



S.A.No.491 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.491 of 2021

Arumugam

... Appellant

Vs.

1.Alamelu Ammal

2.Papathi Ammal

3.Jai Ganesh

4.Selva Kumar

5.Ambiga

6.Rukamani

7.Shantha

8.Hamsa

9.Adhilakshmi

10.Indira

1/17



S.A.No.491 of 2021

11. Sivakumar

12. Ramkumar

13. Umadevi

14. Sangeetha . . . Respondents

Prayer:- Appeal is filed under Section 100 of C.P.C against the impugned judgement and decree of the First Appellate Court dated 08.01.2021 passed in A.S.No.5 of 2016 on the file of the Principal District Judge at Tiruvannamalai by confirming the Trial Court judgement and decree passed in O.S.No.2 of 2007 on the file of the Addl. Sub Court, Tiruvannamalai dated 26.07.2013.

For Appellant : Mr.S.Udaya Kumar

For Respondent : Mr.M.Sankar [R.6]

R.1 died

R.2 to R.5, 7 to 12 and 4- No appearance

R.13 – Not ready in notice

JUDGEMENT

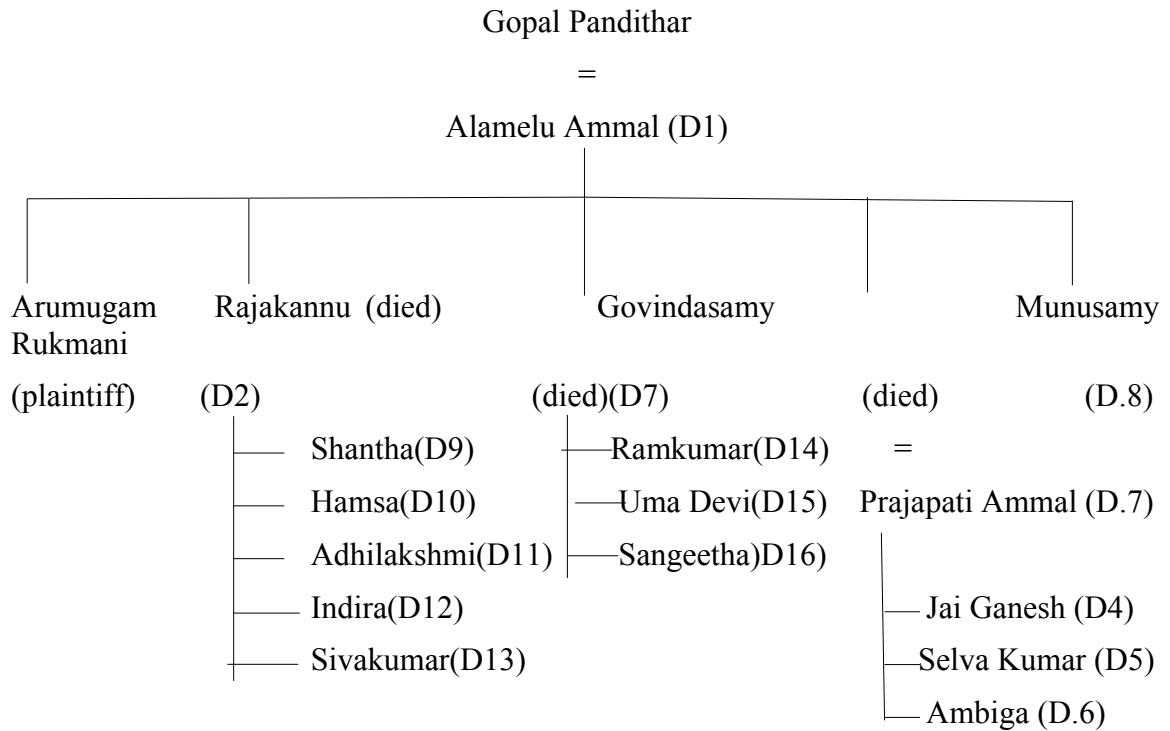


S.A.No.491 of 2021

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The plaintiff who has lost in both the Courts below has filed the above Second Appeal. The facts are briefly set out herein below with the parties being referred to in the same ranking as before the Trial Court.

