



S.A.No.1637 of 2004

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM

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

S.A.No.1637 of 2004

1. Chinniah Chettiar (died)
2. Govindammal (died)
3. Kanthamani Ammal
4. Govindarajulu
5. Murugan
6. R. Ellammal
7. V. Mallika
8. L. Rajendran

...Appellants

Appellants 4 and 5 are recorded and 6th appellant brought on record as LRs of the deceased 1st appellant viz., Chinniah Chettiar vide order of court dated 17.09.2019 made in CMP No.11130 in S.A. No.1637/2004.

Appellants 7 and 8 brought on record as LRs of the deceased 2nd appellant viz., Govindammal vide order of court dated 17.09.2019 made in C.M.P. No.11137 to 11139/2019 in S.A. No.1637/2004.

Vs.

1. Govindan (died)
2. Devarajan



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3. Balakrishnan
4. Vijayalakshmi
5. Seetha Ammal

... Respondents

RR2 to 4 recorded as LR of the deceased R1 and R5 brought on record as LR of the deceased R1 vide order of court dated 23.12.2011 made in CMP No.566 of 2011 in S.A.No.1637/04.

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 29.04.2003 passed in A.S. No.17 of 2002, on the file of the Sub Court, Madurantakam, reversing the decree and judgment dated 18.06.2002 passed in O.S. No.446 of 1987 (after remand), on the file of the District Munsif Court, Madurantakam.

For Appellants : Mr. M. Subramanian
For R2 to R5 : Mr. V. Nicholas

JUDGMENT

The appellants are the defendants in O.S. No.446 of 1987 on the file of the District Munsif, Madurantakam. One Lakshmi Devi filed the said suit for partition of the suit properties (Items 1 to 8) into five equal shares and to allot one such share to her.



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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.

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

The plaintiff is the youngest daughter of the 1st defendant Lakshmi ammal (since deceased). The 1st defendant is the wife of late Raghava Chettiar who died intestate. The other defendants namely, Chinniah Chettiar and Govindammal are the son and daughter of late Raghava Chettiar respectively. The suit properties are the self acquired properties of late Raghava Chettiar and therefore, the plaintiff filed the suit for partition of the suit properties into five equal shares and to allot one such share to her.

4. The suit was resisted by the defendants on the ground that the suit properties were gifted orally by Raghava Chettiar to the 2nd defendant Chinnaih Chettiar and that the 1st defendant (mother) is also one of the co owners of items 1 to 5 of the suit properties which she has



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already gifted orally to the 2nd defendant Chinnaih Chettiar. Since Raghava Chettiar and the 1st defendant Lakshmi Ammal put the 2nd defendant in possession of the suit properties, the plaintiff is not entitled to any share in the suit properties. They further contended that the suit is bad for non joinder of necessary parties.

5. On the basis of the above pleadings, the trial Court framed appropriate issues and after full contest, the learned District Munsif, Madurantagam, decreed the suit in favour of the plaintiff and a preliminary decree for partition was passed on 28.07.1995 dividing the suit properties into 5 equal shares and to allot one such share to the plaintiff.

6. Aggrieved over the decree and judgment passed by the trial court, the defendants, namely, Lakshmi Ammal, Chinniah Chettiar and Govindammal filed an appeal in A.S. No.32 of 95 before the Principal Subordinate Court, Chengalpattu. The Principal Subordinate Judge, Chengalpattu, after analysing the oral and documentary evidence adduced



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on both sides, held that one Kanthamani Ammal who is one of the legal heirs was not impleaded as a party to the suit. He therefore remanded the matter back to the trial court for fresh disposal after giving opportunity to both the parties and also to the party who has to be impleaded in the suit. The plaintiff was given an opportunity to file a petition to implead Kanthimani ammal as a necessary party to the suit and thus she was impleaded as 4th defendant in the suit. In the meanwhile Lakshmi Ammal (1st defendant) died and her other legal heirs Govindarajulu and Murugan were impleaded as defendants 5 and 6. The learned District Munsif, Madurantagam, after analysing oral and documentary evidence adduced on both sides, held as follows:

