



A.S.Nos.904, 973 of 2012,
Cross Obj.No.9 of 2013 &
C.R.P.Nos.2234 & 2235 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B. BALAJI

A.S.Nos.904 & 973 of 2012,
Cross Obj.No.9 of 2013 &
C.R.P.Nos.2234 & 2235 of 2015
and
M.P.Nos.1 & 1 of 2012,
1 of 2013, 1 & 1 of 2015

A.S.No.904 of 2012 :

Sellammal (died)
Pappathi (died)
2.Karuppanna Ganesan
3.Deepa
4.Arun

... Appellants

*[A2 to A4 brought on record as LRs of the deceased
sole appellant viz., Pappathi vide Court order dated
24.08.2022 made in C.M.P.No.9005 of 2021 in
A.S.No.904 of 2012]*

Vs.

1.Subramani
2.Mani

... Respondents

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Prayer : Appeal Suit filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 20.06.2012 in O.S.No.75 of 2006 (L.A.O.P.Nos.5 of 2002 & 40 of 2002) on the file of the Principal District Court, Namakkal.

For Appellants	:	Mr.T.Dhanyakumar
For R1	:	Mr.C.Jagadish
For R2	:	Mr.S.Saravanakumar for M/s.I.Abrar Md.Abdullah

A.S.No.973 of 2012 :

Mani ... Appellant

Vs.

1.Pappathi (died)
2.Subramani
3.Karuppanna Ganesan
4.Deepa
5.Arun

... Respondents

*[R3 to R5 are brought on record as LR's of deceased
1st respondent, viz., Pappathi, vide order of Court
dated 16.11.2022, made in C.M.P.No.5646 of 2022
in A.S.No.973 of 2012]*



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Prayer : Appeal Suit filed under Section 96 of Code of Civil Procedure against the judgment and decree dated 20.06.2012 in O.S.No.75 of 2006 on the file of the Principal District Court, Namakkal.

For Appellant	:	Mr.S.Saravanakumar for M/s.I.Abrar Md.Abdullah
R1	:	Died
For R2	:	Mr.C.Jagadish
For R3 to R5	:	Mr.T.Dhanyakumar

Cross Obj.No.9 of 2013 :

Subramani ... Cross-Objector

Vs.

1.Pappathi (died)
2.Mani
3.Karuppanna Ganesan
4.Deepa
5.Arun

... Respondents

*[R3 to R5 are brought on record as LRs of deceased
1st respondent, viz., Pappathi, vide order of Court
dated 27.10.2022, in C.M.P.Nos.18190, 18194,
18192 of 2022 in Cross.Obj.No.9 of 2013 in A.S.904 of 2012]*



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Prayer : Cross Objection filed under Order XLI Rule 22 of Code of Civil Procedure against the judgment and decree dated 20.06.2012 in O.S.No.75 of 2006 on the file of the Principal District Court, Namakkal.

For Cross-Objector	:	Mr.C.Jagadish
R1	:	Died
For R2	:	Mr.S.Saravanakumar for M/s.I.Abrar Md.Abdullah
For R3 to R5	:	Mr.T.Dhanyakumar

C.R.P.Nos.2234 & 2235 of 2015 :

Subramani ... Petitioner

Vs.

1.Pappathi (died)
2.The Special Tahsildar
(Land Acquisition Officer, Namakkal)
At present
Tamil Nadu Housing Board Department,
Ayyan Thirumaligai,
Salem Town.



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3. Anna Transport Corporation,
Salem, represented by its
Managing Director,
Salem.

4. Mani

5. Karuppanna Ganesan

6. Deepa

7. Arun

... Respondents

*[R5 to R7 are brought on record as LR's of deceased
1st respondent, viz., Pappathi, vide order of Court
dated 27.10.2022, in C.M.P.Nos.16979, 16981 &
16983 of 2022 in CRP No.2234 of 2015 and in
C.M.P.Nos.17166, 17165 & 17172 of 2022 in
C.R.P.No.2235 of 2015]*

Prayer : Civil Revision Petitions in C.R.P.Nos.2234 and 2235 of 2015 filed under Section 115 of Code of Civil Procedure against the order and decretal order dated 13.03.2015 in R.E.A.No.96 of 2014 in R.E.P.No.160 of 2004 in L.A.O.P.No.5 of 2002 and R.E.A.No.97 of 2014 in R.E.P.No.161 of 2004 in L.A.O.P.No.40 of 2002, respectively, on the file of the Principal District Court, Namakkal.

