



S.A.Nos.122 & 123 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.Nos.122 & 123 of 2009

Salai Thamarai Selvi

... Appellant in both S.As

vs.

1.Meivizhi Saradammal

2.Salai Siva Gandhi (alias) Salai Sivagami Ammal

3.Ra.Chellaiah

4.Meivazhi Radhakrishna Anandar (died)

5.K.Amsavalli

6.R.Salai Aathi Mangai

... Respondents in

S.A.No.122 of 2009

1.Ra.Chellaiah

2.Meivazhi Radhakrishna Anandar (died)

3.Meivizhi Saradammal

4.Salai Siva Gandhi (alias) Salai Sivagami Ammal

5.K.Amsavalli

6.R.Salai Aathi Mangai

...Respondents in

S.A.No.123 of 2009

(R5 and R6 in both S.As brought on record as LR's of the deceased 4st respondent in S.A.No.122 of 2009 and deceased 2nd respondent in S.A.No.123 of 2009 vide Court order dated 11.07.2014 in M.P.Nos.1 to 3 of 2013 & 1 to 3 of 2013)

Prayer:- Second Appeals filed under Section 100 of the Civil Procedure Code against the common judgment and decree dated 02.07.2008 in



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A.S.Nos.72 of 2006 & 4 of 2007, respectively, passed by the learned Principal District Judge, Vellore, reversing the preliminary decree and judgment dated 11.10.2006 in O.S.No.329 of 2000, passed by the learned Subordinate Judge, Vellore.

For appellants in both S.As	: Mr.T.S.Baskaran
For R1 & R4	: Died
For R2 & R3	: Compromise order passed
For R5 & R6	: No appearance

J U D G M E N T

The plaintiff in the suit for partition is before this Court in both the Second Appeals.

2. These Second Appeals have been filed as against the common judgment and decree dated 02.07.2008 in A.S.Nos.72 of 2006 & 4 of 2007, respectively, passed by the learned Principal District Judge, Vellore, reversing the preliminary decree and judgment dated 11.10.2006 in O.S.No.329 of 2000, passed by the learned Subordinate Judge, Vellore.

3. The first respondent in S.A.No.122 of 2009, who is the mother of the plaintiff, is the first defendant in the suit and the



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respondents 2 to 4, who are the purchasers, are the defendants 2 to 4 in the suit. Pending these Second Appeals, the fourth/second respondent in both these Second Appeals died and the respondents 5 and 6 were brought on record as the legal heirs in both the Second Appeals.

4. For the sake of convenience, the parties will be referred to according to their ranking as before the Trial court.

5. Since both the Second Appeals arise out of the common judgment and decree passed by the Lower Appellate Court, both the Second Appeals are considered and decided by this common judgment.

The brief facts, which gave rise to these Second Appeals, are that:

6. According to the plaintiff, she is the only daughter of the late Ganapathi Gounder and the first defendant/Meivizhi Saradammal. The said Ganapathi Gounder died intestate on 23.06.1990, leaving behind the plaintiff and the first defendant to succeed his properties. As such, the plaintiff, as a legal heir of Ganapathi Gounder, is entitled to half share in the suit properties. According to the plaintiff, the first defendant had been



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maintaining a hostile attitude and also acted adverse to the interest of the plaintiff. Further, during October 1999, she came to know that the first defendant sold item 4 of the suit properties to the 3rd and 4th defendants through registered sale deeds dated 13.07.1995 and 08.07.1997 and also sold item 3 of the suit properties to the 2nd defendant through sale deed dated 28.02.1996.

7. Further, as per the sale deed executed by the first defendant, the second defendant, who is no way connected with the properties and family, had been shown that as though she is a daughter of the first defendant. According to the plaintiff, the averments are utterly false and the second defendant had no share, rights or any interest in the suit properties. Further, the sale deeds executed by the first defendant, in respect of entire items 3 and 4 of the suit properties in favour of the 3rd and 4th defendants, will not bind the plaintiff. Therefore, she issued a legal notice dated 03.10.1999 calling for amicable partition. Since it did not materialise, the plaintiff came up with the suit for partition and separate possession.



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8. The first defendant resisted the suit by filing a written statement contending that the marriage of the plaintiff was celebrated in a grand manner and at the time of her marriage, a lot of stridhana articles, cash and gold jewels were given and she got settled with her husband at Bangalore. Since the plaintiff had sold all the gold and stridhana articles given to her, for the purpose of extracting money, she filed the above suit.