- i. Suit Items 1 to 5 were purchased jointly by Raghava Chettiar and Lakshmi Ammal and therefore, they are co-owners of the suit properties.
- ii. 6th item of the suit property is an ancestral property and therefore, the plaintiff and the 2nd defendant Chinnaya Chettiar are each entitled to 1/2 share.
- iii. The 1st defendant executed a Will (Ex.B13) dated 08.03.1996 in



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respect of 8th item of the suit property in favour of the defendants 5 and 6.

iv. The 1st defendant had also orally gifted her share in Items 1 to 5 in favour of the 2nd defendant. Therefore, the plaintiff can get only 1/4 share in the properties (Items 1 to 5) purchased by Lakshmi ammal.

v. As far as the share of Raghava Chettiar is concerned the 2nd defendant is entitled to 1/2 share and the other 1/2 share would be equally divided by the plaintiff and the other legal heirs of late Raghava Chettiar.

vi. The 6th item of the suit properties is the ancestral property of late Raghava Chettiar and the plaintiff can get only 1/8 share.

vii. The 7th item of the suit properties was purchased by the 2nd defendant Chinniah Chettiar and the 8th item of the suit properties was bequeathed by late Lakshmi ammal in favour of Chinniah Chettiar and hence the plaintiff cannot get any share in respect of the items 7 and 8.



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7. Aggrieved over the decree and judgment passed by the trial Court, the legal heirs of Lakshmi Devi (plaintiff) filed an appeal in A.S.No.17 of 2002 before the Subordinate Court, Madurantakam, since by that time Lakshmi Devi died. The first appellate court, after analysing the oral and documentary evidence adduced on both sides, set aside the decree and judgment passed by the trial court and held that the suit properties are joint family properties and that the plaintiffs are entitled to 1/5 shares in all the suit properties.

8. Now the present second appeal is filed by the defendants 2 to 6 and the same is admitted on the following substantial questions of law.

- i. " Whether the properties purchased in the name of Lakshmi Ammal are her separate properties or joint family properties?
- ii. Is not the presumption in Hindu Law that the properties standing in the name of a female member of the family is her absolute property applicable in this case?
- iii. Whether the plaintiff would be entitled to only 1/5th of Raghava Chettiar's share in the properties?"



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9. Heard Mr. M.S. Subramanian, learned counsel for the appellants and Mr. V. Nicholas, learned counsel for the respondents 2 to 5.

10. Mr. M.S. Subramanian, learned counsel for the appellants contended that the lower appellate court failed to note that the suit items 1 to 5 were purchased in the names of Lakshmi Ammal and Raghava Chettiar in the ratio 3:1 and that when a property stands in the name of a female member, it is presumed that it is her absolute property. The lower appellate court without taking this aspect into consideration had wrongly held that the properties stand in the name of Lakshmi Ammal are also joint family properties. He relied on the recent decision of the Supreme Court in *Vineeta Sharma vs. Rakesh Sharma* reported in (2020) 9 SCC 1 and contended that even assuming that the properties are ancestral properties, the plaintiffs would get 1/5 share in items 1 to 7 of the suit properties (except item No.8) and therefore, the decree and judgment passed by the first appellate court has to be set aside. He also filed a memo of calculation of shares which are to be allotted to the plaintiff and the defendants and the same is extracted hereunder:



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WEB COPY **Share of Plaintiffs (Respondents)**

Item 1	:	4.2 cents	Out of 0.28
Item 2	:	1.35 cents	Out of 0.09
Item 3	:	1.8 cents	Out of 0.12
Item 4	:	3.15 cents	Out of 0.21
Item 5	:	7.05 cents	Out of 0.47
Item 6	:	20.2 cents	Out of 1.01

Total 37.75 cents

Item 7	:	1/5th share in well and service connection
Item 8	:	Plaintiff is not entitled to any share.

