



SA.No.1301 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.1301 of 2010andMP.No.1 of 2010 & CMP.No.21973 of 2023

K.Ravi

... Appellant

- Vs -

1. Vasanthi @ Jayanthi

2. Kumarasamy (died)

3. Arasu

(R2 died. Appellant, R1 & R3 are the LR's of the deceased 2nd respondent vide order of Court dated 26.07.2022 made in Memo SR.5090)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of allowing the appeal in A.S.No.41 of 2008 dated 4.8.2009 passed by the learned Principal District Judge, Thiruvallur reversing the judgment and decree passed by the learned Subordinate Judge, Poonamallee in O.S.No.29 of 2004 dated 31.10.2007.

For Appellant : Mr.R.Karunakaran

For Respondents : Mr.M.L.Ramesh for R1 & R3
R2-Died.



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JUDGMENT

The instant Second Appeal has been filed at the instance of the second defendant. The first respondent was the plaintiff before the Trial Court. The second and third respondents are the first and third defendants before the Trial Court. The respondents 1 and 3 and the appellant are the children of the deceased second respondent Kumarasamy.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant Second Appeal is that; the suit property originally belongs to one Mr.Kanniappa Achari, who is the grandfather of the plaintiff and the defendants 2 and 3, and the father of the first defendant. According to the plaintiff, the first defendant inherited the suit property for himself and for his children from his father Mr.Kanniappa Achari. The children of Mr.Kanniappa Achari qua the first defendant and his brother has partitioned the property belongs to Mr.Kanniappa Achari by virtue of an unregistered partition deed dated 02.11.1995, by and in which



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the “B” Schedule property was inherited by the first defendant. According to the plaintiff, since the first defendant inherited the suit schedule property for himself and on behalf of his heirs including the plaintiff and the defendants 2 and 3, thereby, the property belongs to all the members of the family equally. The plaintiff further submits that in order to defeat the plaintiff's right, the first defendant executed a settlement deed in favour of his son the second defendant, which is null and void, as the first defendant has no absolute title over the suit property. Hence, the plaintiff has come forward with a suit for partition to divide the suit property into four equal shares and to allot one such share, and also for the relief of declaration to declare the settlement deed executed by the first defendant in favour of the second defendant as null and void and for permanent injunction.

4. The said suit was resisted by the defendants 1 and 2 disputing the contention of the plaintiff. The defendants denied that the suit property is a joint family property and was belongs to Mr.Kanniappa Achari. According to these defendants, the suit property was a gramamatham land belong to the first defendant and neither the joint family property nor ancestral property, as alleged by the plaintiff. According to these defendants, it is the Government



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Poromboke land, enjoyed by the first defendant, and prior to him, his father had enjoyed. The first defendant has got only a possessory right. It is the further stated that the second defendant is taking care of first defendant inspite of his severe odds and difficulties. Hence, the first defendant has settled the suit property to the second defendant to provide him support and resources to get over his difficulties. It is the further submission of these defendants that the first defendant has placed the second defendant in possession and enjoyment of the suit property. These defendants further submit that the second defendant has also made some improvements in the suit property. Thus, these defendants prayed to dismiss the suit.

Evidence, Documents and findings of the Courts below:-

5. Before the Trial Court, the plaintiff has marked 4 documents as Exs.A1 to A4, and on behalf of the defendants, 11 documents have been marked as Exs.B1 to B11. On behalf of the plaintiff, 2 witnesses were examined as PW1 and PW2 and on behalf of the defendants, 2 witnesses were examined as DW1 and DW2.

6. The Trial Court after having gone into the oral and documentary evidences has eventually dismissed the suit. Aggrieved with the same, when



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the plaintiff has preferred the First Appeal, the First Appellate Court by relying upon Ex.A5-சுற்று சீட்டு [unregistered partition deed] have arrived at a conclusion that the suit property was an ancestral property and granted decree of partition. Aggrieved with the same, the second defendant is before this Court.

