



A.S.No.531 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment	Date of Pronouncing the Judgment
01.08.2024	27.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.531 of 2016

- 1.Chennammal
- 2.Saravanan
- 3.Selvi
- 4.Chinnapappa

... Appellants/Defendants

-Vs-

- 1.Chokku @ Chokkalingam
- 2.Kullan @ Venkatraman
- 3.Chinnasamy
- 4.Murugan
- 5.Veerammal
- 6.Murugan
- 7.Perumal
- 8.Velliammal



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9.Ambiga

10.Chitra

11.Pachiammal

12.Megala

.. Respondents/Plaintiffs

13. Chandra

14. Shankaran

.. Respondents / Defendants5&6

Appeal suit filed under Section 96 read with Order 41 of the Civil Procedure Code, 1908, as against the judgment and decree dated 07.12.2015 made in O.S.No.30 of 2013, on the file of the learned Principal District Judge, Krishnagiri.

For Appellant : Mr.T.P.Manoharan
Senior Counsel
for Mr.Mukund R.Pandiyan

For Respondents : Mr.P.Jagadeesan
for Mr.R.Ramesh
for R1 to R3 & R5 to R12

: No appearance for R4



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J U D G M E N T

The defeated defendants are the appellants herein. The respondents/ plaintiffs filed a suit for partition of the schedule mentioned A schedule property; to declare the gift settlement deed dated 30.07.2006-Ex.A2 as null and void; permanent injunction restraining the defendants 1 to 4 from alienating or encumbering the suit property; permanent injunction restraining the defendants 1 to 4 & 6 from putting up further construction into the suit property and for mandatory injunction directing the defendants to remove the construction put up by them in suit B Schedule property.

2. The plaint proceeds on the basis that the entire land in S.No.556 Acre 2-90 of Agasipalli Village Originally belonged to Chinnapillai @ Thirupathi son of Thimmarayan and Bullugan alias Venkataraman. In the above extent, an extent of 12 cents of land was acquired by Government for National Highways Road, and another 9 cents of land was acquired for Harijan colony. Therefore, the remaining extent of Acre 2-69 land was subdivided as S.No.556/2A. About 40 years oral-partition was effected among



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the Branches of Chinnapillai alias Thirupathi and Bullugan @ Venkataraman.

Therefore the Branch of Bullugan @ Venkataraman was allotted to an extent of Hectare 0-54-5 i.e., Acre 1-34 and the same is sub-divided as S.No.556/2A2B and 556/2A2C. Again an extent of Hectare 0-02-5 has been acquired by Government from the said land and that further sub-divisions are also effected and that at present claim is made in S.No.556/2A2B2 Hectare 0-52-0. Assessment Rs.0-52-0 and in S.No.556/2A2C Hectare 0-01-0.

3. Some of the plaintiffs have died and their LRS are brought on record as reflected in the cause title of the lower court judgement. It is the specific case of the plaintiffs that apart from the suit property of the said Bullugan alias Venkataraman died in the year 1973 leaving behind him his wife Chennammal (Amended As per order dated 7.03.2015 in 1.A.No 76/2015), six sons viz., Kannadikara Venkataraman, Dásan, Chinnannan, Thirupathi, Muniappan and Chinnapaiyan and a daughter by name Yellammal. All the said persons are no more. In fact, the said Knnadikara Venkataraman died in the year 1979 leaving behind him, his wife



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Muniammal, sons viz., Chinnannan, Gulli @ Venkataraman, Thirupathi, Chokkalingam (P1), Kullan alias Venkataraman (P2), Chinnasamy (P3) and Murugan (P4) and a daughter by name Chandra (D5).

4(a) In respect of other properties, there was an oral partition effected among the legal representatives about 35 years ago and the suit property alone is kept in common because it is situated on the side of the National Highways Road. The said Gulli @ Venkataraman died in the year 1994 leaving behind him, his wife Veerammal and son Murugan who are plaintiffs 5 and 6.

