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A.S.Nos.662 of 2018 & 387 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.Nos.662 of 2018 & 387 of 2021

and

C.M.P.No.17269 of 2021

A.S.No.662 of 2018

Thirumoorthy

.. Appellant

Vs.

1.Nagamani

2.Natarajamoorthy

3.Velmani

4.Muthulakshmi

5.Mahalakshmi

.. Respondents

A.S.No.387 of 2021

Natarajamoorthy

.. Appellant

Vs.

1.Nagamani

2.Thirumoorthy



3.Velmani

4.Muthulakshmi

5.Mahalakshmi

.. Respondents

Common Prayer: Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the judgement and decree dated 29.08.2017 made in O.S.No.138 of 2013 on the file of the Court of the III Additional District and Sessions Judge, Coimbatore.

For Appellant in
A.S.No.662 of 2018 : Mr.R.Nandhakumar

For Appellant in
A.S.No.387 of 2021 : Mrs.M.Revathi

For Respondents in
A.S.No.662 of 2018 :
(for R1) : Mr.K.P.Shanthosh
(for R2) : Mrs.M.Revathi
(for R3) : No Appearance
(for R4 & R5) : Mr.Kandhan Duraisami

For Respondents in
A.S.No.387 of 2021 :
(for R1) : Mr.K.P.Shanthosh
(for R2) : Mr.R.Nandhakumar
(for R3) : No Appearance
(for R4 & R5) : Mr.Kandhan Duraisami



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COMMON JUDGMENT

Among two appeal suits on hand, one appeal in A.S.No.662 of 2018 has been filed by Mr.Thirumoorthy, who is the first defendant in O.S.No.138 of 2013. The other appeal in A.S.No.387 of 2021 has been filed by Mr.Natarajamoorthy, S/o.Thirumoorthy, who is the second defendant in O.S.No.138 of 2013. Both the appeal suits are filed against the judgment and decree passed in O.S.No.138 of 2013. Thus, the two appeals are heard together for consideration.

2. The parties are referred as per the ranking in the trial Court.

3. The suit has been instituted claiming that the suit properties are ancestral and joint family property of Late Pongia Gounder and his father late Kutty Gounder. Late Kutty Gounder died leaving his only son Pongia Gounder. Pongia Gounder died leaving his son Thirumoorthy/first defendant. The defendants 3 to 5 are the daughters of Thirumoorthy and the second defendant is the son of Thirumoorthy. The said Pongia Gounder had two wives, and had two sons, namely, Chinnasamy Gounder and Ramasamy Gounder through his first wife.



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4. In a partition between the Pongia Gounder and two sons Chinnasamy Gounder and Ramasamy Gounder, properties were allotted to them. After allotment of the properties to the first wife's sons, rest of the properties, being ancestral joint family properties, belonged to the plaintiff and defendant as heirs, through his second wife. The plaintiff would also claim that plaintiff and the defendants contributed Rs.2,00,000/- each as capital and had started a power loom business in the name and style of Lakshmi Textiles. The plaintiff states that the defendants did not come forward for partition and later the first defendant had executed two settlement deeds clandestinely on 08.09.2010 and on 21.12.2011. The plaintiff states that the suit properties are joint and ancestral properties and therefore, the settlement deeds executed by the first defendant are null and void.

5. The defendants 1 and 2 filed a common written statement denying the plaint averments. The defendants 1 and 2 have stated that the suit properties are self acquired properties in the hands of Pongia Gounder as the same devolved upon him as the only legal heir of Kutty Gounder. The first defendant inherited the said properties after the death of Pongia Gounder as



class-I legal heir. The other claim of the plaintiffs that they have invested money for starting power loom business was denied.