Substantial Question of Law:-

7. At the time of admission on 03.11.2010, this Court has formulated the following substantial questions of law:-

“(i) Whether the suit filed for partition of Government land is valid.

(ii) Has not the defendant/Respondent is having perfect title by long possession of the purambokku Land?

(iii) Whether the suit is maintainable in law for partition of Purambokku Land?”

Submissions of both side counsels:-

8. The learned counsel for the appellant/2nd defendant would vehemently contend that the suit property is a poromboke land and has been in actual physical possession and enjoyment of the first defendant, and that prior to him, the property was in the actual physical possession of his father



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Mr.Kanniappa Achari, therefore, the suit property cannot be construed as an ancestral property. It was the further contention that the reliance of recital in Ex.A5 unregistered partition deed by the First Appellate Court is contrary to the provisions of Section 49 of The Registration Act, as Ex.A5 is compulsorily registrable document. Thus, it is the contention of the appellant/2nd defendant that the suit property is the absolute property of the first defendant. Therefore, his father has got every right to execute a settlement deed. Thus, contended that the settlement deed stands in the name of the second defendant is valid and binding and the plaintiff and the third defendant are not entitled for any partition. Hence, prayed to allow the Second Appeal. He also relied upon the judgment of the Hon'ble Single Judge of this Court in ***A.S.No.1016 of 2018 (V.Bakkiyam Vs. C.Kandasamy Gounder (died) and others)*** dated 17.02.2022 and would contend that the female daughter would be construed as a co-parcener only on and from 09.09.2005, and that prior to the said date of any alienation, transfer, mutation, division etc., took place, will exclude the rights on the ancestral property.

9. Per contra, the learned counsel for the plaintiff/first respondent would submit that under Ex.A5, there is a recital that the property is the



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ancestral property. Once the property is an ancestral property, then the plaintiff, being the co-parcener, by **Tamil Nadu Act 1/1989**, she is entitled to have a partition in her grandfather's property. In support of his contention, the learned counsel relied upon the following judgments:-

1. ***Rohit Chauhan Vs. Surinder Singh and others*** reported in (2013) 9 SCC 419;
2. ***Angammal and Chinnammal Vs. C.Sellamuthu and Senthilkumar*** reported in 2008 (1) MLJ 560;
3. Unreported judgment of Hon'ble Supreme Court in ***Civil Appeal No.7528 of 2019 dated 23.09.2019 [Govindbhai Chhotabhai Patel & Ors Vs. Patel Ramanbhai Mathurbhai]***;
4. Unreported judgment of this Court in ***SA.No.589 of 2010 dated 05.03.2021 [M.Muthusamy Vs. R.M.Ponnusamy and another]***; and
5. Unreported judgment in ***S.A.No.729 of 2016 dated 05.04.2022 [S.Sampoornam Vs. C.K.Shanmugam and others]***. Hence, prayed to dismiss the Second Appeal.

10. I have given my anxious consideration to either side submissions.

Analysis of the submissions:-

11. From the submissions of the either side, the short facts involved in this matter is, as to whether Section 6 of The Hindu Succession Act is



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applicable, or as to whether Section 8 of The Hindu Succession Act is applicable, to the present facts of this case. While looking at the judgment of the First Appellate Court, the First Appellate Court carried away by the recital in Ex.A5 as to the word “பூர்வீக சொத்தை” and construed the property as the ancestral property and ultimately held that the first defendant has no right to deal with the entire family property.

12. While looking at Ex.A5, it was marked through the first defendant. Even for argument sake, the word “பூர்வீக சொத்தை” construed as ancestral property, the same should be conjointly read with the plaint averments. In the plaint, the plaintiff has categorically stated in paragraph 3 that the suit property originally belonged to one Mr.Kanniappa Achari viz., the grandfather of the plaintiff. It is pertinent to mention here that the plaintiff did not submit any document as to the parental deed, to show that the suit property derived from the ancestors of the plaintiff's grandfather Mr.Kanniappa Achari. However, the defendant would contend that the suit property is a gramamatham land and a Government Poromboke land enjoyed by the first defendant, and prior to him, it was under the enjoyment of his father.



