



AS.No.709/2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B.BALAJI

AS.No.709/2010 & MP.No.1/2010 & CMP.Nos.5547 & 6440/2023

1.N.Nagarajan
2.Rangharaja
3.Manickaraja

.. Appellants /
Defendants 2, 8 & 9

Vs.

1.Govindammal
2.Annammal
3.Krishnaveni
4.Saradammal
5.Abaranji
6.Sulochana [died]
7.Tamizhselvi
8.K.Dharman
9.Kumararaja
10.Kalaiaarasi
11.Ilayaraja

.. R1/Plaintiff

.. Respondents

****R6 died. RR8 to 11 are brought on record as LR
of deceased R6 vide order dated 15.12.2022 in CMP.
Nos.19829, 19831 & 19832/2022 in AS.No.709/2010**



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Prayer:- Appeal Suit filed under Order 41 Rules 1 and 2 of CPC read with Section 96 of CPC against the judgment and decree dated 03.06.2010 in OS.No.12/2007 on the file of the learned Principal District Judge, Villupuram.

For Appellants	:	Mrs.Hema Samapth Senior counsel for Mrs.R.Meenal
For RR 1 & 2	:	No appearance
For RR4, 5 & 7	:	Mr.R.Balakrishnan
RR 3, 8 to 11	:	Batta due

JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

- (1) This appeal is filed by defendants 2, 8 and 9 in the suit in OS.No.12/2007 on the file of the Principal District Court, Villupuram.
- (2) The 1st respondent herein, as plaintiff filed the suit in OS.No.12/2007 for partition of her 9/64th share in all the suit properties and for other consequential reliefs. The genealogy filed by the appellants herein is not disputed.



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- (3) It is admitted that the suit properties are the joint family properties of Thiru.Manicka Gounder and his three sons by name Narayanasami, Deivasigamani and Dharmaraj. Narayanasami died on 16.05.2000 leaving behind his wife Annammal who is the 1st defendant in the suit and 6 daughters and 1 son as his legal heirs. Plaintiff is one of the daughters of Narayanasami whereas the 1st appellant is the only son of Narayanasami. Defendants 3 to 7 are the other 5 daughters of Narayanasami. Appellants 2 and 3 are the sons of 1st appellant and they are defendants 8 and 9 in the suit. The 6th defendant died during pendency of this appeal and her legal heirs are impleaded as respondents 8 to 11 in this Appeal Suit.
- (4) The suit properties are described as Schedule A and Schedule B located in different survey numbers in two villages. While Schedule A consists of 110 items, Schedule B is a tractor with two trailers.
- (5) The case of the plaintiff is that all the suit properties belonged to her father Narayanasami, son of Manicka Gounder and the



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properties were obtained by him in a partition suit in OS.No.161/1970 on the file of Sub Court, Cuddalore, between himself, his father and his brothers. It is the further case of plaintiff that the said Narayanasami purchased several properties in the name of 2nd defendant or in favour of defendants 8 and 9 from out of the income from the family properties. Stating that neither the 2nd defendant nor defendants 8 and 9 have any means to purchase those properties, it is contended by the plaintiff that plaintiff and defendants 2 to 7 are coparceners by virtue of Hindu Succession Amendment Act, 2005 [Act 39 of 2005].

- (6) The suit was contested by the appellants by filing a written statement by the 2nd defendant, denying the averments in the plaint. Though the partition suit in OS.No.161/1970 is admitted by the appellants, it is contended that Manicka Gounder, during his lifetime, executed a registered Will in respect of several properties which were allotted to him in the partition and that the plaintiff has included those properties of Manicka Gounder in the present suit without any right. It is also pleaded that there was an oral partition



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in 1975 in respect of properties allotted to Narayanasami in the Compromise Decree in OS.No.161/1970. Though there were other defences taken by defendants in the written statement, the Trial Court has not even framed an issue whether the properties are the joint family properties in the hands of Narayanasami. The appellants also claimed right to the properties of Narayanasami under the Will dated 18.11.1997 marked as Ex.B1. It is stated that under the Will Ex.B1, Narayanasamy has dealt with the properties of Manicka Gounder which were bequeathed in favour of appellants by Manicka Gounder and all daughters were given specific items.

