



AS.Nos.887 of 2012 & 527 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

AS.Nos.887 of 2012 & 527 of 2013

AS.No.887 of 2012

1.K.Kannammal
2.K.Subramani
3.Kavitha

... Appellants

Vs.

1.Suseela
2.Kalaiselvi
3.Karpagam

...Respondents

PRAYER:

Appeal Suit is filed under Section 96 of CPC against the judgment and decree of the learned Principal District Judge, Dharmapuri dated 20.03.2012 made in OS.No.55 of 2009.

For Appellants : Mr.I.Abrar Mohammed Abdullah

For Respondents : Mr.R.Selvakumar



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AS.No.527 of 2013

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1.Susila
2.Kalaiselvi
3.Karpagam

... Appellants

Vs.

1.K.Kannammal
2.K.Subramani
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...Respondents

PRAYER:

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For Appellants : Mr.R.Selvakumar

For Respondents : Mr.I.Abrar Mohammed Abdullah

COMMON JUDGMENT

Both the appeal suits are arising out of the same judgment and decree of the learned Principal District Judge, Dharmapuri dated 20.03.2012 made in OS.No.55 of 2009, thereby partly allowed the suit for partition.



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2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The appellants in AS.No.527 of 2013 and the respondents in AS.No.887 of 2012 are the plaintiffs. The respondents in AS.No.527 of 2013 and the appellants in AS.No.887 of 2012 are the defendants in the suit for partition. The case of the plaintiffs is that the suit properties are joint family properties of both the plaintiffs and the defendants and they are enjoying jointly. Some of the properties were issued patta in the name of Kandasamy Gounder and some of the properties were issued patta in the name of one, Kumaravel. The said Kandasamy Gounder died intestate. Subsequently, the husband of the first plaintiff also died. He had married Pavayee Ammal as his first wife and gave birth to defendants 1 to 3. After demise of the said Pavayee Ammal, he had married the first plaintiff and gave birth to the second and third plaintiffs. After demise of the said Kumaravel, both the plaintiffs as well as the defendants are in joint possession of the suit properties. Therefore, the defendants are not entitled for separate right over the suit properties. The income derived from the suit



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properties were utilised for the entire family expenses. Therefore, the plaintiffs and the defendants are entitled to get 3/6 share. Hence, the suit.

4. Resisting the same, the second defendant filed written statement stating that after demise of the first wife, the said Kumaravel got married the first plaintiff as second wife. The suit schedule properties item No.9 to 12 and 15 to 18 belong to Kandasamy Gounder. The said properties are self acquired properties and during his life time, he had executed registered Will in favour of the second defendant dated 12.03.1979. In the year 1992, the first wife Pavayee Ammal died. Thereafter, the said Kandasamy also died in the year 2002. After his demise, the Will came into force and as such, the plaintiffs are not entitled to have any share in respect of the properties which were bequeathed in favour of the second defendant. After demise of the said Kumaravel, the plaintiffs 2 and 3 got married and during their marriage, they were presented 30 sovereigns of jewels and Rs.14,000/- cash to each. The entire expenses were borne by the second defendant. Thereafter, due to family arrangement, other schedule properties were given to the second defendant. In fact, the said Kumaravel had obtained loan from the Indian Bank, Pulikarai Branch. It was repaid by the



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second defendant and thereafter both the plaintiffs and the defendants had pledged the documents with respect to one item of the suit properties and obtained loan from the same bank. Part of the loan amount was also repaid by the second defendant. Therefore, the first plaintiff cannot seek equal share over the property.

5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

- 1. Whether the plaintiffs are entitled to get partition in the suit schedule properties as prayed for?*
- 2. Whether the plaintiffs are entitled to get relief of mesne profits?*
- 3. Whether the suit properties bearing S.Nos.208/2, 209, 245/2, 696/2, 697, 698 and 703/2 are self acquired properteis of the deceased Kandasamy Gounder?*
- 4. It is true to say that the deceased Kandasamy Gounder had executed Will in favour of second defendant dated 12.03.1979?*
- 5. Whether the second defendant has spent Rs.1,00,000/- and gave 30 sovereigns gold articles to the second and third plaintiffs marriage is correct?*
- 6. Whether the suit is bad for partical partition?*



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WEB COPY 7. *To what any relief the plaintiff is entitled to?*

6. In support of the plaintiffs' case, P.W.1 to P.W.3 were examined and four documents were marked as Ex.A.1 to Ex.A.4. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B.1 to Ex.B.6 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court partly decreed the suit thereby the plaintiffs are entitled to have 3/6 share in the suit properties item no.1 to 8, 13,14, 19 to 24 alone. Aggrieved by the same, both the plaintiffs as well as the defendants have filed these appeal suits respectively.