For Petitioner : Mr.C.Jagadish

R1 : Died

For R2 : Mr.R.Siddharth
Government Advocate



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For R4 : Mr.S.Saravanakumar
for M/s.I.Abrar Md.Abdullah

For R5 to R7 : Mr.T.Dhanyakumar

COMMON JUDGMENT

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

The appellant in A.S.No.904 of 2012 is the 2nd plaintiff in the suit in O.S.No.75 of 2006 on the file of the Principal District Court, Namakkal. The appellant in A.S.No.973 of 2012 is the 2nd defendant in the suit in O.S.No.75 of 2006. The Cross Objection in Cross Obj.No.9 of 2013 in A.S.No.904 of 2012 is filed by the 1st defendant in the suit in O.S.No.75 of 2006. The Civil Revision Petition in C.R.P.No.2234 of 2015 is filed by the 1st defendant in the suit as against the order of Principal District Judge, Namakkal, in R.E.A.No.96 of 2014 in R.E.P.No.160 of 2004 in L.A.O.P.No.5 of 2002, and the Civil Revision Petition in C.R.P.No.2235 of 2015 is filed by the 1st defendant in the suit, as against the order of the Principal District Judge, Namakkal, in R.E.A.No.97 of 2014 in R.E.P.No.161 of 2004 in L.A.O.P.No.40 of 2002.



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2.Since both the appeals, the Cross Objection and the two Civil Revision Petitions are connected, all the cases are disposed of by this common judgment.

3.One Sellammal, the mother of the sole appellant in A.S.No.904 of 2012, the appellant in A.S.No.973 of 2012 and the Cross-Objector, filed the suit in O.S.No.75 of 2006 on the file of the Principal District Court, Namakkal, for partition of her 26/42 shares in all the suit properties and for consequential reliefs. The suit properties consist of four items. While Item Nos.1 to 3 are immovable properties, the 4th item is the compensation amount deposited for the land acquired from the properties of father of the parties and lying in the Court deposit to the credit of proceedings in L.A.O.P.Nos.5 of 2002 and 40 of 2002.

4.Originally, the suit in O.S.No.75 of 2006 was filed by the mother as against defendants 1 and 2 who are her sons and the 3rd defendant who is her



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daughter. During the pendency of the suit, the plaintiff, i.e., mother of all the three defendants, died. The 3rd defendant, the daughter of plaintiff, was transposed as 2nd plaintiff.

5. Brief facts that are set out in the plaint in O.S.No.75 of 2006 are as follows :

5.1. The suit properties in Item Nos.1 to 3 consist of ancestral properties of plaintiff's husband Late Sri Marappa Gounder and the properties purchased out of the income from the ancestral properties. Plaintiff is the wife of Late Sri Marappa Gounder and defendants 1 to 3 are the two sons and daughter of Late Sri Marappa Gounder. Besides the three children who are defendants 1 to 3, plaintiff had three other sons by name, Raja, Ramadoss and Palanivel. However, these three sons who are not parties to the suit died unmarried on 15.09.1967, 02.10.1967 and 20.10.1984 respectively.

5.2. The suit 1st Item originally belonged to Late Sri Marappa Gounder and his two brothers, by name Sri Palani Gounder and Sri Veerappa



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Gounder. Though the three brothers were entitled to 1/3rd share each, one of the brothers of Sri Marappa Gounder, viz., Sri Palani Gounder and his sons have conveyed their 1/3rd share in favour of Sri Marappa Gounder by virtue of a Release Deed. Therefore, the suit 1st item alone is the ancestral property of Late Sri Marappa Gounder and the said Marappa Gounder was in enjoyment of undivided 2/3rd shares in the suit 1st Item.

5.3.The suit 2nd Item was purchased by Late Sri Marappa Gounder under document of sale dated 27.02.1959 and it was enjoyed by Late Sri Marappa Gounder and his children as joint family property.

5.4.The suit 3rd Item was also purchased by Late Sri Marappa Gounder in his name by two registered sale deeds dated 04.03.1959 and 07.03.1960 and the acquisition was out of the income of joint family properties and Late Sri Marappa Gounder was enjoying the suit properties along with other properties of the family jointly.

5.5.An extent of 2.81 Acres on the South-Eastern corner in the suit 2nd Item was developed as a house site layout during the lifetime of Late Sri Marappa Gounder and he sold it in favour of seven persons as plots. The



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suit is for the remaining extent. Similarly, an extent of 1 Acre on the North-Eastern Corner of suit 3rd Item was also developed as house site by Late Sri Marappa Gounder during his lifetime and the plots were sold in favour of third parties.

