



A.S.No.87 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No. 87 of 2021
&
C.M.P. No. 5922 of 2021

1.P.Raju (Died)

2.Tamaraiselvi

3.Bhuvaneswari

4.R.Vijayalakshmi

5.R.Poongodi

6.Umayaeswari

7.Jegadeswari

...Appellants

Vs.

1.Mallika

2.Latha

3.Usha



A.S.No.87 of 2021

4.Sudha

5.Murugan

6.Santhi

7.Kavitha

8.Rajasekaran

9.Geetha

10.Karthik

11.Ramakrishnan

12.Nirmala

13.Loganayaki

14.Sivaraman

15.Selvi

16.Sonia

17.Minor.G.Sappan

18.Minor David

...Respondents

(A1 died, A2 to A5 already on record, are Lrs of deceased A1, vide order of Court dated 11.10.2023).



A.S.No.87 of 2021

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Prayer: Appeal is filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 27.01.2020 passed in O.S.No.3 of 2016 on the file of the II Additional District Judge Tindivanam.

For Appellants : Mr. R.P. Ruban Chakravarthy

For Respondents : Given Up
1 to 5, 11 to 16.

For Respondents : No Appearance.
6 to 10.

JUDGEMENT

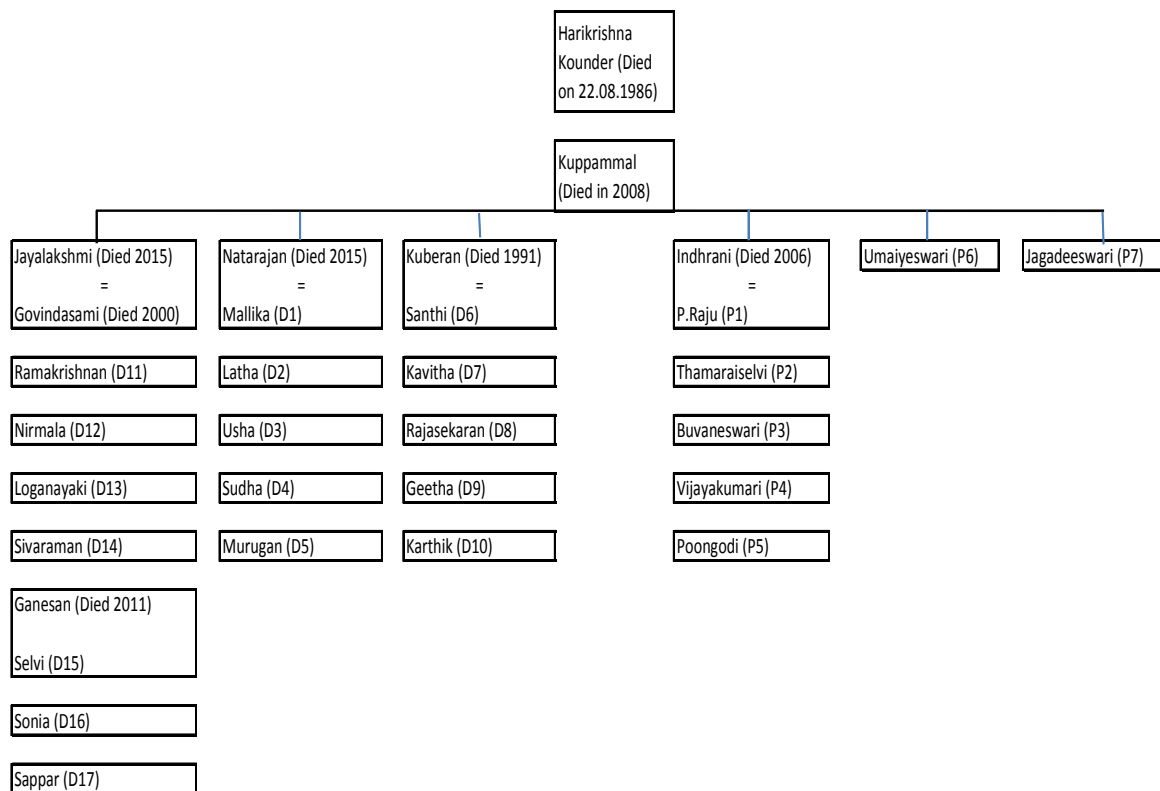
The unsuccessful plaintiffs have preferred this appeal under Section 96 of the Code of Civil Procedure. The facts necessary for disposing of this appeal is herein below stated with the parties being described in the same ranking as before the Trial Court.



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Plaintiff's Case:

2. The plaintiffs had filed the suit O.S.No.3 of 2016 on the file of the II Additional District Court, Tindivanam, seeking a partition of the suit schedule property. Before proceeding to discuss the case on hand, it is necessary to extract the genealogy for better understanding of the plaintiffs' case:





WEB COPY



A.S.No.87 of 2021

3. The sum and substance of the plaintiffs' case is that Item Nos.1 to 3 had been purchased by Kuppammal under a registered sale deed dated 02.06.1966 from one Subramania Chettiar son of Ponnusami Chettiar. She had purchased these properties from out of her own funds. Thereafter, she had mortgaged the properties to Tindivanam Co-operative Housing Society Limited for a sum of Rs.50,000/- under a registered mortgage deed dated 16.10.1991. This fund was utilised for constructing a terraced house in Item nos.1 to 3. Thereafter, the loan was written off by the Bank and Kuppammal has since then been in exclusive possession and enjoyment of the same.