2. Before proceeding to discuss the facts, the genealogy is set out herein below:-





S.A.No.491 of 2021

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3. It is the case of the plaintiff that Gopal Pandithar had inherited items 1 and 2 and from out of the income from these properties had purchased the other items of properties. He had also contended that the 1st defendant, (Alamelu Ammal) who is the wife of Gopal Pandhithar, had no independent income of her own and her father had given her 1.50 acres of dry land. This was objected to by the 1st defendant's brother and the litigation prolonged for a long time. The lands which have been given to plaintiff's mother, were dry lands and no income was derived from the said property. The plaintiff would contend that the family of the plaintiff and the defendants continued to be in joint and there was no partition in the family. The 8th defendant who is the daughter of Gopal Pandithar and the 1st defendant, Alamelu Ammal had been given marriage 25 years back. After the demise of the father, the defendants were not coming forward for partition and were postponing the same under one pretext or the other.



S.A.No.491 of 2021

WEB COPY

4. The 7th defendant, Govindasamy had claimed an exclusive right to one item of property in Survey No.110/A measuring 1.33 acres of land under the settlement deed dated 08.03.2004. Likewise, a settlement deed had been executed in favour of the 8th defendant on 17.09.2003 in respect of the property comprised in Survey No.108/1 measuring 3.30 acres. Both the settlees were also given a right to the well, motor and pump sets in the property. The settlement deeds were executed by Gopal Pandithar and the 1st defendant. The plaintiff would submit that the 7th and the 8th defendants cannot claim an exclusive right since the property in question was a joint family property. It is also the contention of the plaintiff that the 7th and the 8th defendants have not taken possession of the property.

5. Pending the suit, the 2nd defendant Rajakannu had died, leaving behind his wife, the 9th defendant and children, defendants 10 to 13. They were impleaded as his legal heirs to the proceedings.



S.A.No.491 of 2021

Similarly, the 7th defendant had also died pending the suit leaving behind defendants 14 to 16 who were impleaded as parties to the proceedings.

6. The written statement was filed by the 7th defendant which was adopted by the defendants 1 and 8. The defendants 2 to 6, 9 to 16 had not appeared before the Trial Court and were set ex-parte. It is the contention of the 7th defendant that the total area of the 1st item of suit property in Survey No.108/1 is 5.59 acres. The suit 1st item and other few properties originally belonged to Muniya Pandithar who had 2 sons Chinnasamy Pandithar and Kandasamy Pandithar. On the death of Muniya Pandithar, his two sons had inherited the property in question. Thereafter, an oral partition had taken place between the brothers and the half share on the eastern side with half share in the well was allotted to Chinnasamy Pandithar and the half share on the western side with a half share in the well was allotted to Kandasamy Pandithar. After the



S.A.No.491 of 2021

death of Chinnasamy Pandithar, his only son Gopal Pandithar, the father of the plaintiff, had inherited the properties in Survey No.108/1 measuring 2.80 acres with half share in the well. After Kandasamy Pandithar died his two daughters inherited the properties.

7. Thereafter, Gopal Pandithar had constructed a thatched house and was residing in the said property. Gopal Pandithar had married the 1st defendant in the year 1942 and at the time of marriage his father in law had given 20 sovereign of gold, cash and some lands in the self acquired property at Kolunthampattu to the 1st defendant. Thereafter, the 1st defendant from out of her own funds had purchased 0.70 cents on 06.04.1971, 1.40 cents on 03.12.1971 and 0.70 cents on 03.12.1971 with a share in the well in Survey No.108/1. Hence, the above 2.80 cents in the 1st item of the suit property is the self acquired property of the 1st defendant. The 1st defendant had contributed for the family and the education of the other defendants. Under a settlement deed dated 2



S.A.No.491 of 2021

5.06.1992, the said Gopal Pandither, with the consent of the family members gave 0.50 cents in S.No.108/1 to the 1st defendant. With this 0.50 cents, the total property of the 1st defendant became 3.30 cents.

8. It is also the case of the defendant that Gopal Pandithar was not dependent only on agricultural work, on the contrary, he was doing business in musical instruments. Item No.13 is a Natham Poramboke which was assigned to Gopal Pandithar. The 1st defendant and Gopal Pandithar had jointly executed a settlement deed on 17.09.2003 with regard to the 3.30 acres of land in Survey No.108/1 and a house in item no.13 in favour of the 8th defendant. Similarly, Gopal Pandithar had executed a settlement deed on 08.12.1998 with regard to item no.13, measuring East West 50 feet, and North South 28 ½ feet in favour of the 7th defendant. Thereafter, the said Gopal Pandhithar had also executed a settlement deed dated 08.05.2009 in favour of the 7th defendant with regard to item no.5.