4(b) It is further stated that the said Chinnannan died in the year 1989, leaving behind him, his wife Maari, sons viz., Raja, Rajendran, Perumal(P7) and daughter viz., Velliammal (P8). The said Maari also died in the year 1989. The said Raja died in in the year 2002 leaving behind him, his wife Lakshmi, daughters viz., Ambiga (P9) and Chithra (P10). Hence, the settlement gift deed executed by the husband of the first defendant in favour



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of the second defendant on 30.7.2006-Exhibit A2 is null and void.

Consequently, they filed the suit for 1/8th share in the property.

5. The plaintiffs 1 to 4 & 5th defendant each got 1/8 share. The plaintiffs 5 & 6 together entitled to 1/8 share. The plaintiffs 7 to 12 are together entitled to 1/8 share, so also the defendants 1 to 4 together entitled to 1/8th share. The 6th defendant has no manner of right or title or possession or share into the suit property. But he is a henchman of the 2nd defendant and hence, the 6th defendant has also been added as party defendant in the suit.

6(a) The second defendant filed the written statement, who is the son of Thirupathi and brother of the plaintiffs 1, 2, 3 & 4. After the death of Thirupathi, the suit has been filed. The first defendant is the widow of Thirupathi. The second defendant is the son of Thirupathi. The 3rd and 4th defendants are the daughters of Thirupathi. Defendants 5 and 6 are the lessees. In the written statement, the oral partition among the family members in the year 1975 is admitted.



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6(b) However, the 2nd defendant has taken a stand that the suit property in entirety was allotted to the share of his father Thirupathi and after the proceedings of land acquisition for National Highways Department and Tamil Nadu Harijan Development Department, balance of the property is the suit property. In view of the above stated reasons, the said Thirupathi had executed a settlement deed under Ex.A2, dated 03.07.2006 and hence, the second defendant is the absolute owner of the property.

6(c) In other words, in view of the earlier oral partition, the suit property, having divided and fall into the share of the father to the 2nd defendant. It amounts to re-partition the present suit, which is impermissible in law.

6(d) At the risk of repetition, however, for the sake of clarity, the case of the plaintiffs is also that there was an oral partition 40 years before the institution of the suit ie., 2015 wherein except the suit property, all other



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properties are divided among the brothers and sisters of the family and this property alone is left from the oral partition.

7. The trial Court has formulated as many as eight issues and during the trial, the plaintiffs examined PW1 and marked Ex.A1 to Ex.A2. The defendants examined DW1 to DW7 and marked Ex.B1 to Ex.B14 and through the revenue department, Court witnesses Ex.C1 to Ex.C12 were marked. Ex.A2-Settlement Deed dated 30.07.2006 certified copy, while the original is Ex-B13.

8. On consideration of both oral and documentary evidence, the trial Court has rendered a finding that the plea of oral partition pleaded on behalf of the second defendant is not proved in the manner known to law and the oral partition in favour of the father of the second defendant is not proved and the suit property is joined in nature and accordingly, granted the decree and allotted 6/8 share and consequently, held that Ex.A2-settlement deed executed in favour of the second defendant is null and void. Aggrieved



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against that judgment and degree, the defeated defendants have preferred this appeal.

9(a) Mr.T.P.Manoharan, learned Senior counsel completed his argument on the point that the plaint is lack of particulars on earlier partial partition, whereas the defendant has mentioned the allotment of two other properties in the two different villages to the plaintiff family and also relied upon the burden proof is upon the plaintiff to show earlier admitted oral partition is not in total, but only in partial.

9(b) The learned Senior counsel also contended that Ex.A1 filed by the plaintiff is a 'A Register' which does not relate to the suit property and relied upon the judgment of this Court made in S.A.No.163 of 2018 dated 28.03.2024 in the case of Kuppasamy Gounder & Others vs. Kannammal & others reported in 2001 (3) LW 483, Kale & others v. Deputy Director of Consolidation Others reported in 1976 (3) SCC 119 and Rangammal v. Kuppaswami & Another reported in 2011(12) SCC 220.