4. The plaintiffs would submit that the said Kuppammal died intestate in and around the year 2009 leaving behind her son Natarajan who is since deceased and whose widow and children are arrayed as defendants 1 to 5, plaintiffs 6 and 7 another pre-deceased son Kuberan, whose widow and children are arrayed as defendants 6 to 10 and daughter Jayalakshmi, since deceased whose children are arrayed as



defendants 11 to 14 and widow and children of her deceased son Ganesan who have been arrayed as defendants 15 to 18. The suit item Nos. 1 to 3 according to the plaintiffs, therefore devolved on all of them.

5. The case of the plaintiffs is that Kuppammal's husband Harikrishnan did not inherit any ancestral property and he along with Kanniappa Chettiar had acquired Item No.4 of the suit schedule property out of his own labour and exertion. He had purchased the Item no.4 and the remaining extent from Thulasinga Mudaliar under a registered sale deed dated 09.04.1944. Kanniappa Chettiar and Harikrishnan also purchased Item nos.5 and 6 and the remaining extent from one Kaluvaraya Pillai under a registered sale deed dated 09.04.1944 and both are in possession and enjoyment of Item nos.4 to 6.

6. Thereafter, under a oral partition between Kanniappa Chettiar and Harikrishnan, Item nos.4 to 6 was allotted to the share of



Harikrishnan and he had been in the exclusive possession and enjoyment of the same since the oral partition. Thereafter, the said Harikrishnan had constructed terraced house in the said property. He had died intestate in and around the year 1986 leaving behind his wife Kuppammal and children to succeed to Item nos.4 to 6. Kuppammal thereafter died intestate in the year 2009 and the properties devolved equally amongst her legal heirs.

7. The plaintiffs would submit as follows:

(a)Natarajan passed away in the year 2015 leaving him behind the defendants 1 to 5 to succeed to his 1/6th share in the suit property.

(b)Kuberan died in the year 1991 leaving behind defendants 6 to 10 to succeed to his 1/6th share.

(c)Jayalakshmi passed away in the year 2015 leaving behind the defendants 11 to 18 to succeed to her 1/6th share.

(d)Indirani died in the year 2006 leaving behind her husband and children who are arrayed as plaintiffs 1 to 5 to succeed to her 1/6th share.



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(e)Umayeswari and Jagadeeswari the surviving children of Harikrishnan and Kuppammal, who are arrayed as plaintiffs 6 and 7, were entitled to 1/6th share each.

8. The plaintiffs would submit that they had insisted for a partition. Since the defendants were not co-operating and due to efflux of time and to avoid petty quarrels, they had entered into a partition deed dated 11.12.2009. This partition was entered into between plaintiffs and Jeyalakshmi and Natarajan, who are since deceased. However, the other defendants retracted the partition deed and refused to accept the same stating that they are not parties to the deed. They have also not delivered the properties nor agreed for fair division. Therefore, the plaintiffs have come forward with the above suit.

Defendants' case:

9. The defendants 6 to 10 alone had contested the suit and the other defendants namely, 1 to 5 and 11 to 18 were called and set ex parte.



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10. The defendants would contend that the suit is not maintainable particularly, when the suit has not been filed immediately after the plaintiffs have attained majority. The defendants would therefore contend that the suit is barred by limitation. They would submit that during the lifetime of Harikrishnan a partition had taken place between his sons Natarajan and Kuberan in the year 1982. Their mother Kuppammal was also alive when the partition took place. Under this partition Kuberan had agreed to maintain his mother Kuppammal during her life time and therefore it was agreed that the 4 cents purchased by Kuppammal on 02.06.1966 with regard to Item nos.1 to 3 shall go to the share of Kuberan and Kuberan was therefore entitled to 8 cents. Since Kuppammal was living with Kuberan, he had not thought of mutating the revenue records. They would also submit that the said Kuppammal without knowing that her son Kuberan was fixing a wire connection in the building switched on the electric main, as a result of which Kuberan died on 01.06.1992. After that accident, Kuppammal proposed that suit Item nos.1 to 3 would only go to the



share of Kuberan.

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11. It is their case that the suit Item nos.4 to 6 belonging to Harikrishnan had been divided equally between Natarajan and Kuberan to the knowledge of the daughters of Harikrishnan and Kuppammal. The properties of both Harikrishnan and Kuppammal were treated as joint family properties and were being enjoyed by Natrajan, Kuberan and Harikrishnan jointly till oral partition that took place in the year 1982. The marriages of the daughters had been conducted from the income from the joint family properties. Since this was not sufficient, Harikrishnan and his sons had to borrow to perform the marriages and provide adequate seer for the daughters. The daughters therefore represented that they will not seek any share in the form of properties as they will not be able to pay any share in discharging the loan.

