



S.A.No.1524 of 2004
and C.M.P.No.12045 of 2004

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.1524 of 2004

and

C.M.P.No.12045 of 2004

Poongothai Ammal

...Appellant

Vs.

1.Senguttuvan
2.Elangovan (Died)
3.Krishnan
4.Kanchana
5.Radha Ammal
6.Mala
7.Vijayan (Died)
8.Vinoth
9.Vimal
10.Mahalakshmi
11.Balu (Minor)
(Rep. by his natural guardian R-10)

... Respondents

(RR6 to 9 & 10, 11 are brought on record as LR's of the R2 and R7 vide order of Court dated 06.09.2022 made in CMP.No.172/2009 & 14726/2021 in S.A.No.1524/2004 respectively)



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Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 24.12.2003 passed in A.S. No.72 of 2003, on the file of the Principal District Court, Vellore, upholding the decree and judgment dated 31.03.2003 passed in O.S. No.75 of 1999, on the file of the Sub Court, Gudiyatham, Vellore District.

For Appellant : Mr.M.Muthappan
For Respondents : No appearance.

JUDGMENT

The appellant herein is the plaintiff in O.S. No.75 of 1999, on the file of the Sub Court, Gudiyatham, Vellore District. She filed the suit for partition of the suit properties into six equal shares and to allot one such share to her and also for costs.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.



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3.The case of the plaintiff in nutshell is as follows:

The plaintiff and the defendants 1 to 4 are sons and daughters of Kolandhai Gounder and the fifth defendant Radhammal is their mother. Kolandhai Gounder died leaving behind the plaintiff and the defendants as his legal heirs. The suit properties are self acquired properties of Kolandhai Gounder. Item Nos.11 to 17 in 'A' schedule properties were purchased in the name of the fifth defendant. The suit properties were enjoyed by Kolandhai Gounder as his own properties and the plaintiff and the defendants are in joint possession and enjoyment of the same. While so, on 21.01.1991 the defendants 1 to 5 trespassed into Item No.1 of the suit property in which the plaintiff is residing, and asked her to vacate the premises. Thereafter, the plaintiff issued a notice on 04.02.1991 (Ex.A1) to the defendants for partition of the suit properties. Since there was no response from them, the plaintiff had filed the suit.



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4.The suit was resisted by the defendants on the following grounds :

- i. Item No.3 of 'B' schedule property was leased out by the mother of the plaintiff (5th defendant) and income thereon was used for her personal expenses.
- ii. The plaintiff's husband was constructing a house and therefore, the plaintiff was accommodated in Item No.1 of 'B' schedule property. The plaintiff thereafter left Item No.1 of the suit property.
- iii. Kolandhai Gounder (plaintiff's father) during his life time executed a Will dated 15.01.1972 (Ex.B28) bequeathing the suit properties in favour of their sons.
- iv. Item Nos.2, 3, 10 ,17, 19, 27, 28, 29, 37 & 39 are ancestral properties of late Kolandhai Gounder and the defendants 1 to 3 and the same were partitioned amongst them through a koor chit dated 12.02.1969 (Ex.B1). The remaining extent of the land are not self acquired properties of Kolandhai Gounder since they were purchased from out of the joint family nucleus. Therefore,



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WEB COPY according to the defendants the plaintiff cannot claim any share in the suit properties.

5.After full contest, the learned Subordinate Judge, Gudiyatham, Vellore District, decreed the suit vide his decree and judgment dated 31.03.2003 as under :

- i. Item No.14 to 16, 18, 22 to 24 are the self acquired properties of the fifth defendant.
- ii. The other properties are the joint family properties of Kolandhai Gounder and defendants 1 to 3 and as per Hindu Succession Act the plaintiff is entitled to get 1/24th share alone in the suit properties except the properties owned by the fifth defendant.
- iii. The plaintiff can take separate proceedings under Order XX Rule 12 CPC in respect of future mesne profits.

6. Aggrieved over the decree and judgment dated 31.03.2003 passed by the learned Subordinate Judge, Gudiyatham, Vellore District, the defendants filed an appeal in A.S.No.72 of 2003 before the learned



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Principal District Judge, Vellore District and the plaintiff filed cross objection.

7. The first appellate Court after analysing the oral and documentary evidence adduced on both sides upheld the findings of the trial Court vide his decree and judgment dated 24.12.2003, aggrieved over which, the present Second Appeal is filed by the plaintiff on the following substantial questions of law.

- i. Whether the Courts below are right in law that in the absence of any documentary evidence to prove that the properties are purchased from the nucleus of joint family properties?
- ii. Whether the Courts below are right in law applying the doctrine of blending in the absence of any proof that the properties are purchased from the nucleus of the joint family properties?

8. Heard Mr.M.Muthappan, learned counsel for the appellant.

Though several opportunities were given to the respondents, there is no representation. Moreover, the appeal filed by the respondents in



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WEB COPY S.A.No.2152 of 2004 was dismissed by this Court for non-prosecution on 02.03.2023.

9. Mr.M.Muthappan, learned counsel for the appellant / plaintiff relied on the decision in *Vineeta Sharma vs. Rakesh Sharma and others* reported in **(2020) 9 SCC 1** wherein it has been held that if a daughter is alive on the date of enforcement of Amendment Act, 2005 i.e. 09.09.2005, she becomes a coparcener with effect from date of Amendment Act (i.e. 09.09.2005) irrespective of whether she was born before the said amendment. It was further held that that the rights under substituted Section 6 can be claimed by a daughter born prior to the amendment, with effect from the date of amendment with saving of past transactions as provided in proviso to Section 6 (1) r/w. Section 6(5) of the Hindu Succession Act. According to the counsel, the share of the plaintiff can be enlarged in view of the above decision of the Hon'ble Supreme Court. He further did not press the claim over the 5th defendant's properties.



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10. In the instant case, both the Courts below had held that except the properties which are in the name of the fifth defendant namely Radha Ammal (mother of the plaintiff) other properties are joint family properties consisting of the plaintiff and the defendants 1 to 3 and that the plaintiff's father is entitled to 1/4th share. It was further held that as per Hindu Succession Act the plaintiff can claim only 1/6th share from her father's share of 1/4th and thus she is entitled to 1/24 shares in respect of the suit properties except the properties belonging to the fifth defendant. As per the decision of the Hon'ble Apex Court in ***Vineeta Sharma vs. Rakesh Sharma and others*** (cited supra) the plaintiff is entitled to get equal share as that of sons and therefore, the suit filed by her is decreed granting her 1/4th share in the suit properties except the properties belonging to the fifth defendant.

11. In the result,

- i. the second appeal is allowed. No costs. Consequently,
connected civil miscellaneous petition is closed.



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- ii. the decree and judgment dated 24.12.2003 passed in A.S. No.72 of 2003, on the file of the Principal District Court, Vellore District and the decree and judgment 31.03.2003 passed in O.S. No.75 of 1999, on the file of the Sub Court, Gudiyatham, Vellore District are set aside to the extent of the share of the plaintiff.
- iii. The plaintiff is entitled to get 1/4 share in the suit properties except the properties owned by the 5th defendant.

03.03.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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R. HEMALATHA, J.
mtl

To

1. The Principal District Court, Vellore.
2. The Sub Court, Gudiyatham, Vellore District.
3. The Section Officer, VR Section, High Court, Madras.

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