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10(a) The learned counsel for the respondent Mr.P.Jagadeesan, learned counsel for the respondents R1 to R3 & R5 to R12 contended that the respondents herein are plaintiffs in the suit in O.S.No.30 of 2013 filed for partition of the schedule property and allotment of 6/8 share.

10(b) In the written statement, the first defendant/appellants contended that there was a oral partition wherein the entire suit property was allotted to the share of the second defendant's father who in turn has executed a settlement deed in his favour.

11. The learned counsel for the respondents would contend that the plaintiffs filed O.S.No.30 of 2013 for partition, in which the second defendant/second appellant filed written statement stating that there was a oral partition in which the suit property was allotted to his father, subsequently, he has executed Ex.B13(Settlement deed) dated 30.07.2006 in favour of the second appellant herein. Plea of oral partition was negatived by the trial Court. Consequently, the trial Court has also held that Ex.B13 is



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valid in law. Challenging the said finding, the first appellant along with other appellants filed this appeal.

12. After hearing the rival submissions of the respective counsels of the appellants and the respondents & pleadings and evidence, the following points arise for consideration:

1. Whether the plaintiffs are entitled for 6/8 share in A Schedule property?
2. Whether Ex.A2- settlement deed, dated 30.07.2006 is valid in law?
3. Whether the plaintiff is entitled for permanent injunction as prayed for?
4. Whether the plaintiff is entitled for mandatory injunction as prayed for?
5. Whether the plea of the plaintiffs that there was an oral partition is proved in the manner known to law?
- 6(a) Whether in the oral partition, the share is allotted to defendants father is true or not?.
- 6(b) In the alternate, whether the plea of the respondents/plaintiffs that in the oral partition, the suit property was kept in common or whether



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the suit property was allotted to the 2nd defendant's father is pleaded in the written statement is true?.

7. Whether the 6th defendant is in possession of the property?

8. Whether the order of the trial Court is sustainable in law?

13. Before advertng into the factual matrix into the case, the necessary provision of law and judicial pronouncements upon the rival claims are discussed hereunder :

(i) In the decision reported in **2014 (4) SCC 707 in Kesharbai alias Pushpabai Eknathrao Nalawade (dead) by Lrs., and another v. Tarabai Prabhakarrrao Nalawade and others**, the Hon'ble Supreme Court has held that presumption touching upon burden of proof of exclusion of certain property from partition has held that the general presumption is that a Hindu Family is joint and properties are joint family properties, however once a partition takes place in a family, presumption would be that all properties stood partitioned, thus burden of proof of exclusion of certain property from partition would be on