Defendants 5 and 6 (Appellants 4 and 5) are entitled to

Item 1	:	14.1 cents	Out of 0.28
Item 2	:	4.5 cents	Out of 0.09
Item 3	:	6 cents	Out of 0.12
Item 4	:	10.05 cents	Out of 0.21
Item 5	:	23.02 cents	Out of 0.47
Item 6	:	33.8 cents	Out of 1.01

Total 91.87 cents

Item 7	:	2/5th share in well and Service Connection
Item 8	:	Absolutely

6th Appellant - Ellammal D/o. Chinniah Chetty entitled to:



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Item 1	:	1.4 cents	Out of 0.28
Item 2	:	0.45 cents	Out of 0.09
Item 3	:	0.6 cents	Out of 0.12
Item 4	:	1.5 cents	Out of 0.21
Item 5	:	2.33 cents	Out of 0.47
Item 6	:	6.6 cents	Out of 1.01

Total		12.88 cents	

Item 7	:	1/5th share in well and Service Connection	
Item 8	:	No share	

4th defendant (3rd appellant) Kanthamani entitled to

Item 1	:	4.2 cents	Out of 0.28
Item 2	:	1.35 cents	Out of 0.09
Item 3	:	1.8 cents	Out of 0.12
Item 4	:	3.15cents	Out of 0.21
Item 5	:	7.05 cents	Out of 0.47
Item 6	:	20.2 cents	Out of 1.01

Total		37.75 cents	

Item 7	:	1/5th share in Well and Service Connection	
Item 8	:	No share	

Appellants 7 and 8 together (Legal heirs of Govindammal,



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Item 1	:	4.2 cents	Out of 0.28
Item 2	:	1.35 cents	Out of 0.09
Item 3	:	1.8 cents	Out of 0.12
Item 4	:	3.15 cents	Out of 0.21
Item 5	:	7.05 cents	Out of 0.47
Item 6	:	20.2 cents	Out of 1.01

Total		37.75 cents	

Item 7	:	1/5th share in Well and Service Connection	
Item 8	:	No share	

11. Learned counsel for the respondents contended that late Lakshmi Ammal had no independent source of income to purchase the properties in her name and therefore all the properties should be treated as properties of late Raghava Chettiar. Since Item No.6 was inherited by Raghava Chettiar from his father, the same has to be construed as ancestral property of late Raghava Chettiar. However, in all his fairness he conceded that as per the recent decision of the Hon'ble Apex Court in ***Vineeta Sharma vs. Rakesh Sharma*** (cited supra), the plaintiff is entitled to 1/5 share in all the properties except Item No.8. He accepted the



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memo filed by the learned counsel for the appellants with regard to the shares to be allotted to the plaintiff and the defendants.

12. In the decision in *Vineeta Sharma vs. Rakesh Sharma* it has been held that the female heirs are, by birth, co-parceners and they are entitled to get equal share as that of the male heirs. In the instant case, both Raghava Chettiar and his wife Laksmiammal are no more and therefore their properties (whether ancestral or self acquired) can be equally divided among their legal heirs. As far as Item No. 8 is concerned, late Lakshmi Ammal had bequeathed the said property through a Will (Ex.B13) to the 2nd defendant and therefore, the plaintiff cannot claim any right over the same. Thus, it is held that the plaintiff is entitled to 1/5 share in respect of items 1 to 7. The plaintiff is not entitled to any share in Item No.8. The memo filed by the counsel for the appellants showing the division of shares shall form part of the decree. Thus, the substantial questions of law are answered accordingly.



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13. In the result,

- i. the Second Appeal is allowed. No costs.
- ii. the decree and judgment dated 29.04.2003 passed in A.S. No.17 of 2002, on the file of the Sub Court, Madurantakam, is set aside.
- iii. The legal heirs of the plaintiff is entitled to 1/5 share in all the suit properties except Item No.8.
- iv. The memo filed by the learned counsel for the appellants showing the shares to be allotted to the plaintiff and the defendants shall form part of the decree.

28.04.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

1. The Subordinate Judge, Madurantakam.
2. The District Munsif, Madurantakam.
3. The Section Officer, VR Section, High Court, Madras.

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