



SA.No.1952 of 2002

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 27.01.2023**

**CORAM:**

**THE HON'BLE MS.JUSTICE P.T.ASHA**

**S.A.No.1952 of 2002**

1.Govindammal  
2.Selvaraju  
3.Jayakumar

... Appellants

Vs.

1.Rangasami (died)  
2.Selvasekaran  
3.Varalakshmi @ Anandayee (died)  
4.Karunanidhi  
5.Rajagopal  
6.Vasantha  
7.Palani  
8.Subramani  
(R6 brought on record as LR of the  
deceased R1 viz., Rangasami and  
RR7 and 8 brought on record as LRs  
of the deceased R3 viz., Varalakshmi @  
Anandayee vide order of Court dated  
24.01.2020 made in CMP.No.1252/2011  
in S.A.No.1952 of 2002)

... Respondents

**PRAYER :** Second Appeal filed under Section 100 of C.P.C., against  
the judgment and decree of the Court of the Principal District Judge @  
Villupuram in A.S.No.156 of 2001 & dated 27.03.2002 in confirming the  
judgment and decree of the Court of the Principal District Munsif @



SA.No.1952 of 2002

Villupuram in O.S.No.63 of 1995 dated 30.07.2001 and thereby partly  
decreeing the suit for partition.

For Appellants : Mr.V.Raghavachari  
Senior Counsel for  
Mrs.V.Srimathy

For Respondents : R1 & R3 – Died  
Mrs.A.Nilaphar for R2  
R4 to R8 -served – No appearance

### **JUDGMENT**

The unsuccessful plaintiffs before the Court below have approached this Court by way of this Second Appeal and the same has been admitted on the following substantial questions of law on 05.12.2022 :

*“1) Whether the Court below had not erred in overlooking the documentary evidence in the form of Exs.A3 and A5 which categorically prove the nature of property, as early as in 1908?*

*2) Whether the Court below had not overlooked the crucial fac that DW1 was unable to prove that the suit properties were self-acquisitions of Govindammal and the nature of income accruing to her?*



SA.No.1952 of 2002

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*3) Whether the Court below had not erred in treating the evidence of he identifying witnesses on par with that of attesting witnesses?*

*4) Whether the Court below had not erred in presuming adverse possession in respect of some properties and decreeing the suit in respect to the other?”*

2. The appeal seeks to challenge the judgment and decree passed by the Principal District Judge, Villupuram in A.S.No.156 of 2001 in and by which, the learned Judge had confirmed the judgment and decree of the Principal District Munsif, in O.S.No.63 of 1995.

3. The following facts are necessary to be stated in order to answer the substantial questions of law and to appreciate the grievance of the appellants. The plaintiffs had filed the above referred suit for partition of their 13/24<sup>th</sup> share in the suit schedule properties and to put them in possession of the same. It is their case that the suit properties are the ancestral properties of one Narayana Gounder and his pre-deceased son Govinda Gounder. Narayana Gounder died intestate in the year 1979. Govinda Gounder died in the year 1967 intestate leaving behind him two



SA.No.1952 of 2002

wives namely Govindammal and Dhanasekari and three sons namely the plaintiffs through the 1<sup>st</sup> wife Govindammal and the 4<sup>th</sup> defendant through the 2<sup>nd</sup> wife Dhanasekari.

4. The said Narayana Gounder died intestate in the year 1979 leaving behind him his surviving wife Govindammal and two daughters, Jayalakshmi and the third defendant. Govindammal also passed away in the year 1983 and therefore, it is the case of the plaintiffs that they are entitled to 1/3<sup>rd</sup> share in the half share of Narayana Gounder. The said Narayana Gounder's daughter Jayalakshmi died in the year 1992 leaving behind her, surviving her son and husband defendants 1 and 2 to succeed her 1/3<sup>rd</sup> share jointly and they are entitled to 2 shares in the suit properties of Narayana Gounder and though they had issued a legal notice dated 29.06.1994 calling upon the defendants to partition the property, they had not come forward to comply with the request. Meanwhile, the defendants 1 to 3 have alienated the 13<sup>th</sup> item of suit property to 5<sup>th</sup> defendant. The plaintiffs would contend that the sale is not binding upon them. Hence, this Second Appeal.