9. According to the first defendant, the plaintiff never took care of late Ganapathi Gounder or the first defendant and it was done by the second defendant, who was looking after them in their old age and further the first defendant and her husband brought up the second defendant from her childhood with love and affection as their own daughter. Therefore, she sold item 3 of the suit properties to the second defendant under sale deed dated 29.02.1996 and she was in possession of the same. Further, since she had already sold item 3 and 4 of the suit properties, the same are not available for partition.

10. The second defendant resisted the suit by filing a separate



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written statement stating that she is none other than the brother's daughter of the deceased Ganapathi Gounder, the marriage of the plaintiff was celebrated in a grand manner and the plaintiff had sold all the articles given to her during marriage and has now come forward with this speculative suit. She had never looked after her father and the first defendant and they have brought up the second defendant as their own daughter. Further, the first defendant sold item 3 of the suit property in her favour and also reiterated the written statement filed by the first defendant.

11. The third defendant resisted the suit by filing a written statement stating that he purchased the properties from the first defendant, as she had also purchased the properties in her name and is in separate possession of the properties. Further, according to him, the plaintiff was aware of the sale deed executed in his favour, as she was one of the attesting witnesses to the sale agreement itself and also stated that it is well known that the second defendant is the adopted daughter of Ganapathi Gounder.



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12. The fourth defendant also resisted the suit by filing a separate written statement contending that the first defendant had purchased certain properties for valuable consideration under registered sale deeds and was in enjoyment of the properties. Thereafter, she sold about 27 cents of the land comprised in survey Nos.480/4 & 480/5 in Vilathupatti Village in favour of this defendant and registered a sale deed.

According to him, these items do not form a part of the schedule of the properties and he is not a necessary party.

Evidence and documents:

13. During trial, the plaintiff examined herself as P.W.1 and marked documents in Exs.A1 to A5. On the side of the defendants, the first defendant examined herself as D.W.1 and examined the defendants 2 to 4/purchasers as D.W.2 to D.W.4, respectively and marked documents in Exs.B1 to B24.

Findings of the Courts below:

14. The Trial Court, after appraising the evidence and documents, decreed the suit granting a preliminary decree of 1/3 share in



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favour of the plaintiff in respect of the 4 items of the suit properties.

15. The Trial Court found that there was a separate suit filed by the plaintiff, as against the defendants 1 and 2 in O.S.No.68 of 2001 on the file of the District Munsif Court, Keeranoor, where pursuant to the compromise entered into the parties, the suit was decreed in Ex.A12 holding that the plaintiff and the first defendant alone are the legal heirs of Ganapathi Gounder. Since already the suit filed for partition is pending, the parties will work out their remedies in the partition suit. The Trial Court also found that as far as items 3 and 4 of the suit properties are concerned, since the plaintiff is entitled to half share of the suit properties, the sale deed executed by the first defendant in favour of the defendants 2 to 4 conveying the entire extent of the property, will not bind the plaintiff.

16. Aggrieved by the judgment and decree of the Trial Court, the defendants 1 and 2 filed appeal in A.S.No.72 of 2006 and further, the purchasers/defendants 3 and 4 filed a separate appeal in A.S.No.4 of 2007.



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17. The Lower Appellate Court, after reappraising the evidences, by a common judgment and decree dated 02.07.2008 allowed both the appeals reversing the judgment and decree passed by the Trial Court and dismissed the suit.

18. Challenging the judgment and decree of the Lower Appellate Court, the plaintiff is before this Court by the above two separate Second Appeals.

Substantial questions of law:

19. This Court, by order dated 13.04.2010, admitted these Second Appeals and framed the following substantial questions of law:

“1. Whether the lower appellate Court has committed an error in dismissing the suit for partition after holding that the plaintiff was entitled to $\frac{1}{4}$ share in item 1 and $\frac{1}{6}$ share in item 2 of suit schedule properties, without framing an issue regarding non-joinder of necessary parties and without affording an opportunity to rectify the defect of non-joinder of necessary parties?



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2. Whether the lower appellate Court has committed an error in holding that items 3 and 4 which were sold by the first defendant alone not available for partition?

3. Whether the lower appellate Court has committed an error in holding the suit to be not maintainable in view of the compromise decree passed in O.S.No.68 of 2001 in which the question of legal heirship to the father of the plaintiff alone was decided?"

