



WEB COPY

A.S.No.80 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

A.S.No. 80 of 2012

- 1.Babu
- 2.Sivanathan
- 3.Dhanalakshmi
- 4.Natarajan
- 5.Kalaivani
- 6.Senthilkumar

...Appellants

Vs.

- 1.Malliga
- 2.Geetha
- 3.Banumathi
- 4.Uma Maheswari
- 5.Vijayalakshmi

...Respondents

Prayer: First Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 31.10.2011 granted in O.S.No.22 of 2011 on the file of the Additional District and Sessions Judge, Fast Track Court, Vellore.

For Appellants : Mr.Prathik Y.Jain

For Respondents : Mr.N.Mahendra Babu for R1, R4 & R5



WEB COPY

A.S.No.80 of 2



J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The defendants in O.S.No.22 of 2011 are on appeal, aggrieved by a preliminary decree for partition granted by the Trial Court, declaring that the plaintiffs are entitled to 5/11th share in the suit properties.

2. The plaintiffs sought for partition contending that the suit property belong to their father, Manicka Naidu by virtue of a sale deed dated 30.10.1958. After the said purchase, the said Manicka Naidu demolished the old structure in the property and put up a new building. It is stated that the building in the suit property is a self-acquired property of the said Manicka Naidu who died on 08.04.1989. His wife Kanthammal died on 21.02.2006. The couple left behind the plaintiffs and the defendants, who are 11 in number as their heirs. The plaintiffs, who are the daughters seek partition of their 5/11th share.

3. The suit was resisted by the defendants and the 2nd defendant alone filed a written statement contending that the suit property is a joint family property and the construction of the terraced house was put up in 1970 out of the joint family funds. It was also claimed that Manicka Naidu

2/6



mortgaged the property under Ex.B2 on 01.09.1972 and the said mortgage deed specifically states that the property in question belong to him ancestrally and hence, the plaintiffs would not be entitled to the share as claimed by them.

4. On the above pleadings, the Trial Court framed the following issues:-

"i) Whether the suit properties are the ancestral properties ?

ii) Whether the plaintiffs are entitled to 5/11th share in the suit properties as prayed for?

iii) To what other relief the plaintiffs are entitled ?"

5. The learned Trial Judge concluded that the suit property is a self-acquired property of Manicka Naidu and to come to the conclusion, he relied upon the recitals in the sale deed, Ex.A1 dated 30.10.1958 under which, Manicka Naidu purchased the property from Syed Hussain Sahib Katheef. On the said conclusion, the learned Trial Judge passed a preliminary decree declaring the 5/11th share of the plaintiffs who are 5 in number. Aggrieved, the defendants have come up with this appeal.



6. We have heard Mr.Prathik Y.Jain, learned counsel for the appellants and Mr.N.Mahendra Babu, learned counsel for the respondents 1, 4 & 5.

The only question that arises for consideration in this appeal is as to the nature of the property in the hands of Manicka Naidu i.e., whether it is ancestral or self acquired.

7. The learned counsel for the appellants would vehemently contend that once Manicka Naidu himself has conceded that the property was ancestral property, the learned Trial Judge was not right in concluding that the property is a self-acquisition of the said Manicka Naidu. The recitals in Ex.B2 / mortgage deed is sought to be projected as conclusive evidence of the fact that the property is ancestral property of Manicka Naidu.

8. As opposed to the recitals in Ex.B2, the recitals in Ex.A1, sale deed would show that the property was acquired by Manicka Naidu and it remained as his property till his death in 1989. Ex.A1 / Sale deed does not show that Manicka Naidu had paid the consideration out of joint family funds. From a reading of Ex.A1, we are unable to make out that the property was purchased out of ancestral nucleus.



9. Be that as it may, whether the property is ancestral or self-acquired losses significance, in the light of the subsequent pronouncement of the Hon'ble Supreme Court in *Vineeta Sharma Vs. Rakesh Sharma and Others* reported in *(2020) 9 SCC 1*. The Hon'ble Supreme Court has held that immaterial of the date of death of the father, the daughters would become coparceners. If the daughters are coparceners, they would be entitled to equal share as that of the sons. The wife of Manicka Naidu, Kanthammal has also died in the year 2006 therefore, her share in the property would devolve on the daughters and the sons equally.

10. The net result would be the plaintiffs would be entitled to 1/11th share each as has been declared by the Trial Court. We therefore, see no reason to interfere with the judgment and decree of the Trial Court. This First Appeal is therefore, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) (M.S.K., J.)
07.11.2024

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WEB COPY

A.S.No.80 of 2



R.SUBRAMANIAN, J.
and
MUMMINENI SUDHEER KUMAR, J.

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To:-

The Additional District and Sessions Judge,
Fast Track Court, Vellore.

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