5. The second defendant had filed a written statement which is



SA.No.1952 of 2002

adopted by the defendants 1 & 3 in which, they had admitted the relationship between the parties. They denied the claim of the plaintiffs that they are entitled to 13/24<sup>th</sup> share in the suit properties. They also denied that the properties belonged to one Narayana Gounder. The defendants would submit that on 10.12.1953, Narayana Gounder had executed a sale deed in favour of his wife Govindammal in respect of item nos. 3 to 13 which are his self acquired properties. He died in the year 1997 and item nos.1, 2, 14 & 15 are the self acquired properties of Govindammal. The said Govindammal was therefore, the absolute owner of the properties and she has absolute right to the property. While she was alive, she settled the suit properties in favour of her daughters Jayalakshmi and her other daughter, the third defendant/ Varalakshmi @ Anandayee. The settlees had accepted the settlement and had acted upon the same. Since the properties belonged to the defendants 1 to 3, the plaintiffs and 4<sup>th</sup> defendant have no right to the suit property.

6. It is the defendants admitted case that there was Panchayat on 29.07.1985 between the plaintiffs and the defendants in which they had accepted the settlement deed in favour of Jayalakshmi and the third



SA.No.1952 of 2002

defendant and an agreement was entered into on that day acknowledging the same in the presence of Panchayatars. Therefore, the defendants have prayed for dismissal of the suit.

7. Additional written statement came to be filed by the second defendant which was adopted by the defendants 1 & 3 in which it was contended that the property item No.13 belonged to Govindammal. In respect of S.No.61/1A, 69/5, 154/4, 240/1B and 147/14, the defendants would contend that these properties have not been included in the suit. As regards the property comprised in S.No.161/1A the same had been acquired by the Government for granting patta for house sites. They had contended that the suit was bad for non joinder of necessary parties and also for partial partition in view of the non-inclusion of the above properties.

8. The trial Court had framed the following issues which reads thus:

Issues framed on 15.11.1961;

*“1. Whether the plaintiffs are entitled to get*



SA.No.1952 of 2002

*each 13/24 shares in the suit properties?*

*2.Whether the suit is barred by limitation?*

*3.To what other reliefs?*

Additional issues framed on 01.08.1997:

*“1.Whether the suit is bad for non-joinder of necessary parties?*

*2.Whether the suit is bad for partial-partition?*

*3.To what other reliefs?”*

Issues framed on 18.07.2000:

*“1. Whether the suit properties are the self-acquired properties of Narayanan and his wife Govindammal?*

*2.Whether the suit properties are the ancestral properties as of Narayanan Gounder and his pre-deceased son Govinda Gounder?”*

Issues framed on 19.07.2000:

*“1.Whether Ex.B5 & B6 are true and valid?”*

**9.** The second Plaintiff was examined as PW1 and Exs.A1 to

A9 were marked. On the side of the defendants, the second Defendant



SA.No.1952 of 2002

examined himself as DW1, the third defendant as DW2 and one Arumuga Gounder as DW3, they had marked Exs.B1 to B32.

**10.** The learned Principal District Munsif, Villupuram, on considering the evidence on record proceeded to decree the suit, only with reference to item No.18. The learned Judge held that all other properties belonged to Govindammal and hence, by virtue of the settlement deeds Exs.B5 & B6 the property devolved on the defendants 1 to 3.

**11.** The learned Judge observed that the plaintiffs remained silent when Ex.B2 was executed even during the lifetime of their father Govinda Gounder was alive. The learned Judge observed that Govinda Gounder himself was not vested with right in the property in view of the sale deed executed by his father in favour of his mother Govindammal.

**12.** Challenging the judgment and decree, the plaintiffs had filed an appeal in A.S.No.156 of 2001 on the file of the learned Principal District Judge, Villupuram. The learned Judge by his judgment and



SA.No.1952 of 2002

decree dated 27.03.2002 was pleased to dismiss the same confirming the judgment and decree passed by the trial Court. Aggrieved by the same, the plaintiffs are before this Court.

