 1 and 2 in favour of defendants 3 to 8, it is stated that the alienation came to the knowledge of plaintiff only on 10.08.2005 when the plaintiff visited the suit properties. It is contended that such alienations are void. It is stated that the plaintiff has filed a separate suit in respect of the properties already sold by defendants 1 and 2.

5.The suit was contested by respondents/defendants 1 and 2 mainly on the ground that the plaintiff is not a coparcener and she has no right as contended by her. It is further contended that the properties were allotted to 1st defendant in a partition deed dated 12.08.1959 during the life time of Kulande Gounder between Kulande Gounder and his four sons and the properties of Kulande Gounder were partitioned after his death as per the Partition Deed dated 13.12.2001. All the suit properties are claimed to be the separate properties of 1st defendant. Stating that the suit properties are divided between defendants 1 and 2 by metes and bounds under the



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partition decree on 27.01.1995 in O.S.No.1070 of 1995, it is further contended that the partition in 1995 between 1st defendant and 2nd defendant cannot be questioned by the plaintiff. The 2nd defendant in his separate written statement referred to the Partition Deed dated 12.08.1959 between Kulande Gounder and his four sons, a registered Will dated 11.12.1985 executed by Sri Kulande Gounder in respect of his self acquired properties and the subsequent Partition Deed dated 13.12.2001 among the sons and daughters of Kulande Gounder in respect of the properties of Kulande Gounder. By virtue of partition as per the decree in O.S.No.1070 of 1993, it is further contended that the plaintiff is not entitled to any share or right in any of the suit properties as all the properties are the separate properties of 1st defendant. The 3rd defendant claimed to have purchased 7.51 Acres of land from first defendant after the allotment of properties in the compromise decree in O.S.No.1070 of 1993. The 4th defendant claimed to have purchased 4.5 Acres from 1st defendant. Similarly, other defendants have purchased an extent of 7.18 Acres and another extent of 13.08 Acres from 2nd defendant.



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6.The trial Court framed the following issues :

“1.வாதி தாவாவில் கோரியுள்ளபடி விளம்புகை பரிகாரம் பெற அருகதையற்றவரா ?

2.வாதிக்கு கிடைக்கக்கூடிய வேறு பரிகாரம் என்ன ?”

7.The trial Court, though proceeded on the basis that the properties are ancestral properties of Sri Kulande Gounder, accepted the case of defendants that the properties are separate properties of defendants 1 and 2. Since there was a partition dated 12.08.1959 during the lifetime of grandfather Sri Kulande Gounder between Sri Kulande Gounder and his four sons, the trial Court held that the properties allotted to Kulande Gounder are his separate properties.

8.Referring to the registered Will executed by Kulande Gounder on 11.12.1985, the Trial Court held that Kulande Gounder is entitled to deal with his separate properties allotted to him in 1959 and the properties purchased by him after 1959 partition. Since plaintiff has admitted that she



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got married in 1987, the Trial Court held that she is not entitled to the benefits of Tamil Nadu Amendment. Since it is established that the remaining properties which are not covered by the Will were divided among the heirs of Kulande Gounder in a partition dated 13.12.2001, and the said partition is admitted by plaintiff, the Trial Court held that the properties of Kulande Gounder will devolve only on his children and that plaintiff has no right. Though the properties allotted to 1st defendant in 1959 partition are held to be the ancestral properties of 1st defendant, the Trial Court found that the partition between 1st defendant and 2nd defendant on the basis of compromise decree in O.S.No.1070 of 1993 is valid and saved as the properties were partitioned before 20.12.2004. In other words, the Trial Court rightly held that the plaintiff is not entitled to claim any share even under the Hindu Succession Amendment Act, 2005 in view of the partition as per the Final Decree dated 27.01.1995 in O.S.No.1070 of 1993.

9. Aggrieved by the dismissal of suit by Trial Court, the above appeal is preferred by plaintiff.



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10.The learned counsel for the appellant/plaintiff submitted that the Partition Suit in OS.No.1070/1993 is collusive and the judgment and decree in OS.No.1070/1993 is null and void and not binding on the appellant. The learned counsel then submitted that the Trial Court has not appreciated the pleadings and evidence properly and that the judgment and decree of the Trial Court is vitiated as few properties are held to be separate properties of Kulande Gounder. Since the partition suit in OS.No.1070/1993 is collusive and the compromise in the said suit was clandestinely done with a view to defeat the plaintiff's right, the learned counsel submitted that the appeal has to be allowed. The learned counsel then submitted that the Partition Deed dated 12.08.1959 is admitted and the properties are therefore, joint family properties.

