



S.A.No.235 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2024

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CORAM

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

S.A.NO.235 OF 2019
AND C.M.P.NO.3662 OF 2019

1.A.Suganthi

2.A.Chellam

3.V.Mahalakshmi

4.A.Kousalya

...

Appellants /

Appellants 2 to 5 /

Defendants 22 to 25

Vs.

1.A.Pushpa

...

1st respondent /

1st appellant /

15th defendant

2.N.A.Palanisami

3.K.Vijayalakshmi

4.C.Subramani

5.C.Krishnan

6.C.Thangarasu

7.C.Kannammal

8.T.Lakshmi

9.T.Govindarajan

10.C.N.Gomathi

11.B.Sumathi

12.N.Malathi

13.N.Maheswari

14.G.Pongiannabhoopathi

15.C.Kannammal

16.K.M.Subramaniam



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17.P.Subbulakshmi

18.K.M.Dhanalakshmi

19.K.M.Sivadinesh

20.K.M.Mohanasundaram

21.T.Gunasundari

21/

...

Respondents 2 to

Respondents 2 to 21/
Defendants 1 to 14 and
16 to 21

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated September 20, 2018 passed in A.S.No.19 of 2017 by the Additional District Court, Erode, confirming the Judgment and Decree dated March 20, 2017 passed in O.S.No.86 of 2011 by the II Additional Subordinate Court, Erode.

For Appellants : Mr.R.Subramanian

For Respondent – 21 : Mr. V. P. Sengottuvel
Senior Counsel
for M/s.R.Indu Priya

For Respondent – 1 : Served – No appearance

For Respondents – 2 to 20 : Given up – remained *ex-parte*
before Trial Court as well as
First Appellate Court

JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated September 20, 2018 passed in A.S.No.19 of 2017 by the 'II Additional District Court (Mahalir Neethimandram), Erode' [henceforth



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'First Appellate Court'], confirming the Judgment and Decree dated March 20, 2017 passed in O.S.No.86 of 2011 by the 'II Additional Subordinate Court, Erode' [henceforth 'Trial Court'].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

Plaintiff's case:

3. One Subbanna Gounder had four children, namely Palaniammal (plaintiff), Pongiammal, Valliammal and Pavayammal. The said Subbanna Gounder died intestate in 1984. His wife passed away intestate in the year 1974. After the demise of Subbanna Gounder, the plaintiff and her sisters are each entitled to common 1/4 share in the Suit Properties which are their joint family properties. Pongiammal, one of the daughters of Subbanna Gounder, died intestate long back leaving behind the defendants 3 to 7 and one Ayyavoo. The said Ayyavoo died intestate two years back from the date of Plaint, leaving behind the defendants 1 and 2 as his legal heirs. Another daughter - Valliammal also died intestate leaving behind the defendants 14 to 16 and one Muthulakshmi as her legal



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heirs. The said Muthulakshmi also died intestate long back. The defendants 8 to 13 are the legal heirs of Muthulakshmi. The above said Pavayammal also died intestate leaving behind the defendants 17 and 21 and her husband - Palanisamy. The said Palanisamy also died intestate leaving behind the defendants 18 to 20 as his legal heirs / legal representatives.

4. The Suit Properties exclusively belong to the plaintiff and her sisters. Therefore, the plaintiff is entitled to 1/4 share therein. The defendants 1 to 7 are jointly entitled to 1/4 share therein. Similarly, the defendants 8 to 16 are together entitled to 1/4 share; and the defendants 17 to 21 are together entitled to the remaining 1/4 share in the Suit Properties. The plaintiff and the defendants are in joint possession and enjoyment over the Suit Properties. The plaintiff felt some inconvenience in joint possession and enjoyment of the Suit Properties. Hence, the plaintiff filed the Suit for partition and separate possession.

Defendants' case:

5. The 15th defendant filed Written Statement denying the averments made in the Plaint. She averred that the plaintiff was given in



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marriage to a wealthy family with substantial amount of *seervarisai*. The plaintiff had no issues. Hence, Subbanna Gounder gifted some of his properties in favour of his daughters - Pongiammal & Pavayammal, and they have alienated their shares. Further, Subbanna Gounder had orally gifted the Suit Properties to his daughter - Valliammal, the 15th defendant's mother who got into exclusive possession and enjoyment of the Suit Properties including the house property, as her own, to the knowledge of everyone including the plaintiff and the other defendants. On that basis, with regard to the Suit Properties, Patta was granted in favour of Valliammal by competent authority. The plaintiff and the other defendants are fully aware of this and did not raise any objection till her death.