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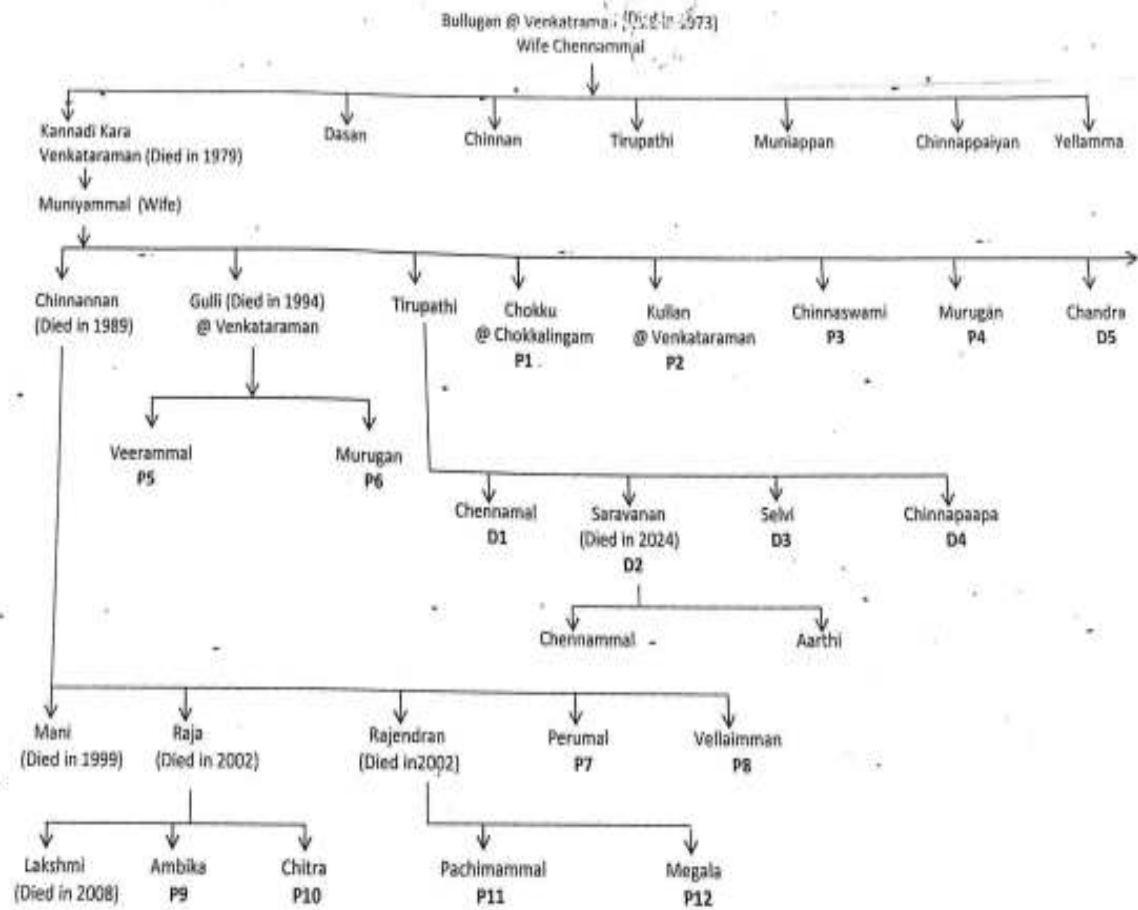
party who asserts same to be joint. In fine, it is a settled principle of law that once a partition in the sense of division or right, title or status is proved or admitted, the presumption is that all joint property was partitioned or divided. Undoubtedly the joint and undivided family being the normal condition of a Hindu Family, it is usually presumed, until the contrary is proved, that every Hindu family is joint and undivided and all its property is joint. This presumption, however, cannot be made once a partition(of status or property), whether general or partial, is shown to have taken place in a family. This proposition of law has been applied by this Court in a number of cases.

(ii) In ***Kumarappa Chetty v. Adaikkalam Chetty (I.L.R.IV Mad.483)*** wherein the Bench of this Court has taken a view that the partial partition would raise the presumption that there was a total partition of the entire joint family properties and the burden, therefore, shifts on the defendant to show that was a partial partition only.



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14. For ready reference, the genealogy map is shown below :



15(a) In the instant case, in his written statement, the 2nd defendant has admitted that 35 years before the filing of the suit, there was an oral partition in the family and a larger extent of the land along with the schedule property



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was allotted to his father, Thirupathi and thereafter, a settlement deed under Ex.A2, it was allotted to him.

15(b) So also, the plaintiff at paragraph No.8 could state that there was an oral family partition between the family members before 35 years. However, except the suit property, all other properties, all other properties were divided in the oral partition and given effect to after acquisition of National Highways Department for Harijan Welfare Development Housing Colony. B-Schedule property is kept in common. Thus, this court finds that in view of the pleadings as well as their evidence, PW1 and DW1 that oral partition among the family members was admitted by both the parties.