5.6.The suit 4th Item was the property of Late Sri Marappa Gounder, but acquired by State for Anna Transport Corporation, Namakkal. Since inadequate compensation alone was paid for the land acquired from Late Sri Marappa Gounder, he filed a petition under Section 18 of Land Acquisition Act and the compensation was enhanced in L.A.O.P.Nos.5 of 2002 and 40 of 2002. A sum of Rs.7,14,015/- had been deposited to the credit of L.A.O.P.Nos.5 of 2002 and 40 of 2002 before the District Court (Fast Track Court), Namakkal.

5.7.Since the suit properties are the joint family properties of Late Sri Marappa Gounder, his five sons are entitled to equal share along with their father, and upon the death of three sons, the plaintiff/mother is entitled to inherit 3/6 share of her three sons in all the suit properties. After the death of Sri Marappa Gounder on 07.03.1999, the plaintiff is entitled to 1/42 share



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as the wife of Sri Marappa Gounder and plaintiff is also entitled to 25/42 share in all the suit properties as the mother of her three deceased sons.

5.8.Since the 1st defendant has taken money in excess of his share, the 1st defendant should be directed to repay the excess amount paid to him.

6.The suit was contested by 2nd defendant by filing a detailed written statement. While disputing the case pleaded by the plaintiff in the plaint, the 2nd defendant admitted the joint family character of suit 1st Item and the relationship between all the parties. The death of Sri Marappa Gounder and the three unmarried sons as pleaded in the plaint are admitted. However, in the written statement, the plaintiff's entitlement as pleaded in the plaint is specifically disputed. It is his specific case that all the other properties are self-acquired properties of Late Sri Marappa Gounder purchased out of his own income without any aid of joint family properties. In the course of hearing, the 2nd plaintiff relied upon a Will stated to be executed by 1st plaintiff-mother in favour of 2nd plaintiff. The alleged Will is also disputed by the defendants.



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7.The Land Acquisition Officer was impleaded as 3rd defendant and the 3rd defendant also filed an independent written statement.

8.The trial Court originally framed the following issues :

- i. *“Whether the plaintiff is entitled to partition in the suit properties ?*
- ii. *To what relief if any the plaintiff is entitled to ?”*

Thereafter, the trial Court recasted the issues in the following manner:

- i. *“Whether the properties are self acquired properties of Marappa Gounder ?*
- ii. *Whether the properties, release executed by late Palani Gounder in favour of Marappa Gounder dt. 21.8.81 is self acquired property of Marappa Gounder ?*
- iii. *Whether the properties acquired under LAOP No.5 of 2002 and 40 of 2002 is self acquired properties of Marappa Gounder ?*
- iv. *Whether the share claimed by the 2nd defendant, in the statement is correct ?*
- v. *Whether the 2nd defendant discharged the debts, incurred by late Ramadoss ?*
- vi. *Whether the Will executed by late Marappa Gounder dated*



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16.6.90 and 24.5.94 is binding upon the plaintiff ?

- vii. Whether the plaintiff is ousted and under Ouster Principle the plaintiff is not having any right over the property ?*
- viii. Whether the 3rd defendant is entitled to 1/42 share in the property is correct ?*
- ix. Whether the plaintiff claim of share is correct ?*
- x. Whether the properties are joint family properties of the Marappa Gounder is correct ?*
- xi. Whether Marappa Gounder's family was having ancestral property, at Periyapatti village, in S.No.2/02 is true ?*

Additional issues :

- i. Whether the Will dated 29.9.06 executed by Sellammal 1st plaintiff is true and valid ?*
- ii. Whether the plaintiff is ousted by the Doctrine of ouster principle ?”*

9. Before the trial Court, on behalf of plaintiffs, P.W.1 to P.W.3 were examined and Exs.A1 to A35 were marked. On behalf of defendants, D.W.1 and D.W.2 were examined and Exs.B1 to B12 were marked. The Expert's Opinion was marked as Ex.C1, but no one was examined to prove the authenticity of Ex.C1.



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10.The trial Court disbelieved the Will dated 29.09.2006 marked as Ex.A24 and stated to have been executed by mother Sellammal in favour of 2nd plaintiff. Since the Will was prepared at the instance of 1st plaintiff's son-in-law by name Ganesan, the trial Court, by referring to several facts and discrepancies, held that the Will marked as Ex.A24 is not proved in the manner known to law. Since the mother of 2nd plaintiff died and the alleged Will stated to be executed by mother is held not proved, the trial Court found that all the properties are to be equally divided among the two sons and the daughter of Late Sri Marappa Gounder. The trial Court also held that the 2nd plaintiff and the defendants 1 and 2 are entitled to equal share. Having found that the 1st defendant had received money in excess of what he was entitled to, the trial Court directed the 1st defendant to deposit the amount to the credit of the suit before passing the final decree.