6. Subsequently, Valliammal gifted Item Nos. 1 to 3 of the Suit Properties excluding the house bearing Door No.10A to the four daughters of the 15th defendant under four Deeds dated September 8, 2003. Thereafter, the four daughters were in possession and enjoyment of their specific plots, as absolute owners, to the knowledge of everyone including the plaintiff and the other defendants. The plaintiff is fully aware



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of the four Settlement Deeds executed by her sister - Valliammal in favour of the four daughters of the 15th defendant. Thus, the plaintiff and others are ousted from the Suit Properties. Further, at any rate, the four daughters of the 15th defendant are necessary parties to the Suit. Hence, the Suit is bad non-joinder of necessary parties. Accordingly, the 15th defendant prayed to dismiss the Suit.

Trial Court :

7. During the Trial, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.10 were marked on the side of the plaintiff. On the side of the defendants, the 15th defendant was examined as D.W.1, one Kausalya was examined as D.W.2 and Ex-B.1 to Ex-B.17 were marked.

8. The Trial Court after hearing both sides and after considering the evidence on record, concluded that the Suit Properties are ancestral and joint family properties and that the plaintiff is entitled to 1/4 share therein and accordingly, passed a Preliminary Decree in favour of the plaintiff.



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First Appellate Court:

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9. Dissatisfied with the Judgment and Decree passed by the Trial Court, the defendants 22 to 25 filed an appeal in A.S.No.19 of 2017 on the file of the First Appellate Court. During the pendency of the appeal, the plaintiff - Palaniammal passed away on November 29, 2017. The First Appellate Court after hearing both sides and perusing the case files, came to the conclusion that the Suit Properties are the ancestral properties and after the demise of Subbanna Gounder, the plaintiff and her sisters are co-owners and the plaintiff is entitled to 1/4 share therein. Accordingly, the First Appellate Court concurred with the findings recorded by the Trial Court and confirmed the Judgment and Decree passed by the Trial Court. Since the plaintiff, namely, K.Palaniammal, died during the pendency of the First Appeal, the First Appellate Court directed the parties to approach the Trial Court to divide the plaintiff's share as per Law.

Second Appeal:

10. Dissatisfied with the Judgment and Decree passed by the First Appellate Court, the defendants 22 to 25 filed this Second Appeal under Section 100 of the Code of Civil Procedure, 1908.



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Arguments:

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11. Mr.R.Subramanian, learned Counsel for the appellants / Defendant Nos.22 to 25 submits that during the pendency of the Appeal Suit, the plaintiff, namely K.Palaniammal, passed away. Since the Suit is for partition, the First Appellate Court ought to have ascertained the legal heirs/legal representatives and divided the properties among the legal heirs/legal representatives. Instead, the First Appellate Court erroneously directed the parties to approach the Trial Court. In this regard, the learned Counsel relies on the Judgment of the Hon'ble Supreme Court in ***Phoolchand and another v. Gopal Lal*** reported in ***AIR 1967 SC 1470***. Accordingly, he prays to admit the Second Appeal.

11.1. Further, the learned Counsel for the appellants prays to allot plaintiff's 1/4 share to the defendants as per Law, considering the facts and circumstances of the case. To that effect, he has filed a Memo dated October 23, 2024 and the contents of the same reads as hereunder:

- “1. *The plaintiff filed O.S.No. 86 of 2011 before the I Additional Sub. Court Erode for partition and separate possession of her 1/4th share.*



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2. *According to the plaintiff, the property belonged to her father Late Subanna Gounder, who died intestate in 1984 leaving behind the plaintiff and the 3 sisters, namely Pongaiammal, Valliammal and Pavayammal and each daughter is entitled to 1/4th share.*
3. *Pongaiammal died leaving behind defendants 3 to 7 and one Ayyavoo, and the said Ayyavoo leaving behind defendants 1 and 2.*
4. *Valliammal died leaving behind defendants 14 to 16 and one Muthulakshmi and after the death of Muthulakshmi, the defendants 8 to 16 are the Legal Heirs.*
5. *Pavayammal died leaving behind defendants 17 to 21 and one Palanisamy. After the death of Palanisamy, D18 to D20 are his Legal Heirs. Thus, each branch is entitled to 1/4th share; Defendants 1 to 7 entitled to 1/4th share; Defendants 8 to 16 entitled to 1/4th share; Defendants 17 to 21 entitled to 1/4th share.*
6. *A Preliminary decree was passed on 20.03.2017. It was challenging in A.S.No.19 of 2017 on the file of Additional District Court. Erode. During the pendency of appeal, the plaintiff Palaniammal died without any issues. The Lower Appellate Court after recording that the Plaintiff / 1st respondent died without issues, erroneously dismissed the appeal.*