20. Pending these Second Appeals, the second defendant in the suit, who had purchased item 3 of the suit property through Ex.A11, had come forward to settle the issue with the plaintiff/appellant and the second defendant, who is the second respondent in S.A.No.122 of 2009, filed a joint memo of compromise. This Court, by order dated 16.07.2014, recorded the joint memo of compromise, where, the second defendant/second respondent in S.A.No.122 of 2009/purchaser agreed to recognise all the rights and share of the plaintiff and also decided to reconvey the properties purchased by her in favour of the plaintiff. Pursuant to this stand taken by the second defendant and the settlement



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entered into, the issue in respect of the item 3 of the suit properties pending in both of the appeals got settled out of Court.

21. Further, the third defendant in the suit, who is the third respondent in S.A.No.122 of 2009 also decided to compromise the issue with the plaintiff/appellant and the 3rd defendant also recognised the rights and title of the plaintiff, in respect of the shares purchased by him and decided to reconvey the properties in favour of the plaintiff. The 3rd defendant/3rd respondent in S.A.No.122 of 2009 also entered into a joint memo of compromise with the plaintiff/appellant. This Court, by order dated 09.01.2018, recorded the compromise and thereby, the issue between the plaintiff/appellant and the 3rd defendant/3rd respondent in S.A.No.122 of 2009 in respect of a part of item 4 of the suit properties, has got settled out of Court.

22. As such, now, the only issue to be decided in both these appeals is in respect of item 1 and 2 of the suit properties and a part of the item 4 of the suit properties, which is conveyed in favour of the 4th defendant/4th respondent in S.A.No.122 of 2009 through Ex.A10, properties measuring 6 cents in survey no.480/4 and 21 cents in survey



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no.480/5, in all, total 27 cents.

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Submissions on both sides:

23. The learned counsel appearing for the plaintiff/appellant contended that the Trial Court, by taking note of the documents filed in Exs.A6 to A8, which are the death certificate, legal heir certificate and the succession certificate issued in respect of the death of the plaintiff's father Ganapathi Gounder, which reveal that the plaintiff and the first defendant are the legal heirs of the deceased Ganapathi Gounder and the first defendant joining with the second defendant, had made an unsuccessful attempt to project as though the second defendant is one of the legal heirs. However, in the suit filed by the plaintiff in O.S.No.68 of 2001, the same was compromised between the parties and pursuant to the compromise decree in Ex.A12, the plaintiff and the first defendant alone were declared as the legal heirs of Ganapathi Gounder and it was for the parties to work out their rights in respect of the properties, since the suit for partition is pending.

24. The learned counsel further contended that the Trial Court,



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after considering the fact that the plaintiff, being the daughter of the deceased Ganapathi Gounder, inherited his properties, as he died intestate and thereby, became the owner of half share of the suit properties, has come to a conclusion that the sale deeds executed by the first defendant conveying the entire suit properties in favour of the defendants 2 to 4 will not bind the plaintiff and therefore, has rightly granted preliminary decree granting 1/3 share in the entire suit properties.

25. The learned counsel further contended that however, the Lower Appellate Court erroneously by misinterpreting the documents filed in Ex.A12, *i.e.*, the decree passed declaring the plaintiff and the first defendant as the legal heirs of the deceased Ganapathi Gounder, has allowed the appeal, holding that the parties decided to compromise the dispute in respect of the properties in that suit and therefore, the present suit for partition is not maintainable.

26. The learned counsel further contended that when the suit in O.S.No.68 of 2001 was filed, the present suit for partition was already pending and therefore, the parties decided to settle the dispute in respect



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of the legal heirship alone and it was left open to the parties to decide the issue of partition in the pending suit. However, the Lower Appellate Court holding that the compromise decree in Ex.A12 is a bar in deciding the suit filed by the plaintiff for partition, which finding is not based on the documents available on record and therefore, perverse. He further contended that the Lower Appellate Court, simply by holding that since the properties were sold by the first defendant in respect of the 3rd and 4th defendants, those properties were not available for partition, is against the settled proposition and when the plaintiff, as a legal heir, is entitled to half share, the documents executed by the first defendant, conveying the properties including the share of the plaintiff, will not bind the plaintiff and therefore, sought for allowing these Second Appeals.

27. The learned counsel also contended that pending these Second Appeals, the defendants 2 and 3/purchasers, who have realised the legal position, have come forward to settle the issue with the plaintiff and thereby, the issues in respect of item 3 and also a major portion of item 4 of the suit properties have been settled between the parties. Even the second defendant, who claimed to be a legal heir, as a daughter of



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Ganapathi Gounder, has also come forward and recognised that the plaintiff is the only daughter and accepted the title and interest of the plaintiff in respect of the half share in the suit properties and reconveyed the properties executed in her favour.