**13.** Mr.V.Raghavachari, the learned Senior Counsel on behalf of Mrs.V.Srimathi, learned counsel would submit that the Lower Appellate Court had come to the conclusion that Exs.B5 & B6 are the settlement deeds said to have been executed by Govindammal in favour of her daughters Jayalakshmi and Varalakshmi @ Anandayee/ the third defendant but, however proceeded to dismiss the appeal without granting partition, though the plaintiffs were held as the legal heirs of the pre-deceased son of Govindammal, who is the first plaintiff in the suit.

**14.** The learned Senior Counsel would further submit that once the Court has held that the property belonged to Govindammal and Govindammal had died intestate, the learned Judge ought to have granted the partition. He would further submit that the judgment and decree of the Courts below have to be set aside and the plaintiffs ought to be granted the partition prayed for.



SA.No.1952 of 2002

**15.** Per contra, Mrs.A.Nilaphar, learned counsel appearing for defendants 1 to 3 would submit that the plaintiffs have not explained as to the basis on which they claim the properties belongs to their grand father Narayana Gounder and Govinda Gounder and how they have claimed partition on the basis of being the legal representatives of the pre-deceased son of Narayana Gounder one Govind Gounder. She would submit that the plaintiffs have now given go by to their claim and claim a right as the legal representative of Govindammal. The plaintiffs cannot be permitted to take prevaricating stands.

**16.** Heard the counsels on either side.

**17.** The plaintiffs have come forward with a case that the suit property belonged to Narayana Gounder. However, the defendants had stated that the properties described as 1 to 14 and 15 was purchased in the name of Govindammal and item Nos.3 to 13 was sold by her husband Narayana Gounder in her favour and therefore, she was the absolute owner of the suit schedule properties.

**18.** The Courts below opined that though the plaintiffs were



SA.No.1952 of 2002

unable to prove that Govindammal had no independent source of income to purchase the property, the sale is binding on the plaintiffs as the same has been executed by Narayana Gounder, who was the absolute owner of the property. The defendants claim a right over to the property on the basis of Exs.B5 & B6 settlement deeds. However, the Lower Appellate Court had held that the defendants have not proved the settlement deeds and their taking possession of the property. Pursuant to that the Courts also observed that the defendants are not in joint possession of the property.

**19.** Further despite the specific finding of the Appellate Court that the settlement deed was not proved, the defendants 1 to 3 have not challenged this finding by filing a cross appeal or regular appeal. Therefore, once it is found that the settlement deeds are not valid and the same remains unchallenged then intestate succession would open with regard to the properties of Govindammal. Admittedly the plaintiffs and the defendants are the children of pre-deceased son of Govinda Gounder. Therefore, they are entitled to 1/3<sup>rd</sup> share in the suit schedule properties.

**20.** It is not in dispute that item Nos. 3 to 13 stood in the name



SA.No.1952 of 2002

of Narayana Gounder, who sold it to his wife Govindammal and the documents are produced in favour of his wife Govindammal Ex.B27, the documents Exs.A28 & 29. Therefore, it is seen that the defendants themselves admitted that the property originally belonged to Narayana Gounder. Therefore, the learned Principal District Judge, Villupuram, has rightly held that the parties are entitled to the share equally between the plaintiffs who have taken 1/3<sup>rd</sup> amicable partition. Since the settlement deeds have also not been proved, no right flows to the defendants under the settlement deeds and the property covered under the settlement deeds are also available for partition. Therefore, the plaintiffs will be entitled to 1/3<sup>rd</sup> share in the suit schedule properties as legal representatives of pre-deceased son of Govindammal.

**21.** Hence, the Second Appeal is allowed and the judgment and decree of both the Courts are set aside and the suit is decreed. No costs.

**27.01.2023**

Index : Yes/No  
Internet : Yes/No  
dna



SA.No.1952 of 2002

**To**

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- 1.The Principal District Judge @ Villupuram
- 2.The Principal District Munsif @ Villupuram.



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SA.No.1952 of 2002

**P.T.ASHA, J.**  
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**S.A.No.1952 of 2002**

**27.01.2023**