



A.S.No.793 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

A.S.No.793 of 2010 &
C.M.P.No.17677 of 2019

Judgment reserved on 22.03.2024	Judgment pronounced on 01.07.2024
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Ammasai Ammal

...

Appellant

Vs.

1.R.Palanisamy

2.R.Shanmugam

3.R.Chinnappan

4.Palaniappan

5.The Secretary

Primary Agricultural Co-operative Bank

Naduvancherry

No.K-840, Naduvancherri

Avinashi

6.Valliammal

7.P.Gnanaselvan

(R1 died. R-6 & R-7 are brought on
record as Lrs of deceased R1 vide order
of Court dated 13.12.2023 made in CMP
Nos.356/2022 & 2374/2023 in AS No.
793/2010)

8.Palaniammal

1/13



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9.S.Kavitha

10.S.Kiruthika

11.Bhuvaniya Devi

(R-2 died. R8 to R11 are brought
on record as LR's of the deceased
R2 vide order of Court dated
13.12.2023 made in CMP Nos.
356/2022 & 2374/2023 in AS No.
793/2010) ...

Respondents

Prayer: This First Appeal is filed under Section 96 of Civil Procedure Code against the judgment and decree of the Additional District Judge cum Fast Track Court – 4, Coimbatore at Tiruppur dated 19.03.2010 in O.S.No.294 of 2006.

For Appellant : Mr.P.Valliappan
Senior Counsel for
Mr.G.Rm.Palaniappan

For R.1, R.2 & R.4: Died

For R-3 : Mr.D.Thirumoorthy

For R-5 : Mr.Dharani Subramanian

For R-6 & R-7 : Mr.Govi Ganesan

For R8 to R11 : Ms.S.Divya Bharathi



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J U D G M E N T

WEB COPY Parties are referred to as per their ranking before the Trial Court, for the sake of convenience.

2. The Plaintiff is the Appellant herein. The Plaintiff filed O.S.No.294 of 2006 before the Additional District Court (Fast Tract Court IV) Coimbatore for partition of the property mentioned in schedule A & B, to the extent of 1/4th share on the foot that the properties are purchased by her late father viz., Avinashi Gounder and during the life time of the said Avinashi Gounder, one of the sisters pre-deceased him, as spinster and the father later died on 30.12.2002, leaving behind the Plaintiff and the Respondents 1 to 3. The fifth Respondent is the bank, which is said to have some fixed deposit.

3. In the written statement filed by the defendants before the trial Court, it is contended that as per Ex.B1/partition deed dated 18.02.1998 entered between the said Avinashi Gounder and Defendants 1 to 3, there was a partition and the same is given effect to and therefore one of the sister, Plaintiff herein is not entitled for any share, in view of the amended Hindu Succession Act.



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4. During the trial, plaintiff examined herself as PW1 and Exs.P1 to Ex.P11 were marked. On the side of the defendants, first Defendant examined himself as DW1, attestors of Ex.B1-partition deed were examined as DW2 & 3 and Exs.B1 to B8 were marked.

5. After trial, Additional District Court (Fast Tract Court IV) Coimbatore came to the conclusion that Ex.B1/partition deed is true and having binding upon the parties. Since there was a partition deed even before the amended Act effected, daughter of Avinashi is not entitled for any share and accordingly, dismissed the Suit. Hence the present Appeal.

6. Mr.P.Valliappan, learned senior Counsel appearing on behalf of the plaintiff/appellant would contend that in view of the decision of the Hon'ble Supreme Court in the case of *Vineeta Sharma Vs. Rakesh Sharma* reported in **(2020) 9 SCC 1**, the date of death of the father is not relevant. Since the plaintiff was alive on 09.09.2005 (crucial date of amendment), she is entitled for 1/4th share and further he would contend that Ex.B1 was entered between



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father and the sons and daughter was not included and she is not a party to Ex.B1 and therefore, it is not binding upon the plaintiff. Due to collusion and by force Ex.B1 was registered before the Sub Registrar Office. Even if it is the case that Ex.B1 was duly executed and valid in law, then in the father's share under Ex.B1, the plaintiff is entitled for 1/4th share. The learned counsel further drew my attention to Section 8 of the amended Hindu Succession Act.

7. The learned counsel appearing for the defendants/respondents 1, 2, 3, 6 & 7 in the appeal submitted that the properties are ancestral properties and the nature and character of the suit property is ancestral property owned by Avinashi Gounder who died on 30.12.2002. Even during the lifetime, there was a partition between the Avinashi Gounder and his sons viz. D1 to D3 which was a registered partition dated 18.02.1998 which is marked as Ex.B1, in an by which Item No.1 of the suit property was allotted to all the three sons and in Item No.2 of the suit property, lifetime estate was vested to Avinashi Gounder and thereafter remains to the sons. With regard to Item No.3 of the suit schedule property, DW1 has deposed that during the lifte time of Avinashi Gounder he has withdrawn the amount and the same is not available for



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partition. In short, in view of the existence of registered instrument namely partition deed Ex.B1, as per the Central Amended Act which came into force on 09.09.2005, by virtue of Section 6(i) of the Act, the registered instrument Ex.B1 is saved and therefore, the Trial Court has rightly dismissed the suit.

8. After hearing the rival submissions of both parties, the following points arise for consideration.

- (i) Whether the plaintiff is entitled for partition as prayed for ?
- (ii) Whether the plaintiff is to be treated as a co-parcener in lieu of the judgment of the Hon'ble Supreme Court in ***Vineeta Sharma's case***, cited supra ?
- (iii) Whether Ex.B1 – partition deed is true and valid and binding upon the plaintiff ?
- (iv) Whether the order of Trial Court is sustainable in law ?