28. In view of these circumstances, the learned counsel contended that the sale deed executed by the first defendant in favour of the 4th defendant, conveying a part of the 4th item of the suit properties, is not sustainable.

29. Though, initially, the same counsel had entered appearance for all the respondents and the issue was settled by filing the joint memo of compromise by the defendants 2 and 3/respondents 2 and 3 in S.A.No.122 of 2009 and as far as the 4th defendant/4th respondent in S.A.No.122 of 2009 is concerned, pending Second Appeals, the 4th defendant/4nd respondent in S.A.No.122 of 2009, died and the 5th and 6th respondent have been brought on record as the legal heirs in the both Second Appeals. Therefore, the counsel reported no instructions for 5th and 6th respondents.



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30. This Court, by order dated 04.08.2021, directed issuance of fresh notice to the respondents 5 and 6 returnable by four weeks and also permitted private notice. The service of the respondents 5 and 6 was effected on 30.08.2021 and also the learned counsel for the appellant filed an Affidavit of service by serving the private notice on the respondents 5 and 6. Therefore, this Court by order dated 28.09.2021, directed the Registry to print the name of the parties in the cause list. Today, the name of the respondents 5 and 6 are printed in the cause list. However, there is no appearance on their side.

31. Heard the submissions made by the learned counsel for the appellant.

32. This Court has given its anxious consideration on the submissions made by the learned counsel for the appellant.

Analysis of the submissions:

33. It is admitted that the plaintiff is the legal heir of Ganapathi



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Gounder and the first defendant. It is also not in dispute that Ganapathi Gounder died intestate on 23.06.1990. Apart from the documents filed by the plaintiff in Exs.A6 to A8 to establish herself as a legal heir, she had filed the suit as against the first and second defendants in O.S.No.68 of 2001 on the file of the District Munsif Court, Keeranoor, in which, a compromise was entered into between the plaintiff and the first and second defendants, whereby, the plaintiff and the first defendant was alone declared as the legal heirs. While so, the first defendant had executed the sale deed by including the second defendant portraying as the daughter of the deceased Ganapathi Gounder. However, in view of the compromise decree in Ex.A12, the Courts below have come to a conclusion that the plaintiff and the first defendant are the legal heirs of the deceased Ganapathi Gounder.

34. The first defendant had executed the sale deeds in favour of the defendants 2 to 4 in Exs.A9 to A11. As far as the properties sold by the first defendant in favour of the second defendant in Ex.A11 is concerned, the second defendant herein has come forward and settled the issue with the plaintiff and thereby, orders have also been passed as



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settled out of Court. Hence, the properties sold in her favour, were reconveyed to the plaintiff.

35. Further, in respect of the major portions of item 4 of the suit properties, the 3rd defendant, who purchased the properties in Ex.A9, has also come forward and recognised the title and interest of the plaintiff and thereby, has entered into the compromise with the plaintiff by reconveying the share purchased by him. Therefore, the issue in respect of a part of item 4 of the suit properties has also been sorted out, pending appeal.

36. As such, the only issue now pending is the properties purchased by the 4th defendant in Ex.A10 *i.e.*, 6 cents in survey no.480/4 and 21 cents in survey no.480/5, in all, total 27 cents.

37. In respect of the said 27 cents purchased by the 4th defendant, he has given evidence as D.W.4. A perusal of the evidence of D.W.4/4th defendant itself, shows that he has admitted that half of the property was purchased by Ganapathi Gounder and the balance half of



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the property in item 4 was purchased by the first defendant. Therefore, even according to the 4th defendant, the plaintiff, being the daughter of the deceased Ganapathi Gounder, is entitled to half share in the half share of item 4 of the suit property. In other words, the plaintiff is entitled to $\frac{1}{4}$ share in item 4 of the suit property.

38. It is also the case of the first defendant that stridhana and gift were given at the time of marriage of the plaintiff and since she had sold all the articles, she has come up with the speculative suit for partition. Further, it is the claim that she was aware of the sale deed executed in favour of the 4th defendant and she has attested as a witness in the sale agreement. Further, both the Courts below found that the sale agreement is not a admissible evidence as it is an unregistered document and further, the signature found in the agreement has been disputed and it is not proved that it belongs to the plaintiff. The first defendant, in her evidence, also admitted that the plaintiff is entitled to $\frac{1}{4}$ share in item 4 of the suit properties. However, she contended that the share may be allotted from and out of the share of this defendant, while she had also taken a stand that since he has sold the properties in favour of the



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defendants 3 and 4, the same is not available for partition. As such, it is an admitted case of the first defendant that the plaintiff, as a legal heir, is entitled to $\frac{1}{4}$ share in item 4 of the suit properties and only an explanation was given to deny her share that the gift was given during the marriage of the plaintiff and that she had knowledge of the sale in favour of the defendants.