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6. The 3rd defendant in the suit filed a written statement which was adopted by the defendants 4 and 5. It is contended that Kutty Gounder had extensive ancestral property and after the death of Kutty Gounder, his son Pongia Gounder succeeded to the ancestral property. Pongia Gounder and his two sons Chinnasamy Gounder and Ramasamy Gounder, born through his first wife, divided the ancestral property as per the registered Partition Deed dated 29.01.1948 in which 'A' schedule properties measuring 14.74 $\frac{2}{3}$ acres, together with residential building, were allotted to Pongai Gounder. Subsequently, Pongia Gounder acquired lands in Survey Nos. 292/3, 352, 354/3B and 356/2. The claim of the said defendants is that till the death of Pongia Gounder on 15.12.1984, the ancestral property remained undivided and therefore, they are entitled for $\frac{1}{6}$ th share in the ancestral property as they are also deemed to be coparceners. The settlement deeds executed by the first defendant in favour of the second defendant on 08.09.2010 and on 21.12.2011 are void abinitio and not binding on the other defendants 3 to 5. The defendants 3 to 5 agreed with the contention of



the plaintiff with regard to the business of Sree Lakshmi Power looms which is the joint family business.

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7. Based on the pleadings between the parties, the Trial Court had framed the following issues :

(i) Whether the suit properties are joint and ancestral properties of plaintiff and defendant?

(ii) Whether two settlement deeds dated 08.09.2010 and 21.12.2011 executed by 1st defendant in favour of the 2nd defendant are null and void?

(iii) Whether the plaintiff is entitled for preliminary decree of partition as prayed for?

8. The plaintiff had examined herself as PW1 besides examining one Palanisamy as PW2. Ex.A.1 to Ex.A.13 have been marked on the side of the plaintiff. On behalf of the defendants 3 to 5, the 4th defendant had examined herself as DW1. No documentary evidence was produced on her side. On behalf of the 1st defendant, he had examined himself as DW2, but no document was marked. The 2nd defendant examined himself as DW3 and marked Ex.B.1 to Ex.B.21.



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9. Regarding issue number (i) - whether the suit properties are joint and ancestral properties of the plaintiff and defendant? The Trial Court considered the partition deed dated 29.01.1948 (Ex.A.7). The properties referred in Ex.A.7 document was being enjoyed jointly by Pongia Gounder and his two sons born through his first wife. It is not the case of the parties to the lis that Ex.A.7 document and the properties therein were originally self acquired property of Kutty Gounder. When the partition deed was executed on 29.01.1948, (Ex.A.7), Kutty Gounder was not alive. Thus, the Trial Court made a finding that any property inherited by a Hindu male from his deceased father is an ancestral property and the essential features of the ancestral property is that if a person inheriting the same has sons, grandsons, great-grandsons, or if he begets a son later, they become joint owners/coparceners with him. Thus, they became entitled for a share upon their birth. The position of law changed after the amendment to Hindu Succession Act with the class-I legal heirs inheriting self-acquired property from a deceased male Hindu being considered as absolute owners of the same. Therefore, even assuming that Pongia Gounder inherited Kutty Gounder's self acquired property, the same assumes the character of an ancestral property, when he had sons born to him.



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10. As per Ex.A.7 document an extent of 14.74 $\frac{2}{3}$ acres comprising of various survey numbers, which form part of the present suit schedule properties were allotted to Pongia Gounder. The 1st defendant in the suit admittedly is the son of Pongia Gounder through his second wife. Thus, the first defendant also acquired right in the suit property as a coparcener.

11. Considering the above facts and circumstances, the Trial Court arrived at a conclusion that plaintiffs could able to prove that the portion of the suit schedule property, which is the subject matter of partition deed dated 29.01.1948 (Ex.A.7) is ancestral property in the hands of Pongia Gounder and therefore, the plaintiff is entitled for the relief. Regarding the second issue (ii)- whether the settlement deeds dated 08.09.2010 and 21.12.2011 executed by the 1st defendant in favour of the 2nd defendant are null and void?, The Trial Court made a finding that the partition deed dated 29.01.1948 was proved and therefore, in respect of the properties covered under the partition deed and to that extent the settlement deeds are to be declared as null and void. More specifically, in respect of the Schedule 'A' property in the suit, it is covered under the partition deed dated 29.01.1948.



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When the 'A' Schedule property was covered under the partition deed, the first defendant has no exclusive right for executing the settlement deeds in respect of the said 'A' Schedule property. Having arrived at such conclusion, the Trial Court granted the relief of partition in respect of the A Schedule properties and in respect of the other parties in the plaint the Trial Court declined to grant the relief. In respect of the other property, the settlement deeds are held as valid. Since the plaintiff could not able to establish that the other properties except 'A' Schedule property are ancestral properties.