7. The learned counsel for the plaintiffs submitted that the suit properties item No.9 to 12 and 15 to 18 were purchased by the said Kandasamy Gounder only from the income derived from the joint family property. He had no source of income other than the income from the joint family property. Therefore, the plaintiffs are entitled to have share in the said property also. Though the defendants claimed through Will, it was not proved before the trial court in the manner known to law. The said Kumaravel died in the year 2002. Until filing of the suit for partition, the alleged Will was not brought to the notice



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of the plaintiffs by the defendants which leads to adverse inference insofar as the execution and validity of the said Will.

8. The learned counsel for the defendants would submit that the first plaintiff is being the second wife is not entitled to have equal share in the suit properties. In fact, the said Kumaravel died prior to the commencement of the Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005). The old Act only would apply and all the daughters of the said Kumaravel i.e. plaintiffs 2 and 3 and defendants 1 & 3 had got married after the commencement of the said Act.

9. Heard, the learned counsel appearing on either side.

10. On the submissions made by either side, the following points arise for consideration of these appeal suits:

- 1. Whether the plaintiffs and the defendants are entitled to equal share except some of the items of the suit properties which were bequeathed by way of Will in favour of the second defendant?*
- 2. Whether the Will which was executed in favour of the*



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second defendant is valid?

11. The second defendant mainly contended that the suit properties item No.9 to 12 and 15 to 18 are self acquired properties of his grandfather Kandasamy Gounder. Therefore, he bequeathed the said properties in favour of him by Will dated 12.03.1979. Hence, the plaintiffs are not entitled to have any share over the properties. Though the plaintiffs contended that those properties are joint family properties, on perusal of records revealed that the said Kandasamy Gounder purchased those properties. The plaintiffs failed to prove the same. PW3 was examined by the plaintiffs in order to prove their contention that those properties are acquired by the said Kandasamy Gounder only from the income derived from the joint family properties. It was leased out in respect of joint family properties by the said Kandasamy Gounder and he had paid some substantial amount. From the said amount, the said Kandasamy Gounder had purchased the properties in his name. However, except oral evidence, nothing was produced as if the said properties are treated as joint family properties. The plaintiffs failed to prove that some of the items of the properties were purchased from the income derived from the joint family properties.



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12. The second defendant was examined as DW1. The suit properties mentioned in item No.9 to 12 and 15 to 18 were purchased by his grandfather by the registered sale deed which was marked as Ex.B3. The said property was bequeathed in favour of the second defendant by the Will dated 12.03.1979. Therefore, the plaintiffs are not entitled for any share in respect of the suit properties item No.9 to 12 & 15 to 18. During the life time of the said Kandasamy Gounder i.e. the grandfather of the second defendant had executed Will dated 12.03.1979 in favour of the second defendant. The Will dated 12.03.1979 was marked as Ex.B2. It revealed that after demise of his first wife i.e. Pavayee Ammal, the second defendant can get the properties absolutely. After demise of the said Kandasamy Gounder in the year 2002, the second defendant derived title over the suit properties item No.9 to 12 and 15 to 18. Thereafter, the second defendant also mortgaged those properties and availed loan. The second defendant also had examined DW2 who is one of the attestors in the Will dated 12.03.1979. which was marked as Ex.B2. He categorically deposed that in his presence, the deceased Kandasamy Gounder had executed Will. He was very much conscious and in sound mind while execution of the



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Will dated 12.03.1979. Therefore, in the manner known to law, the Will was proved by the second defendant and therefore, the second point is also answered against the plaintiffs.

13. In view of the above discussion, both the appeal suits fail and the same are liable to be dismissed. Accordingly, both the appeal suits are dismissed and the judgment and decree of the learned Principal District Judge, Dharmapuri dated 20.03.2012 made in OS.No.55 of 2009 are confirmed. There shall be no order as to costs.

14.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

- 1.The Principal District Judge,
Dharmapuri
- 2.Section Officer,
V.R.Section,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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