16(a) The case of the appellants/defendants is that the suit schedule property was allotted to his father Thirupathi.

16(b) Per contra, the case of the respondents/plaintiffs is that except the suit property, all other properties are divided and the suit B schedule



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property is kept in common.

17. In other words, as per the plaintiffs' case, the admitted oral partition among the family members is only partial. On the contrary, as per defendants' case, the oral partition that was effected 35 years back is a completed one.

18(a) In view of the above stated decisions in ***Kesharbai's case*** and ***Kumarappa Chetty's case*** when a person pleads that there is a partition, law presumes that it is a total partition and a person who pleads that one or some of the property is excluded from the above said oral partition or partition, as the case may be, he who pleads so, has to prove the said fact.

18(b) In this view of the matter, I find that the trial Court has committed a gross error in wrongly placing the burden upon the defendants to prove. Hence, the finding rendered by the trial Court to that effect is set aside.



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19. The learned counsel for the respondents/plaintiffs Mr.P.Jagadeesan could contend that the plaintiffs have discharged the burden from the evidence of the revenue witnesses namely, DW4 to DW7. Besides also relied upon Ex.B1 to Ex.B3 and Ex.C1 to Ex.C12 that all discussed infra.

20. Now, the scope of the appeal reduced into whether the respondents/plaintiffs is able to discharge their burden of proof that the oral partition said to have taken place in the family is only partial in nature and not total. Besides, the B Schedule suit property was kept aside as a common property. In this regard, Exs.B1 to B3 assumes significance.

21(a) Perused Ex.B1. It is a suit in O.S.No.357 of 2011 filed by the mother of all persons, by name, Muniammal. She filed the suit in O.S.No.357 of 2011 before the District Munsif Court, Krishnagiri. On the date of filing the suit, the said Muniammal is aged about 90 years. The suit is filed against the second defendant namely, Saravanan, son of Thirupathi. The said suit is



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for a permanent injunction restraining the second defendant herein from interfering the peaceful possession and enjoyment of the suit property.

21(b) In that suit, it is admitted by both the parties that the suit property in O.S.No.357 of 2011 instituted by the grandmother against the grandson are one and the same. The pleadings are to the effect that the said Muniammal, who is the mother of the plaintiffs and the defendants as early as on 2011, filed the above suit with specific pleading that there was an oral partition among the family members and the suit property was earmarked for the maintenance of the said Muniammal, namely, the mother of the plaintiffs and the defendants and after his lifetime, the property has to be dealt with.

21(c) It is further pleaded that after the death of the said Thirupathi, father of the second defendant, the said grandmother Muniammal came to know about the fact that the Thirupathi has effected some mutation in his name without the knowledge of other family members and executed the



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settlement- Ex.A2 in favour of the second defendant herein namely, Saravanan, who is the sole defendant in the above suit.

21(d) Hence, she has sought for declaration to declare Ex.A2 (marked herein)-settlement deed dated 03.07.2006 executed by the said Thirupathi, to the second respondent is null and void and permanent injunction in her favour in view of the original oral partition wherein she was allotted life estate, viz. enjoyment of suit property till her life time assumes significance.

22(a) In the said suit, the very same Saravanan, the second defendant herein, filed a written statement admitting the oral partition, however, contended that the entire property is allotted to his father and never set apart for the enjoyment of the grandmother till her death. Actually, it is his further case that submitted that the above defendant's father has got the suit properties in a oral partition. The other six brothers of the defendant's father also got their respective separate properties from the above oral partition. In the oral partition, the above plaintiff is not allotted any property in her name



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for her maintenance. In the oral partition, it is decided that the above plaintiff has to live according to her own will in any of the seven sons' houses and for that the above plaintiff also agreed. According to that only, till now she is living. The defendant's father has gift away the suit properties which are in his possession to the above defendant through a gift deed dated 30.07.2006.