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WEB COPY 9. It is not in dispute that the suit schedule properties are ancestral properties of Avinashi Gounder. There are three schedules. Schedule 'A' & 'B' are immovable properties while 'C' schedule property is an alleged Fixed Deposit with the fifth defendant.

10. One Avinashi Gounder had three sons and two daughters. One of the daughter pre-deceased her father. The plaintiff is the daughter and the defendants are the sons of Avinashi Gounder. His wife pre-deceased him.

11. Item No.1 of the suit schedule property is an agricultural land situated in Chinnaripalayam Village, Avinashi Taluk which was cultivated by the fourth defendant and Item No.2 of the property is a house and building in Chinnaripalayam Village, Avinashi Taluk measuring 4984 sq.ft. The said Avinashi Gounder died on 30.12.2002 and hence the plaintiff seeks 1/4th share in the suit schedule properties. As per Ex.A1-death certificate, the said Avinashi Gounder died on 30.12.2002.



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12. In the written statement, a specific plea was raised that during the life time of Avinashi Gounder, on 18.02.1998, the family properties are partitioned among themselves by a registered partition deed Ex.B1 whereby 'A' schedule property was given to all the three sons and in 'B' schedule property, Avinashi Gounder was given a life time estate without alienation of the same and after his death, it shall go to all the three sons. In respect of 'C' schedule property, the 5th defendant Agricultural Co-operative Bank has stated that out of Rs.50,000/-, Avinash Gounder has made an application before the 4th defendant on 18.12.2002 for foreclosure of the said Fixed Deposit Account and received an amount of Rs.48,650/- on the same day for his medical expenses.

13. The learned Senior Counsel appearing for the plaintiff/appellant, relying upon the judgment of the Hon'ble Supreme Court in *Vineeta Sharma's* case, would contend that from 1954 onwards, the family properties of the family has to be treated as coparceners.



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14. Per contra, the learned counsel appearing for the legal heirs of the first respondent viz. respondents 6 & 7 would contend that in view of the amendment in the year 2005 (Central Amendment), which came into force on 09.09.2005, on the date the property shall devolve upon the daughters also if there is no registered instrument. The Tamil Nadu Act 1 of 1990 came into force on 20.12.1989 while the Central Act cut off date was 09.09.2005. Ultimately plaintiff was married 45 years before and therefore she will not get any benefit in the Tamil Nadu Amended Act.

15. In respect of Central Act, the cut off dated is 09.09.2005. On the commencement of the Amendment Act, even much prior to that, the said Avinashi Gounder died on 30.12.2002. In the year 1998, namely 19.02.1998, Avinashi Gounder alongwith three sons have entered into partition. Ex.B1 is a registered partition deed. In support thereof, DW2 & DW3 were examined who are the attestors of the said registered partition deed. The evidence of DW2 & 3 has been properly appreciated by the Trial Court and rendered a categorical finding that Ex.B1 – partition deed came into existence on 18.02.1998. Pursuant to the same, they have acted upon the partition and



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taken separate possession. Exs.B2 to B8 are revenue records which supports the case of the defendants that Ex.B1 was acted upon and hence on the commencement of the new act, the property was already divided by a registered instrument and in view of the saving clause in the said amendment act, the case of the plaintiff does not fall under the guidelines prescribed by Vineeta Sharma's case. Therefore, she cannot claim the share in the property as a daughter.

16. Now let us examine whether the plaintiff is entitled for a share on the death of the father, even with regard to share of her father Avinashi Gounder.

16(a) On perusal of Ex.B1 – partition deed, it is seen that Schedule 'A' in the suit is 'B' schedule in the partition. The said 'B' schedule property has been divided among the brothers and whereby the property has already been divided and hence it is not available for partition in the present suit. 'B' schedule property in the suit is shown as 'A' schedule property under Ex.B1-partition deed wherein life time estate, namely enjoyment of the property was



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given to the father Avinashi Gounder and after his death, it shall devolve upon the sons D1 to D3. The said Avinashi Gounder died on 30.12.2002 and in other words, the defendants succeeded upon even prior to coming into force of the Amendment Act. Hence, both the 'A' and 'B' schedule properties have already been in enjoyment of the respective shares of the parties as per Ex.B1 – partition deed. In other words, 'A' and 'B' schedule properties are not available for partition on the date of commencement of the Central Amendment Act and hence as against 'A' and 'B' schedule properties, the suit shall stand dismissed.

16(b) In respect of 'C' schedule property, it is seen that Avinashi Gounder has deposited a sum of Rs.50,000/- in Fixed Deposit for five years with the 5th defendant on 02.07.1998 however, he has pre-closed the same and withdrawn a sum of Rs.48,650/- on 18.12.2002. From the written statement filed by the 5th defendant, it is stated that no amount is pending in the account of Avinashi Gounder. However, if any amount is left with the Bank, the plaintiff is entitled for 1/4th share in the said amount being in the deposit of the Bank.



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WEB COPY 17. In the result, **this Appeal Suit is partly allowed** to the extent indicated above. Accordingly, the judgment and decree of the Additional District Judge cum Fast Track Court – 4, Coimbatore at Tiruppur dated 19.03.2010 in O.S.No.294 of 2006 is modified to that extent. Consequently, C.M.P.No.17677 of 2019 filed to return the original partition deed dated 18.02.1998 and registered as Doc.No.566 of 1998 in SRO, Avinashi marked as Ex.B1 in the suit in O.S.No.294 of 2006 on the file of the Additional District Court (FTC – IV), Coimbatore at Tiruppur is allowed in the interest of justice. No costs.

01.07.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

1.The Additional District Court (FTC – IV),
Coimbatore at Tiruppur.

2.The Section Officer
VR Section, High Court
Madras.

RMT.TEEKAA RAMAN, J.

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Judgment in
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