11.Challenging the judgment and decree of the trial Court, the above appeals have been filed.



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12.Before commencement of arguments on both the appeals, Civil Revision Petitions and the Cross-Objection, learned counsel appearing for the 1st defendant, who is the petitioner in the two Civil Revision Petitions in C.R.P.Nos.2234 & 2235 of 2015 and the Cross-Objector in Cross Obj.No.9 of 2013 in A.S.No.904 of 2012, submitted that the 1st defendant has no grievance if 1/3rd share is given to the 2nd plaintiff and defendants 1 and 2 equally as regards Item Nos.3 and 4 of the suit properties are concerned, and in that case, he submitted that the Civil Revision Petitions and the Cross-Objection may be dismissed as withdrawn. As regards Item No.2 is concerned, all the parties agreed for a partition in terms of the Will dated 24.05.1994 executed by father marked as Ex.B2. Except referring to the Will executed by mother in favour of 2nd plaintiff, no serious arguments were advanced by the counsel appearing for appellant in A.S.No.904 of 2012.



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13. Admittedly, Item No.1 of the suit properties is the property which is ancestral. Though a partition was pleaded, it is seen that there is no partition by metes and bounds and the suit property itself is described as the property in which the plaintiff and defendants are entitled to have $2/3^{\text{rd}}$ share. The Release Deed, dated 21.08.1981, that is marked as Ex.A1, shows Item No.1 as the property which originally belonged to father of Marappa Gounder. Vaiyapuri Gounder is the father of Marappa Gounder, who died leaving behind Marappa Gounder, Palani Gounder and Veerappa Gounder. From the Release Deed under Ex.A1, it is seen that the property was not divided by metes and bounds. $1/3^{\text{rd}}$ share of Palani Gounder was released in favour of Marappa Gounder under Ex.A1. Marappa Gounder, who is entitled to $1/3^{\text{rd}}$ share is, therefore, entitled to $2/3^{\text{rd}}$ share in Item No.1 of the suit properties. However, since the partition itself is in respect of $2/3^{\text{rd}}$ share of Marappa Gounder, the suit is not maintainable without impleading the other co-sharers in respect of Item No.1, viz., Veerappa Gounder. In the absence of Veerappa Gounder or his legal heirs, there cannot be a decree for



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partition in respect of Item No.1. **Therefore, this Court holds that the suit for partition in respect of Item No.1 is not maintainable for non-joinder of Veerappa Gounder and his heirs.**

Item No.2 :

14.With regard to Item No.2 of suit properties, it is admitted that the father Marappa Gounder executed a Will on 24.05.1994 under Ex.B2. The father has described the property as his self-acquired property. Having regard to the fact that the Will under Ex.B2 is admitted by the 2nd plaintiff herself as P.W.1, the learned counsel appearing for the 2nd plaintiff also submitted that the 2nd plaintiff has no objection for granting a decree in terms of the Will under Ex.B2. **Therefore, as regards Item No.2, the parties' shares are declared in terms of the Will under Ex.B2.**

Item No.3 :

15.It is the case of the defendants that the property under Item No.3 of the suit properties is the self-acquired property of Marappa Gounder. This



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Court found that, in the course of evidence, it is admitted that Item No.3 was purchased under Exs.A6 and A7. Ex.A7 is dated 04.03.1959, and Ex.A6 is on 07.03.1960. The property under Ex.A6 was purchased for a consideration of Rs.2,000/-. However, this Court finds that, under Ex.A22, Marappa Gounder, along with defendants 1 and 2, have sold the property on 01.03.1960 for a sum of Rs.600/-. Though the property which is described as Item No.3 was purchased under two different documents, the parties have not carved out which portion of the property was purchased under Ex.A6 and Ex.A7. Though there is no evidence focussing whether the property under Ex.A7, dated 04.03.1959, was purchased with the joint family nucleus, this Court is unable to find any evidence that the father Marappa Gounder had sufficient funds by his self exertion without any aid of joint family nucleus. The learned counsels for the defendants 1 and 2 are not serious in establishing that the property described as Item No.3 was purchased by the father Marappa Gounder out of his own funds. In such circumstances, we hold that Item No.3 is the joint family property to which both 2nd plaintiff and defendants 1 and 2 are entitled to equal share.