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7. *The Defendants 22 to 25 have filed the present appeal mainly contending that on the death of Palaniammal, her 1/4th share would devolve upon her 3 sisters as per Section 15 (2) (a) of Hindu Succession Act. Since the defendants are all the Legal heirs of the 3 Branches, they have to be recorded as the Legal Heirs of the deceased plaintiff also. And the plaintiff 1/4th share has to be allotted to all the defendants.”*

12. In response to the Memo, Mr.V.P.Sengottuvel, learned Senior Counsel for the Respondent No.21 / Defendant No.21 files a typed-set of papers and submits that the plaintiff - Palaniammal died on November 29, 2017. During the lifetime of Palaniammal, she executed a registered Will dated December 31, 2010 (Registered as Document No.147 of 2010) on the file of the Sub Registrar, Surampatty and thereby, Palaniammal bequeathed her 1/4th share in favour of T.Gunasundari (21st respondent / 21st defendant). He further submits that the 21st defendant filed an Interlocutory Application in I.A.No.3 of 2019 in O.S.No.86 of 2011 under Order XX Rule 18 and Section 151 of the Code of Civil Procedure, 1908 before the Trial Court seeking to pass supplementary preliminary decree allotting the plaintiff's 1/12 share to her along with her



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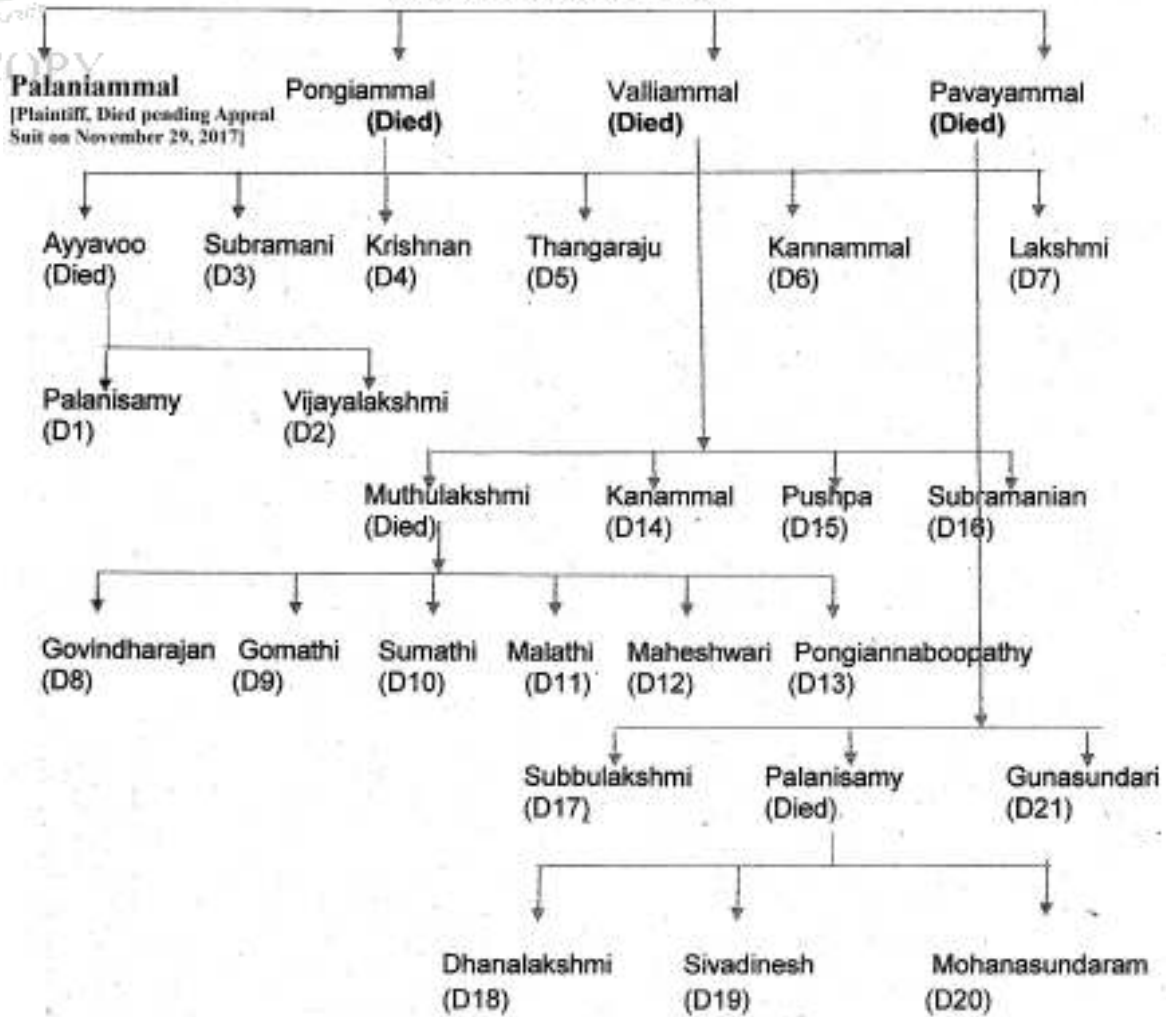
1/4 share *i.e.*, totally 4/12 share. In the said application, enquiry commenced and P.W.1 and P.W.2 were examined on the side of the petitioner therein. Further submits that the Trial Court as well as the First Appellate Court rightly appreciated the evidence available on record and passed Judgments and Decrees. There is no illegality or infirmity with the same. There is no question of law, much less substantial question of law, involved in this Second Appeal. Accordingly, he prays to dismiss the Second Appeal.