11.Having regard to the points raised by the appellant and the pleadings of the respective parties, the following points arise for consideration in the above Appeal:

[A]Whether the suit properties are joint family properties of Kulande Gounder?



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[B]Whether the decree in OS.No.1070/1993 on the file of Sub Court, Coimbatore, is valid?

[C]Whether the plaintiff/appellant is entitled to any share in the suit properties either by virtue of the 1989 State Amendment in the Hindu Succession Act or by virtue of the Hindu Succession Amendment Act, 2005?

12.Before going into the issues this Court finds that the parties have some difficulty in understanding the character of properties. The specific averments in the plaint as well as in the written statement filed on behalf and defendants 1 and 2 indicate that the parties as well as the counsels appearing for them before the Trial Court have some confusion in understanding the character of suit properties even on the admitted facts. Hence, this Court is inclined to discuss position prior to Hindu Succession Act, 1956 and post 1956 Act. Before Hindu Succession Act, 1956, when a male member dies, his property will devolve on his son, grandson and great grandson and they acquire an interest in coparcenary property from the moment of their birth. On the death of a coparcener his interest in the



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coparcenary property pass on to other coparceners by survivorship.

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13.After 1956, section 6 deals with the devolution of property of a male Hindu having undivided interest in a co-parcenary [joint family]. Section 8 deals with devolution of interest in respect of propeties of a male Hindu who die after 1956 Act. As per section 6, the undivided interest of coparcenary of a male Hindu devolves on other coparceners by survivorship if he has no female heirs.

14.Going by Law Lexicon by P.Ramanatha Aiyar, the term ‘ancestral’ is derived from the word ‘ancestor’. One who has preceded another in a direct line of descent or a lineal ascendant is normally called an ancestor. It is well accepted that the term ‘ancestor’ differs from the term predecessor. It has been judicially interpreted that the term ancestor in its ordinary and natural meaning connotes a progenitor. In Hindu Law, all properties which a man inherits from a direct male ancestor, not exceeding third degree higher than himself is ancestral property. Therefore, the term ancestral property would also mean that the property derived from a father or a



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grandfather or great grandfather. In other words, a property inherited from a direct male ancestor is also an ancestral property. However, a coparcenary is a property shared by male members of joint family where there is unity of title, possession and interest. A coparcenary property can also be called as ancestral property. However, every ancestral property need not be a coparcenary property after the advent of Hindu Succession Act, 1956. Under section 8 of Hindu Succession Act, the self acquired property of a male Hindu after his death devolves on his class I heirs namely widow, son, daughter and mother. The property devolved on a son under section 8 may also be called as ancestral but it will be his absolute property. A Hindu Joint family is a larger body than a Hindu Coparcenary because a Joint Family consists of all persons lineally descended from a common ancestor and includes female heirs namely wife and daughter [before 1956 unmarried daughters] of the common ancestor.

15.A Full Bench of this Court in the case of ***Commissioner of Income Tax Vs. P.L.Karuppan Chettiar*** reported in ***AIR 1979 Mad 1***, has considered the character of the properties inherited by a son from his



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divided father. The Hon'ble Full Bench of this Court that in a case where the joint family properties were divided between the father and his son in 1954 before the commencement of Hindu Succession Act, 1956, considered the character of separate properties of father who died after 1956. After the death of father, the separate properties which were allotted to the father in the 1954 partition, was held to be separate properties of son by virtue of Section 8 of the Hindu Succession Act. The view taken by the Full Bench of this Court was also upheld by the Hon'ble Supreme Court and was reiterated by the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax Vs. P.L.Karuppan Chettiar*** reported in ***1993 Supp [1] SCC 580***.

16.The parties and the advocates in the mofussil Courts should know the difference between the ancestral, coparcenary and joint family property after the advent of Hindu Succession Ac, 1956.