22(b) On perusal of documents, I find that since the plaintiff's grandmother died, the suit was abated as per Ex.B3 dated 05.08.2013. Thus, this Court, on a combined reading of Exs.A1, A2 & A3, find that the oral partition is being admitted and the grandmother, as early as on 2011, has filed a suit against the grandson, through her son, under Ex.A1, alleging that the suit property is set apart for her. Hence, after her death, the present plaintiff has filed the suit treating this as a common property appears to be maintainable. Since the suit was not disposed on merits, but on the death of the plaintiff, the suit was abated. Be that as it may, a 95 years old grand lady, who is the grandmother of both the plaintiff and defendant, has filed the suit claiming her right viz. the right of maintenance in the suit property lends



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credence with the case of the plaintiff though not established in full.

However, it lends a corroborated evidence to the case of the plaintiff that even in the year 2011, the grandmother namely, mother of the original plaintiff and original defendant has claimed the property as the life estate property set apart for the partition in future after her death, assumes significance and relevance.

23. The private witnesses of the plaintiffs deposed in support of the plaintiffs' case.

24. The private witness of the defendants deposed in support of the defendants. Admittedly, the suit was filed on 15.05.2013. Ex.A1 is of the year 2011. Immediately, after the dismissal of the earlier suit filed by the mother, the present suit has been laid in the year 2013. The oral partition has pleaded in the year 1975. The evidence in this case was recorded in the year 2014. By the time more than 39 years are passed.



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25. The learned Senior Counsel Mr.T.P.Manoharan could contend that the revenue records support the defendants case and could further state that the compensation amount for the portion of lands acquired by the government in the suit schedule property had been given to the Appellant/Defendant's father and in such event, the trial Court ought to have non-suited the Plaintiff's on that score alone. The suit schedule property had been allotted to the share of the 1st appellant/defendant's husband and father of the appellants/defendants 2 to 4 by way of a oral partition about 35 years ago and from that time the Defendants 2 to 4's father had been possession and enjoyment till his death. The patta No.3289 had been granted in favour of Thirupathi and the kist receipts had been paid by the 2nd appellant/2nd defendant and in any event. The patta, chitta and the land tax receipts in the name of the 2nd defendant and his father vide Exs.B4 to B6. The documents in Exs.B7, B8 & B9 in a proper perspectives ought not to have granted the reliefs.



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26. Per contra, Mr.P.Jagadeesan, learned counsel for the respondents/ plaintiffs draw my attention to the respective evidence given by the respective revenue authorities namely, DW4-Land Acquisition Special District Revenue Officer, DW5-Village Administrative Officer of the village namely Agasipalli, DW6-Deputy Thasildar coupled with Ex.C1 to Ex.C12.

27(a) Perused the evidence of revenue official viz. DW4-Land Acquisition Special DRO, based upon the official records deposited on 07.09.2015 that வெங்கட்ராமன் மகன் திருப்பதி பெயருக்கு அவார்ட்டு வழங்கப்பட்டுள்ளது. மேற்படி நிலத்திற்கு பட்டா வெங்கட்ராமன் மகன் திருப்பதி பெயருக்கு உள்ளது and further stated in the cross-examination that for Thirupathi, he has not produced any document to show that he has obtained property either by Will or gift or settlement. According to DW4, in the official file, no document of Will, gift or sale deed was produced and there is only one entry that he has obtained by as an ancestral property and in his further cross-examination, he could state that patta transfer details are not



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available. However, as per A-Register, the suit Survey No.556/2A1 was mentioned as Chinnapillai @ Thirupathi and Survey No.556/2A2 is Venkataraman and Survey No.556/2A3 is Chinnapillai @ Thirupathi and Venkataraman, joint patta. In respect of lands that have been acquired, there is no separate patta for Thirupathi as per A-Register, though the name of Venkataraman is mentioned as stated supra, compensation was given only for Thirupathi and notice was not sent to the LRS of the Venkataraman, so his admission in the cross-examination lends evidence to the case of plaintiff.