Discussion:

13. This Court has considered both sides' submissions and perused the materials available on record. There is no dispute with regard to the relationship between the parties as stated in the Plaint. The following family tree helps to better appreciate the facts of the case:



Subanna Gounder



14. The Trial Court and the First Appellate Court has concurrently held that after the demise of Subanna Gounder, his four daughters, namely Palaniammal (Plaintiff), Pongiammal, Valliammal and Pavayammal inherited the Suit Properties. Hence, the said Palaniammal is entitled to 1/4 share. Since the Trial Court as well as the First Appellate Court, after considering the evidence on record, concurrently held that the



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plaintiff Palaniammal is entitled to 1/4 share, and also in view of the submissions made by either side, this Court is of the view that there is no substantial question of law involved in this Second Appeal.

15. The grievance of the defendants 22 to 25 (appellants) is that during the pendency of the Appeal Suit, the plaintiff passed away and hence, the First Appellate Court ought to have divided the plaintiff's 1/4 share among her legal heirs, who were all parties to the Appeal Suit. On the other hand, the learned Counsel for the 21st respondent / 21st defendant would submit that Palaniammal (plaintiff) executed a registered Will in favour of the 21st defendant and the same is pending adjudication before the Trial Court; the 21st defendant filed an Interlocutory Application in I.A.No.3 of 2019 in O.S.No.86 of 2011 under Order XX Rule 18 and Section 151 of the Code of Civil Procedure, 1908 before the Trial Court, seeking to pass supplementary preliminary decree based on the registered Will. In these circumstances, this Court is of the view that the First Appellate Court directing the parties to approach the Trial Court to divide the plaintiff's 1/4 share is correct.



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16. Given the facts and circumstances of the case, if the 21st defendant succeeds in proving the Will before the Trial Court, she would be entitled to the plaintiff's 1/4 share as per the Will along with her 1/12 share *i.e.*, totally 4/12 share and to that effect the Trial Court shall pass supplementary preliminary decree. In case, the 21st defendant fails to prove the Will allegedly executed by the plaintiff, all the legal heirs of the plaintiff would be jointly entitled to the '1/4 share left by plaintiff'. In such a scenario, the Trial Court shall distribute the '1/4 share left by plaintiff' to all her legal heirs and amend the preliminary decree accordingly or pass supplementary preliminary decree to that effect.

Conclusion:

17. The Second Appeal is disposed of with the above observation. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Speaking order : Yes
Neutral citation : Yes
mps/tk



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To
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- 1.The Additional District Court
(Mahalir Neethimandram)
Erode.
- 2.The II Additional Subordinate Judge,
Erode.



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R. SAKTHIVEL, J.

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