39. The Lower Appellate Court, while reversing the judgment and decree of the Trial Court, has only taken note of the compromise decree passed in Ex.A12 and observed that since the issue has been compromised between the plaintiff and the first defendant, they have also decided to sort out the differences in respect of the suit properties and when they have decided to do so, the plaintiff is not entitled to continue with the suit for partition in view of the compromise decree passed earlier.

40. At this juncture, as rightly contended by the learned counsel for the appellant, only because of the second defendant claimed to be a legal heir with the help of the first defendant, which necessitated the



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plaintiff to file a separate suit in O.S.No.68 of 2001 to declare to be a legal heir of the deceased Ganapathi Gounder. Pursuant to the compromise entered in that suit, the Court has declared that the plaintiff and the first defendant are the legal heirs of Ganapathi Gounder. As far as the issue regarding the partition of the suit properties is concerned, it was left open to the parties to decide the issue, since already the suit filed for partition is pending before the Court. The Lower Appellate Court, erroneously, by misinterpreting the compromise decree in Ex.A12, has reversed the judgment and decree of the Trial Court and dismissed the suit.

41. As rightly held by the Trial Court, the plaintiff is the daughter of Ganapathi Gounder and as a legal heir, she is entitled to partition of her share in the suit properties and therefore, the judgment and decree of the Lower Appellate Court dismissing the suit on the ground that the compromise entered into between them in Ex.A12 stands against the claim of the plaintiff, is not based on the materials available on record. Further, it is seen that as far as the properties in items 1 and 2 of the suit properties are concerned, admittedly, those have been



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purchased by deceased Ganapathi Gounder in Exs.A1 and A2 dated 21.01.1960 and 17.11.1954, respectively, where he had purchased only half undivided share in those properties. When the plaintiff has come forward with the suit for partition and admittedly, Ganapathi Gounder had purchased only half undivided share, the suit filed for partition in respect of items 1 and 2 of the suit properties without making other sharers of those items 1 and 2 as parties in the suit, is not sustainable. It is for the plaintiff to work out her remedy in a proper proceedings insofar as items 1 and 2 of the suit properties are concerned. Since the issue in respect of item 3 and a part of the item 4 has already been settled, the finding arrived at and the judgment and decree passed by the Lower Appellate Court in respect of a part of the item 4 of the suit property i.e., 27 cents covered under Ex.A10 in survey No.480/4 and 480/5, is perverse and not based on materials available on record.

42. Therefore, the substantial questions of law are answered in favour of the appellant and against the respondents.



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43. To sum up, both the Second Appeals are decided in the following manner:

1. The judgment and decree of the Lower Appellate court in dismissing the suit for partition in so far as items 1 and 2 of the suit properties is confirmed. However, liberty is given to the plaintiff to work out her remedy in appropriate proceedings in respect of her half share by including other co-sharers.
2. The judgment and decree passed by the Lower Appellate Court is set aside in so far as the item 3 is concerned and these Second Appeals are disposed of in terms of the order, dated 16.07.2014, passed based on the compromise memo dated 16.07.2014 and also the Compromise memo shall form part of the decree.
3. The judgment and decree passed by the Lower Appellate Court is set aside in respect of part of item 4 of the suit properties and these Second Appeals are disposed of in terms of the order, dated 09.01.2018, passed based on the compromise memo dated 09.01.2018 and also the Compromise memo shall form part of the decree.



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4. As far as part of item 4 of the suit property i.e., 27 cents in S.No.480/4 and 480/5 is concerned, the judgment and decree passed by the Lower Appellate Court are set aside and the judgment and decree passed by the Trial Court is restored, however modifying that the plaintiff is entitled to only $\frac{1}{4}$ share.

44. In the result, these Second Appeals are partly allowed.

However, there shall be no order as to costs.

19.02.2024.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The Principal District Judge, Vellore.

2. The Subordinate Judge, Vellore.

3. The Section Officer, V.R.Section, High Court, Madras.



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G.ARUL MURUGAN,J

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