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16.The 2nd plaintiff relied upon a Will executed by the 1st plaintiff, namely, Sellammal, the mother of defendants 1 and 2, in favour of 2nd plaintiff. It is seen that the Will was executed on 29.09.2006. From the evidence, the trial Court held that the 2nd plaintiff's husband has played vital role in execution of the Will and that there is no evidence to show that Sellammal, the mother, executed the Will after knowing the contents of the Will, which was written as per the instructions of the 2nd plaintiff's husband. Therefore, this Court has no reason to interfere with the findings of the trial Court that the Will, stated to have been executed by mother Sellammal, is not on her own. The suspicious circumstances surrounding the Will was not dispelled by the 2nd plaintiff. Therefore, this Court holds that the Will under Ex.A24 is not proved. In the absence of any Will, the plaintiff and defendants are entitled to equal share. Accordingly, **this Court holds that the plaintiff and defendants 1 and 2 are entitled to 1/3rd share in all the suit properties.**



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Item No.4 :

17.As regards Item No.4, it is admitted by the learned counsels on either side that the property described as Item No.4 in the suit properties was acquired, and enhanced compensation has already been deposited to the credit of L.A.O.P.Nos.40 of 2002 and 5 of 2002 on the file of Principal District Court, Namakkal. The said property is the property purchased by father Marappa Gounder. Since the plaintiff is entitled to equal share even otherwise by virtue of Hindu Succession (Amendment) Act, 2005, this Court holds that the **plaintiff as well defendants 1 and 2 are entitled to equal share in the amount which is lying to the credit of L.A.O.P.Nos.40 of 2002 and 5 of 2002 before Principal District Court, Namakkal.**

18.However, it is now admitted before this Court that some amount out of the compensation already deposited, was withdrawn by the 1st defendant. The learned counsel appearing for the 1st defendant has agreed that the 1st defendant would return the amount. Since the 2nd plaintiff and



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2nd defendant are also entitled to interest to the amount that was withdrawn in excess of his share by 1st defendant, the 1st defendant is directed to pay a sum of Rs.60,000/- (Rupees Sixty thousand only) each to the 2nd plaintiff and the 2nd defendant. The remaining amount shall be withdrawn in equal proportion by the 2nd plaintiff and 2nd defendant in the suit.

19.As a result, the **Civil Revision Petitions in C.R.P.Nos.2234 and 2235 of 2015 and Cross Objection in Cross Obj.No.9 of 2013 are dismissed as withdrawn. The appeals in A.S.Nos.904 and 973 of 2012 are disposed of** in the following lines :

- i. As regards Item No.3 and 4 of the suit schedule properties, the appellants in A.S.No.904 of 2012 and defendants 1 and 2 in O.S.No.75 of 2006 are entitled to equal shares.
- ii. As regards Item No.4 of the suit schedule properties, plaintiff as well defendants 1 and 2 are entitled to equal share in the compensation amount, which is lying to the credit of L.A.O.P.Nos.40 of 2002 and 5 of 2002 before Principal



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District Court, Namakkal. Since the 1st defendant has already withdrawn something more than his share as admitted, the 1st defendant is directed to pay a sum of Rs.60,000/- (Rupees Sixty thousand only) each to the 2nd plaintiff and the 2nd defendant towards excess amount received by him with interest. The 2nd plaintiff and 2nd defendant alone are entitled to withdraw the remaining amount lying to the credit of L.A.O.P.Nos.40 and 5 of 2002 in equal proportion.

- iii. As regards Item No.2 of the suit schedule properties, the 2nd plaintiff as well defendants 1 and 2 are entitled to allotment in terms of the Will under Ex.B2 without any modification.
- iv. The suit in O.S.No.75 of 2006 stands dismissed as regards Item No.1 of the suit schedule properties alone. However, it is open to any one of the parties to file a suit for partition by impleading all the parties including Veerappa Gounder and his legal heirs or anyone claiming under them.



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v. There shall be no order as to costs. Connected miscellaneous
petitions are closed.

(S.S.S.R., J.) (P.B.B., J.)
09.02.2023

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Internet : Yes

Index : Yes / No

To

- 1.The Principal District Judge,
Namakkal.
- 2.The District Judge,
Fast Track Court,
Namakkal.
- 3.The Special Tahsildar
(Land Acquisition Officer, Namakkal)
At present
Tamil Nadu Housing Board Department,
Ayyan Thirumaligai,
Salem Town.
- 4.The Managing Director,
Anna Transport Corporation,
Salem.

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mkn

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

| *with a direction to return*
| *the records to the lower Court*
| *forthwith*

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09.02.2023