27(b) DW5-Rajasekar is the Village Administrative Officer. He had fairly admitted in the cross-examination that for Survey No.556/2A1, Chinnapillai @ Thirupathi, had UDR patta No.674 and also admitted that the father's name of Chinnapillai @ Thirupathi is Thimmaraya Gounder. Survey No.556/2A2 is in the name of Venkataraman and the said patta was transferred in the name of Venkataraman's son Thirupathi only on 22.11.2005, just before the land acquisition proceedings. The patta was transferred on the form given by the said Thirupathi by way of ancestral



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property. Patta transfer proceedings was effected in the name of Saravanan, son of Thirupathi, as per the order of the Thasildar, vide TR4257/2006. However, in the chitta, it is mentioned as a joint patta in the name of Venkatraman, son of Chinnapillai and in the chitta, it is mentioned as Saravanan, son of Thirupathi, son of Venkataraman. Thus, from the revenue witnesses and the Ex.A9, Ex.A10 & Ex.A11, this Court finds that though the oral partition was said to be effected 35 years before the institution of the suit, only when the land acquisition was taken by the National Highways Department in the year 2005 there is a change of patta in the name of the father of the second defendant Saravanan, namely Thirupathi.

28(a) As per DW5-Village Administrative Officer's evidence coupled with documentary evidence, Exs.B9 B10 & B11 demonstrated that patta transfer was effected only on 22.11.2005 just before the payment of compensation. Ex.A2-settlement deed is dated 03.07.2006 based upon which patta was transferred in TR.4257/2006 from Thirupathi to Saravanan, the 2nd



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defendant assumes significance. Had there been a partition 35 years ago, the patta should have been changed much much longer time.

28(b) In fact joined pattadhar's name is also appears to be found in the A-Register as admitted by DW4-Govindaraj and DW5-Rajasekar for the reasons best known, no notice of award of compensation was issued to the family members of Venkataraman, assumes significance.

29(a) Yet another point is that DW6-Saminathan, Deputy Thasildar (Land Acquisition) on court summons has examined as DW6. He could state that as per Ex.C12, patta No.2889 is only in the name of Thirupathi, son of Venkataraman and the correlating Survey number is S.No.556/2A2B. In the cross-examination, he had categorically admitted that the said survey number initially in the name of Venkataraman. Only on his death, the legal representatives of the said Venkataraman are entitled for patta transfer. Patta transfer proceedings in favour of Thirupathi, father of the second defendant Saravanan is not available on record. For affecting the patta transfer in the



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name of the Thirupathi or possessory right, no document was produced and no document is in the office file. DW6 also admitted that when there are other legal heirs of the said Venkataraman, all the legal heirs are entitled for notice and patta was transferred to only one of the legal heir of the Venkataraman, namely, Thirupathi and he also admitted that no notice was issued to the other legal heirs nor LR certificate of Venkataraman was issued before effecting the patta transfer in favour of the said Thirupathi. LR certificate is also not enclosed.

29(b) In the patta transfer order, the admission in the cross-examination of DW6, namely the Deputy Thasildar for the Land Acquisition clearly demonstrated that all is not well in transferring the patta from Venkataraman to the name of Thirupathi (father of the 2nd defendant) without following the procedure as to whether the said Thirupathi has obtained the property or not. It appears that the said Thirupathi has manured the revenue officials and incorporated his name in the patta in respect of the said subdivision was effected and mutated in the name of Thirupathi (father of the 2nd



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defendants) without following the procedure also throw serious doubt as to the case of the defendant/appellant.