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POINTS [A], [B] and [C]:-

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17.From the facts admitted and pleaded by the respective parties, admittedly the properties are the properties of grandfather of Kulande Gounder. It is the case of the appellant/plaintiff that some of the properties were purchased by Kulande Gounder out of the income from the joint family properties. It is admitted that there was a partition between Kulande Gounder and his four sons. In the said partition, Kulande Gounder and his sons were allotted separate properties and some of the suit properties are the properties that were allotted to Kulande Gounder in the said partition dated 12.08.1959. It is also admitted that Kulande Gounder was a party to the Partition Deed dated 12.08.1959 and therefore, the suit properties are the properties of divided father and they are his separate properties. When it is admitted that the properties are separate properties of Kulande Gounder, the succession after the Hindu Succession Act, 1956, will be in terms of Section 8 and hence, the appellant, the granddaughter of Kulande Gounder has no right in the properties of Kulande Gounder. After section 8 of the Hindu Succession Act, the properties will devolve only on the sons of Kulande



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Gounder. It is admitted that some of the properties were bequeathed under a Will executed by Kulande Gounder and the remaining properties were divided among the sons in the year 2001. Therefore, the plaintiff/appellant is not entitled to any share in the property that were allotted to Kulande Gounder in the Partition Deed dated 12.08.1959.

18.Now, let us examine the property that were allotted to the 1st defendant in the Partition Deed dated 12.08.1959. It cannot be disputed that the properties allotted to the 1st defendant in the 1959 Partition Deed are the joint family properties of 1st defendant. In respect of the properties allotted to 1st defendant, it is admitted that the properties were divided between defendants 1 and 2 pursuant to the Partition suit and the compromise Deed in OS.No.1070/1993 dated 21.07.1995. Though it is stated that the Partition Suit is a collusive one and it is not binding on plaintiff/appellant, it is admitted that the appellant was given in marriage before the Tamil Nadu Amendment in the year 1989 and therefore, the decree in OS.No.1070/1993 cannot be challenged on the ground that the appellant is a necessary party or that the decree in OS.No.1070/1993 is not binding on her. It is the specific



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case of 1st defendant that the appellant got married on 14.06.1987 and this fact is not in issue. Therefore, the appellant cannot claim any share as a coparcenar by virtue of State Amendment in the year 1989 by which the daughters are given equal share to that of a son even in coparcenary properties. Except stating that the partition suit is collusive and the decree is null and void, the appellant has not given any reason to declare the nullity of the partition that was effect between defendants 1 and 2 as per the compromise decree in OS.No.1070/1993. Even though the right to get equal share is conferred on daughters irrespective of their date of birth under Hindu Succession Amendment Act, 2005, this Court has repeatedly held that even by virtue of amended section 6 of Hindu succession act, the partition effected by metes and bounds before 01.04.2004 is saved.

19.Amended section 6 of the Hindu Succession Act, 2005, reads as follows:-

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;

(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.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 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 pre-deceased 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 subsection, 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 of whether he was entitled to claim*



partition or not.

(4)After the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 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 (39 of 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 (39 of 2005) had not been enacted.



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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, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 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."

20. Even if an oral partition is proved in the manner known to law is saved, by virtue of the judgment of the Hon'ble Supreme Court in the case of **Vineeta Sharma Vs. Rakesh Sharma** reported in **2020 [5] CTC 302** wherein, it is held as follows:-

“129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or



after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of



Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected out rightly.”

21.In view of the decision on the character of property as well as the effect of decree in the partition suit in the year 1995, the appellant is not entitled to any share in the properties allotted to Kulande Gounder in the 1959 partition or properties of her father/1st defendant allotted to him in the said partition.

22.This Court is unable to find any error or illegality in the judgment



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and decree of the Trial Court. Hence, this Appeal Suit is dismissed confirming the judgment and decree dated 25.04.2008 in O.S.No.364 of 2005 by the Additional District and Sessions Court, Fast Track Court-3 at Coimbatore. Having regard to the relationship between parties, there is no cost.

[SSSRJ] [PBBJ]

21.03.2023

mkn/AP

Internet : Yes

Index : Yes / No

To

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

2.The Section Officer,
VR Section, High Court,
Chennai.

| *with a direction to return*
| *the records to the Court below,*
| *forthwith*



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and
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