12. With reference to the findings of the Trial Court, the partition deed dated 29.1.1948, Ex.A.7, the said document was proved which would establish that 'A' Schedule property in the plaint was already partitioned since it was an ancestral property. As far as the other properties in the plaint are concerned, the plaintiff could not able to establish that it is an ancestral property and accordingly, the suit was partly decreed. The learned counsel appearing on behalf of Mr.Thirumoorthy/appellant in AS.No.662 of 2018 and 387 of 2021 made a submission that even prior to the institution of the suit by the plaintiff, he had executed a settlement deed in favour of his only son, who is the second defendant in the suit. Therefore, the said appellant is



supporting the case of the second defendant, who is none other than his only son.

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13. The findings of the Trial Court are that though the plaintiff is able to prove that the portion of the suit schedule property, which is also the subject matter of Partition Deed dated 29.01.1948 (Ex.A7), is the ancestral property, which was in the hands of the Pongia Gounder and there is no material to hold so with regard to the remaining properties. Thus, the Trial Court found that the Partition Deed of the year 1948 covers the ancestral property, which was in the hands of Pongia Gounder. Consequently, Issue No.2 was decided by the Trial Court, since the family property is an ancestral property and therefore, the Settlement Deeds executed by the 1st defendant on 08.09.2010 and 21.12.2011 (Ex.A11 and Ex.A12) are null and void, in respect of the ancestral properties and covered under the Partition Deed dated 29.01.1948 (Ex.A7). Consequently, Issue No.3 was also considered by the Trial Court based on the findings in Issue Nos.1 and 2 and accordingly, held that the plaintiff is entitled for 1/6th share out of the portion of the suit schedule property, which is covered under Partition Deed dated 29.01.1948 (Ex.A7). Accordingly, the suit was partly decreed by declaring



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the Settlement Deeds dated 08.09.2010 and 21.12.2011 (Ex.A11 and Ex.A12) as null and void and the plaintiff is entitled for 1/6th share out of the portion of the suit schedule properties mentioned as Schedule 'A' in the Partition deed dated 29.01.1948 (Ex.A7). The defendants 3, 4 and 5 are entitled for 1/6th share out of the portion of the suit schedule properties mentioned as Schedule 'A' in the Partition Deed dated 29.01.1948 (Ex.A7).

14. The point for consideration would be that the Trial Court's finding with reference to the position of law is correct or otherwise. Pertinently, the Partition Deed dated 29.01.1948 (Ex.A7) was not disputed between the parties. From and out of the said Partition Deed, Late Pongia Gounder devolved his right in the ancestral property. Therefore, the Trial Court has rightly concluded that Partition is to be effected with reference to the properties covered under the Partition Deed dated 29.01.1948, which is the ancestral property. The relationship between the parties are not in dispute. When the Partition Deed was not disputed and it was of the year 1948, through which, Pongia Gounder derived his property right in respect of those properties, there is no reason whatsoever to deny share to the plaintiff, since the property has been proved as ancestral properties.



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15. Since it is concluded that the 'A' Schedule property is the ancestral property, the Settlement Deed executed by the 1st defendant in favour of the 2nd defendant on 08.09.2010 and 21.12.2011 are null and void and it is rightly held so. When Schedule 'A' property is an ancestral property, the plaintiff is entitled for 1/6th share in the 'A' schedule property as rightly held by the Trial Court and thus, this Court do not find any infirmity.

16. The learned counsel for the appellant made a submission that the Settlement Deed was executed in the year 2010 and there was a family arrangement prior to the amendment of Succession Act in the year 2004. However, such an argument cannot have any force in the eye of law, since the parties could not establish that the partition was effected in respect of the suit schedule property prior to the amendment and they were in possession of the respective portion of the share. In the absence of any partition prior to the amendment, the partition suit instituted by the plaintiff after amendment is maintainable and thus, the women heir also get equal right in respect of the ancestral property.



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17. Accordingly, the judgment and decree dated 29.08.2017 made in O.S.No.138 of 2013 stands confirmed and the Appeal Suit in A.S.Nos.662 of 2018 and 387 of 2021 are **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

27.02.2023

Sha/Kak
Index : Yes
Speaking order
Neutral Citation : Yes

To

III Additional District and Sessions Judge,
Coimbatore.



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S.M.SUBRAMANIAM, J.

Sha/Kak

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