30. The award passed in the land acquisition proceedings has marked through the revenue officials DW4 to DW6 and documentary evidence Ex.C1 to Ex.C7 goes to show that in view of the alleged patta which was obtained in the name of Thirupathi as stated supra, compensation was claimed and given to the father of the second defendant and hence, I find that all is not well in obtaining the patta as admitted by the revenue officials, revenue witnesses namely, DW4 to DW6 and hence, I find that in view of the Ex.A1 and Ex.A2 wherein initial oral partition in the family is admitted by none other than the mother of the plaintiffs and defendants herein. It is also admitted by the defendant herein in the written statement. As could be seen from Ex.B1 and Ex.B2, I find that the plaintiff has successfully proved that there was a oral partition among the family members. In fact, the same is also admitted by the defendant as extracted, supra.



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31. As extracted supra, according to the plaintiff, the suit property alone was excluded and kept in common which was denied by the defendant. In view of the judicial pronouncement as stated supra in ***Kesharbai's case*** and ***Kumarappa Chetty's case***. Since the plaintiff has taken the plea that this property was excluded from the earlier oral partition, the burden of proving the same lies upon him. To discharge the burden, the plaintiff may produce the document on his own or get an answer of admission from the defendant witnesses or revenue witnesses and can play reliance upon the court document, namely Exs.C1 to C12.

32. In the instant case, the evidence of the DW4, DW5 & DW6 as elucidated in the cross examination of the respective revenue witnesses coupled with the revenue document Exs.C1 to C12 goes to show that the property was set as a joint family property till 2015 till the land was acquired by the Highways Department and it appears that the said Thirupathi has manure to get patta and manuring to get compensation. Hence that still the plaintiff has now successfully proved through the admission of DW4 to DW6



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and Exs.C1 to C4 that the suit property was separately set apart for the maintenance of the grandmother as could be seen from the Ex.B1. This Court has no reason to disbelieve the evidence of 95 years old grand lady filed Ex.B1 plaint copy of in O.S.No.357 of 2011 filed against her own son's son and the same is also duly substantiated by the revenue witnesses that only in the year 2015, the revenue records have been mutated. Based upon the sole influence exerted by Thirupathi appears to have been influenced by Thirupathi.

33(a) Hence, I find that the plaintiffs have successfully demonstrated that these property was not the subject matter of the earlier oral partition and when the suit property was set aside for non-maintenance of the mother and after her death, the family members are entitled for partition and hence, I find that the plaintiff has discharged his burden viz. the onus of the proof on his shoulder and hence the burden is now shifted back to the defendant to prove that the suit property has been allotted to the share of his father Thirupathi.



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33(b) As discussed earlier, the patta which was transferred in the name of his father only in the year 2005. For 40 long years there is no other documents to show his father is exercised act of ownership. Even revenue records are mutated only in the year 2005 when the notification of land acquisition was published vide Ex.C4-Paper publication and thereafter the patta was transferred. Admittedly, patta is not the evidence of title and even that patta was not in favour of the father of the second defendant, by name Thirupathi for 45 years, which clearly indicates that the case of the 2nd defendant is highly improbable and in the absence of any probable evidence to discharge the burden of proof on the shoulders of the 2nd defendant after discharge the onus of proof as stated in the above judicial pronouncement assumes significance.

33(c) Consequently, I have no hesitation to come to the conclusion that the 2nd defendant failed to prove the burden of the proof after it was shifted to his shoulder. Consequently, the defendants' case has to be rejected. The trial Court has rejected the case of the 2nd defendant for different reasoning. This



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Court has rejected the case of the 2nd defendant for the reasoning as stated supra. The plaintiff is entitled for partition.

34. In the result,

- i. The Appeal Suit is dismissed.
- ii. The judgment and decree dated 07.12.2015 made in O.S.No.30 of 2013, on the file of the learned Principal District Judge, Krishnagiri, is hereby confirmed for different reasoning as sated supra.
- iii. There shall be no orders as to costs.

27.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PJL
To

1. The Principal District Judge,
Krishnagiri.
2. The Section Officer,
VR Section, High Court, Chennai.



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RMT.TEEKAA RAMAN, J.

PJL

JUDGMENT
IN
A.S.No.531 of 2016

27.12.2024