- (7) The Trial Court proceeded as if the entire properties are the properties allotted to Narayanasami in the Compromise decree. The Will alleged to have been executed by Manicka Gounder on 06.11.1971 was not produced as document. The oral partition pleaded by appellants was held not proved. It is further held that the Will propounded by the appellants dated 18.11.1997 is not proved in the manner known to law. After considering the



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entitlement of female heirs by virtue of Hindu Succession Act, 2005, the Trial Court held that the plaintiff is entitled to 1/8th share as members of joint family and entitled to a further share of 1/64th share as a heir of Narayanasami. As against the decree declaring plaintiff's 9/64th share, the above Appeal Suit is filed.

- (8) Mrs.Hema Sampath, learned Senior counsel appearing for the appellants submitted that the appellants have filed an application in CMP.No.6440/2023 under Order 41 Rule 27 of CPC for reception of a registered Will dated 06.12.1971 executed by Manicka Gounder as additional evidence in the appeal. Learned Senior counsel also referred to another application in CMP.No.5547/2023 filed for reception of nearly 12 Sale Deeds as additional evidence to show that some of the properties were purchased by the 1st appellant.
- (9) When this Court examined the merits of the above two Civil Miscellaneous Petitions, the learned Senior counsel appearing for the appellants has demonstrated before this Court that Mr.Manicka Gounder was given almost 54 items out of 110 items in the suit



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properties as per the Compromise decree dated 24.12.1970 in the suit in OS.No.161/1970. Since the compromise decree is marked as Ex.A1, this Court surprisingly finds that most of the properties which are described in the suit schedule, are the properties allotted to Manicka Gounder and the suit for partition is filed without even impleading the two other sons of Manicka Gounder namely Deivasigamani and Dharmaraj. Even though no issue was raised by the appellants before the Trial Court, this Court cannot ignore the crucial fact which goes to the root of the matter touching the maintainability of the suit.

- (10) In a suit for partition, every co-owner/co-sharer is a necessary and proper party. This Court finds no specific averment in the plaint to exclude the two other sons of Manicka Gounder, namely, Deivasigamani and Dharmaraj when properties allotted to Manicka Gounder in the partition are included in the suit. Even though the learned Senior counsel appearing appellants have spent enormous time in convincing this Court that the said Manicka Gounder also executed a Will in respect of several items in favour of the



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appellants and there is a reference to the said Will in the written statement, this Court, in the absence of necessary and proper parties, is not inclined to go into the other issues.

- (11) Since the suit for partition has been filed by the plaintiff without impleading necessary and proper parties, namely, the other two sons of Manicka Gounder and their legal heirs, we are not able to sustain the judgment and decree of the Trial Court in OS.No.12/2007. Since no objection was raised before the Lower Court regarding maintainability of suit without impleading the other two sons of deceased Manicka Gounder, this Court is unable to throw the suit filed in OS.No.12/2007 only on that ground.
- (12) Whenever an objection is raised or the Appellate Court finds that there are other parties who are also to be impleaded in the suit for partition, it will be desirable to give an opportunity to the plaintiff to implead all the necessary and proper parties to proceed further. It is now stated that the plaintiff is not interested in prosecuting the suit but the other daughters want to pursue. In that view of the matter, this Court is inclined to set aside the judgment and decree



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of the Trial Court in OS.No.12/2007 only on the ground of non joinder of necessary parties and to remand the matter to the Trial Court for denova trial to enable either the plaintiff or anyone who is interested in the suit for partition to transpose himself or herself as plaintiff to prosecute the suit after impleding the other legal heirs of Manicka Gounder.

(13) Learned counsel appearing for respondents 4, 5 and 7 submitted that defendants 4, 5 and 7 / respondents 4, 5 and 7 are sisters of plaintiff and are also having equal share as that of plaintiff. He further submitted that respondents 4, 5 and 7 are interested to transpose themselves as plaintiffs to prosecute the suit further, irrespective of the fact whether the plaintiff is interested in prosecuting the suit or not.

(14) In view of the conclusions reached above, the appeal suit is **allowed** and the judgment and decree of the Trial Court in OS.No.12/2007 dated 03.06.2010 is set aside. The matter is remitted back to the Trial Court for denova trial and for fresh consideration of all the issues. Since the appellants have pleaded



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the Will alleged to have been executed by Manicka Gounder, it may be open to the appellants to file the additional documents during the course of trial and it is also open to the respondents to raise all their objections before the Trial Court. Both parties are permitted to raise additional pleadings and let in fresh evidence. No costs. Consequently, connected miscellaneous petitions are closed.

- (15) Since the matter is remitted back to the Trial Court for fresh trial, Registry is directed to send all the original documents along with records to the Trial Court forthwith.

[SSSRJ] [PBBJ]

24.04.2023

AP

Internet : Yes

To

1.The Principal District Judge
Villupuram.

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



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