12. The plaintiffs 6 and 7 and Indirani, the mother of plaintiffs 2 to 5 had attained majority when the properties were orally partitioned in the year 1982. From the year 1982 till 2016, they had not taken any



A.S.No.87 of 2021

steps to seek partition and had not even issued legal notice. Hence, even on this ground, the suit was barred. That apart, it is the contention of the defendants that the suit was fraudulent and vexatious one. The contents of the plaint was not only fraudulent but there was suppression of material facts.

13. The defendants would submit that their father had constructed a terraced house in suit Item nos.1 to 3, out of his funds and also by obtaining loan from Tindivanam Cooperative Housing Society Limited. Kuberan died on 01.06.1992 and the Society had discharged mortgage loan due to the death of Kuberan. The said Kuppammal had also given her properties to Kuberan. Since the daughters had accepted these facts, they had not taken any steps to seek partition. It is only now in the year 2016 that the same has been filed. The defendants also pleaded ouster. Therefore, they had sought for dismissal of the suit.

Trial Court:

14. The learned II Additional District Munsif, Tindivanam had



framed the following issues:

“1. Whether the plaintiffs are entitled for 3/6 share over the plaint schedule of properties?

2. Is the plaintiffs are entitled for preliminary decree for partition?

3. Whether the partition deed document dated 11.12.2009 is a fabricated document?

4. What other reliefs the plaintiffs are entitled for?”

15. The 1st plaintiff had examined himself as P.W.1 and the 7th plaintiff examined herself as P.W.2. Ex.A.1 to Ex.A.10 were marked on the their side. The 8th defendant examined himself as D.W.1 and the 10th defendant was examined as D.W.2. Ex.B.1 to Ex.B.14 were marked on their side.

16. The learned Judge dismissed the suit by contending that the plaintiffs had not immediately filed a suit for partition. In fact, the suit was not filed during the lifetime of Indirani, the wife of P.W.1 and



therefore on the ground of ouster the suit was dismissed.

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17. Aggrieved by the same, the plaintiffs are before this Court.

18. Admittedly, the properties in Item Nos.1 to 3 stood in the name of mother Kuppammal and Item Nos.4 to 6 have been purchased by the father and was his self acquired properties. This factum has been admitted by both the parties. The defendants would contend that there was an oral partition in the year 1982 and thereafter the properties had been allotted to each of the sharers. The properties in question are not ancestral properties but are the self acquired properties of the mother and the father. The plaintiffs are the legal representatives of both Kuppammal and Harikrishnan who have admittedly died intestate. Therefore, the property should devolve equally upon all the legal heirs.

19. The defendants had set up a case that there was an oral partition between the sons of Harikrishnan. The explanation for not including the daughters is that they had been married and as



considerable expenses had been incurred for their marriage for which the father and sons had to borrow, the daughters had decided to give up their right in the suit properties. However, these factors have not been proved by the defendants. Therefore, their possession if any of the suit properties is only as that of co-owner. The Trial Court has committed an error in contending that the plaintiffs have ousted the defendants from the suit property. The reasons for which is given herein below.

20. A perusal of the written statement would clearly show that all the ingredients of ouster have not been made by the defendants in their written statement. The defendants have not stated from which date their possession of the property has become adverse to that of the plaintiffs. Without such a plea, the Judgement and Decree of the Trial Court holding that the defendants have proved ouster is totally erroneous and liable to be set aside.

21. Further, though the defendants would plead that there has been an oral agreement in the year 1982, it is seen that under Ex.B.13,



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Kuppammal has mortgaged the property which has been signed by both Kuppammal as well as Kuberan. The Trial Court has totally overlooked Ex.A.8 partition deed. Ex.A.8 has been executed by Natarajan. This would clearly belie the statement of defendants 6 to 10 that there was an oral partition between Natarajan and Kuberan. In the absence of the same, the property have to necessarily devolved by intestate succession of all the legal heirs.

22. The Trial Court has overlooked the deposition of D.W.1 who has stated that though there was an oral partition, the electricity connection continued to be in the name of Kuppammal. He has also conceded that no steps have been taken to have the revenue records mutated. Therefore, once it is an intestate death then the property should devolve as per Hindu Succession Act. He has also admitted that similar is the case of Harikrishnan. The defendants have not filed any documents to substantiate their defense of oral partition.



A.S.No.87 of 2021

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23. Therefore, the Judgement and Decree of the Trial Court deserves to be set aside and is accordingly set aside. The Appeal is therefore allowed and the suit stands decreed. Consequently, the connected miscellaneous petition is closed. No costs.

28.11.2023

Index : Yes/No
Internet : Yes/No
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To

The II Additional District Judge,
Tindivanam.



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A.S.No.87 of 2021

P.T. ASHA, J,

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A.S.No.87 of 2021

28.11.2023