S.A.No.491 of 2021

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9. The Trial Court had framed the following issue:-

1. Whether the suit items 1, 5, 6 and 13 are joint family properties?

2. Whether the alleged oral partition is true?

3. To what relief?

10. On the side of the plaintiff, 4 witnesses were examined and Ex.A.1 and A.2 were marked. On the side of the defendant, the 8th defendant had examined herself as D.W.1 and 11th defendant as D.W.2 and Ex.B.1 to B.13 were marked.

11. The learned Trial Judge, on perusing the evidence both oral as well as documentary, came to the conclusion that the plaintiff has not



S.A.No.491 of 2021

proved his case that the properties in question were purchased from out of the income earned from the joint family properties.

12. Further, the Trial Court had held that the settlement deeds which have been executed by Gopal Pandithar in favour of the 1st and the 8th defendants in respect of his self acquired properties also goes to show that the properties in question are the self acquired properties of Gopal Pandithar.

13. The Trial Court had further held that the plaintiff has himself admitted during his evidence that there was an oral partition amongst the family members, wherein some portions in items 3, 7 and 11 of the properties were allotted to the plaintiff's share. Therefore, the Trial Court had held that the plaintiff has not proved the existence of the joint family and that apart having admitted the earlier partition the plaintiff cannot seek to once again agitate on the very same issue. UI



S.A.No.491 of 2021

timately, the Trial Court had dismissed the suit. Aggrieved by the said judgment and decree the plaintiff had filed A.S.No.5 of 2016 on the file of the Principal District Judge, Tiruvannamalai.

14. The Lower Appellate Judge by her judgment and decree dated 08.01.2021 was pleased to confirm the judgment and decree of the Trial Court by dismissing the appeal. The Lower Appellate Court had also considered the evidence of the plaintiff wherein he had accepted the oral partition under which some portions in items 3, 7 and 10 had been allotted to him.

15. The learned Judge had held that though items 1 and 2 are ancestral properties, there was an oral partition amongst the family members. The learned Judge had also observed that the plaintiff has not come forward to deny the oral partition by way of a reply statement and consequently, the appeal stood dismissed.



S.A.No.491 of 2021

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16. Aggrieved by the same, the plaintiff is before this Court and this Court was pleased to admit the Second Appeal on the following Substantial Questions of law:-

“(a) Whether the suit properties are ancestral properties of the plaintiff and the defendants, is not burden on the defendants to prove partition and on their failure to do so will not presumption as the jointness arise?

(b) Whether the suit properties are ancestral or joint properties, the coparceners are entitled to seek partition?

(c) Whether the Courts is correct in law in dismissing the suit filed by the petitioner in respect of all the properties over looking the very defendants that there was a oral partition with reference to items 1, 5, 6



S.A.No.491 of 2021

and 13 only?

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17. Heard the counsels.

18. Even according to the plaintiff items 1 and 2 alone are the ancestral properties. The plaint is silent as to how items 3 to 13 had been purchased. It is for the plaintiff to prove that it is the income that was derived from the ancestral properties which formed the basis for the purchase of the other properties in order to clothe these properties with an ancestral character. The plaintiff has failed to prove the source of income for the purchase of items 3 to 13. That apart, he had admitted the oral partition in which some items of properties have been allotted to him.

19. The Lower Appellate Court has held that the plaintiff and the



S.A.No.491 of 2021

defendants have jointly not been able to give a clear picture and details about the properties that have already been partitioned and the properties that are now available for partition. Items 1 and 2 have been settled in favour of the 8th defendant which has not been questioned by the plaintiff. The plaintiff has admitted that items 3 to 13 have been purchased only in the name of Gopal Pandithar and as stated already, there is no proof let in to show that the income that has been utilized for the purchase of these properties is the income that has been derived from out of the ancestral properties namely items 1 and 2. Since a partition has taken place between the Gopal Pandithar legal heirs which includes the plaintiff, the plaintiff cannot seek for the relief of partition.

20. The Substantial Questions Law are answered against the plaintiff particularly when both the Courts below have extensively



S.A.No.491 of 2021

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considered the evidence and come to the conclusion that the plaintiff has failed to prove that the properties in question are ancestral. The Second Appeal therefore stands dismissed. No costs.

16.11.2023

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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S.A.No.491 of 2021

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To

1. The Principal District Judge at Tiruvannamalai.
2. The Addl. Sub Court, Tiruvannamalai.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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S.A.No.491 of 2021

P.T.ASHA, J.,

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S.A.No.491 of 2021

16.11.2023