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13. Therefore, when the plaintiff is not in a position to submit any document as to the ancestral nature of Kanniyappa Achari, and when the plaintiff's case is not as that of death of Kanniyappa Achari was prior to 1956, while reading Ex.A5 in the background of the plaint averment made in paragraph 3 and the above defence put forth by the defendant, this Court can safely arrive at a conclusion that the right over the property to the plaintiff's family was originally accrued to the plaintiff's grandfather Mr.Kanniyappa Achari. Therefore, this Court is of the view that such property cannot be construed as a co-parcenary property so as to apply Section 6 of The Hindu Succession Act. Therefore, the proper provision to be applied here is Section 8 of The Hindu Succession Act. For ready reference, Section 8 is extracted hereunder:-

“8. General rules of succession in the case of males.—

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and



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(d) *lastly, if there is no agnate, then upon the cognates of the deceased.*”

14. As per Section 8 of The Hindu Succession Act, when a male Hindu died, the property will be devolved under Clause 1. On careful reading of Clause 1, the son's son, or son's daughter are not entitled for any partition. But only the son of the predeceased son, or daughter of the predeceased son are alone entitled to have a partition. In this regard, it is useful to refer the judgment of this Court in the case of *The Additional Commissioner of Income-tax Vs. P.L.Karuppan Chettiar* reported in *1978 SCC OnLine Mad 30*, which was subsequently followed by the Hon'ble Supreme Court in the case of *Uttam Vs. Saubhag Singh and others* reported in *(2016) 4 SCC 68*. Though the learned counsel for the respondent has submitted various authority mentioned in para 9 supra, all the above judgments are only in respect of Section 6 of The Hindu Succession Act. However, it is the plaintiff's case that the property belongs to one Mr.Kanniappa Achari absolutely. Therefore, it must be dealt under Section 8 of The Hindu Succession Act. If Section 8 is applied, then the plaintiff being son's daughter has no birth right to seek partition in her grandfather's property, while his father is alive.



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15. In the case on hand, on the date of filing of the suit, his father/the first defendant is alive. Therefore, the succession in respect of the plaintiff as well as the defendants 2 and 3 will not open and it is only a spes successionis. Here, in our case, even prior to opening of succession, Class 1 legal heir of Mr.Kanniappa Achari, who is the father of the plaintiff, who has got a share [according to the plaintiff] has absolute right over the said property and has exercised such right by settling the property in favour of the first defendant. Therefore, this Court is of the view that the plaintiff has no right to seek any partition in the property as the property is not at all a co-parcenary property. Though in the poromboke land, the family member has got a right to seek partition as held in ***K.Arumugam Vs. Meera and others*** reported in ***2014 (3) MLJ 847***, since the plaintiff is not the Class I legal heir in respect of his grandfather's property, the claim for partition must fail. Hence, all the substantial question of law are answered in favour of the appellant.

16. The appellant has filed an application to receive additional documents. The ground urged is not within the 4 corners of Order 41 Rule 27 CPC. Therefore, in view of the above reasons, and also upon the reason



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that the substantial question of law are answered in favour of the appellant,
this CMP.No.21973 of 2023 is liable to be dismissed.

17. In the result, this Second Appeal is allowed, thereby, the judgment and decree of the First Appellate Court in A.S.No.41 of 2008 is set aside and the Order of the Trial Court dismissing the suit in O.S.No.29 of 2004 is restored. CMP.No.21973 of 2023 is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

12.12.2023

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Index : yes

Speaking Order

Neutral Citation Case: Yes

To

1. The Subordinate Judge's Court,
Poonamallee.
2. The Principal District Judge,
Thiruvallur.



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C.KUMARAPPAN, J

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