



SA.No.573 of 2007 & Cross Obj.No.68 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **21.02.2023**

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THE HONOURABLE MS. JUSTICE P.T.ASHA

SA.No.573 of 2007 & Cross Obj. No.68 of 2021

[SA.No.573 of 2007]

1.Alagesan
2.Alagappan
3.Alaganathan

... Appellants

Vs.

Thanjammal

... Respondent

PRAYER: Second Appeal filed under Section 100 of the CPC, against the judgement and decree of the Court of the Sub Judge, Arni, Tiruvannamalai in A.S.No.36 of 2006 dated 16.10.2006 in confirming the judgement and decree of the Court of the District Munsif, Polur in OS.No.21 of 1999 dated 15.02.2006.

For Appellants : M/s.V.Srimathi

For Respondent : Mr.S.T.Bharath Gautham for
Mr.T.R.Rajaraman



SA.No.573 of 2007 & Cross Obj.No.68 of 2021

[Cross Obj. No.68 of 2021]

Thanjammal

... Appellant

Vs.

1.Alagesan
2.Alagappan
3.Alaganathan

... Respondents

PRAYER: Cross Objection is filed under Order 41 Rule 22 CPC, to allow the Cross-Appeal and modify the judgement and decree with regard to disallowed portion, made in A.S.No.36 of 2006 dated 16.10.2006 on the file of the learned Judge, Arni.

For Appellants : Mr.S.T.Bharath Gautham for

Mr.T.R.Rajaraman

For Respondent : M/s.V.Srimathi

JUDGEMENT



The defendants are the appellants before this Court challenging the concurrent judgment and decree passed by the Courts below. The appeal arises against the judgment and decree in OS.No.21 of 1999 on the file of the District Munsif, Polur. The brief facts are hereinbelow narrated and while so narrating the parties are referred to in the same ranking as before the District Munsif, Polur for ease of understanding.

2. The plaintiff had filed the above suit for partition of her 1/7th share in the suit schedule property. The suit schedule property consisted of 8 items of property. It is her case that the property is the self-acquired property of her father Kothandan Gounder. Items 2 and 3 were purchased by her father under a registered sale deed dated 21.01.1958, the 4th item was purchased under a sale deed dated 07.03.1983, the 5th and the 6th items were purchased under a sale deed dated 11.03.1987 and items 1 and 7 under a sale deed dated 05.03.1958. As regards the 8th item of property it is her contention that the same is a Gramantham vacant site and a house was constructed thereon from out of the self-acquired funds of her father Kothandan Gounder.



3. The plaintiff would submit that her father had died 6 months prior to the institution of the suit and till his death he was in continuous possession and enjoyment of the property. Since he had died intestate his property would devolve equally among his wife, the 6th defendant, his sons defendants 1 and 3 and daughters, the plaintiff and defendants 4 and 5. She would submit that on account of a recent enmity she was not willing to continue to be joint with the defendants and therefore she had in the last two weeks of December 1996 requested the defendants to divide and allocate her share in the suit schedule property. However, the defendants evaded the said request under one pretext or the other. They had also attempted to alienate some of the properties. Therefore, the plaintiff had come forward with the present suit for partition. The 7th defendant has been added as a formal party.

4. The 2nd defendant had filed a written statement which was adopted by defendants 1 and 3 in which they had primarily contended that the suit properties were joint family properties of the Kothandan Gounder, the son of Chandraveedu Gounder. The daughters who included the plaintiff had all been married much prior to 1956 and therefore they were not entitled to any



share in the property. They ,therefore, sought for a dismissal of the suit.

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5. The 5th defendant had filed a written statement seeking her 1/7th share in the suit property. The 7th defendant had filed a written statement stating that he is not a necessary party to the suit.

6. The learned District Munsif had framed the following issues whose English translation is as follows:-

- i) Whether the suit properties are the self-acquired properties of the plaintiff's father Kothandan Gounder?*
- ii) Whether the plaintiff is entitled to the relief claimed for?*
- iii) Whether the plaintiff is entitled to decree for injunction?*
- iv) To what relief the plaintiff is entitled to?*

7. The plaintiff had examined herself as P.W.1 and had marked Ex.A.1 to A.5. The 2nd defendant had examined himself as D.W.1 and the



1st defendant as D.W.2 and they had marked Ex.B.1 to B.4.

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8. The learned Judge on considering the evidence on record came to the conclusion that the properties are the self-acquired properties of the father and that all the legal heirs were entitled to an equal share in the property. Consequently, the suit was decreed as prayed for.

9. The defendants had pleaded a partition under Ex.A.5. The learned Judge had observed that even in Ex.A.5, the defendants 1 to 3 have themselves described the property as the self-acquired property of their father. Aggrieved by the said judgment and decree the defendants 1 to 3 had filed A.S.No.36 of 2006 on the file of the Sub Court, Arni.

10. The learned lower Appellate Judge had partly allowed the appeal by setting aside the judgement and decree of the Trial Court in relation to 7 and 8 items of property. The defendants had filed the above Second Appeal against the disallowed portion of the judgement and decree by the learned Sub Judge, Arni and the plaintiff has filed the Cross Objection in respect of the judgement and decree with regard to the items 7 and 8.



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11. This Court was pleased to admit the Second Appeal and the Cross Objection on the following Substantial Questions of law:-

“1. Whether the learned Subordinate Judge is right in not taking the settled proposition that even female heirs are entitled to equal shares of property in family and ancestral properties after 2005 Amendment to the Hindu Succession Act, in consideration while deciding that female heirs are not entitled to items 7 and 8?

2. Whether learned Subordinate Judge is right in negating Items 7 & 8 of the suit properties that female heir is not entitled to their share, while Hon'ble Supreme Court of India had clarified the issues and settled the law in Vintha Sharma Vs. Rakesh Sharma reported in 2020 (9) SCC 1 and reported in 2022 LiveLaw (SC) 71?

3. Whether the Courts below are right in shifting the burden of proof on the appellants to prove the nature of the property, when the obligation lies on the



plaintiff?”

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12. Heard both the counsels.

13. The plaintiff has come to Court with a case that the properties are all the self-acquired properties of her father which has been refuted by the defendants on the ground that the same are ancestral properties belonging to their grand father Chandraveedu Gounder. However, no document has been filed by the defendants to prove the ancestral nature of the properties or that the properties have been purchased in the name of the father from out of the Joint family funds. in fact, the defendants had pleaded a partition which is evidenced by Ex.A.5 in which the defendants have themselves described the properties as the self-acquired properties of their father. In fact, the appellant has not filed any document to show the very existence of a ancestral property.

14. Therefore, the finding that the properties are the self-acquired properties of the deceased Kothandan Gounder has to be necessarily upheld



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and once it is held that the properties are the self-acquired properties of Kothandan Gounder and he had died intestate then all the legal heirs of deceased Kothandan Gounder is entitled to an equal share in the suit schedule property.

15. The plaintiff has filed sufficient proof to show that the properties are the self-acquired properties of the Kothandan Gounder. Therefore, the Substantial question of laws are answered in favour of the plaintiff. The Second Appeal therefore stands dismissed and the Cross Objection is allowed. The judgement and decree of the Trial Court is confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed, if any.

21.02.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To
1. The Sub Judge, Arni, Tiruvannamalai.



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2. The District Munsif, Polur.
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P.T. ASHA, J,

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