



WEB COPY



S.A.No.536 of 2006

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

S.A.No.536 of 2006

- 1.C.T.Chellammal
- 2.C.T.Jeeva Rathinam
- 3.C.T.Kamatchi
- 4.C.T.Padmini
- 5.P.Sambandam
- 6.P.S.Nirmala
- 7.P.S.Anuradha
- 8.P.S.Thiruvakkarasu
- 9.P.S.Sreedharan
- 10.P.S.Mahalakshmi
- 11.P.S.Vaishnavi

S/o.Sambandan,
No.38, Ponnappa Mudalist,
Purasawalkam, Chennai – 600 084.

[A3 died, A11 is B/R as LR's of the deceased A3 vide Court order dated
11.12.2023 made in CMP.No.20051/2023 in S.A.No.536/06]

...Appellants

Vs.

- 1.C.T.Saravana Perumal (died)
- 2.C.T.Sambandamurthy
- 3.C.T.Kothandapani (died)
- 4.T.Rajammal
- 5.T.S.Akilandeswari
- 6.T.S.Pasupathy
- 7.T.S.Revathy
- 8.T.S.Leela Kumaran
- 9.T.S.Thilagavathy



S.A.No.536 of 2006

[R1 died. R4 to R9 brought on record as Lrs of the deceased R1 vide order of Court dated 15.03.2023 made in CMP.Nos.5375, 5377, 5378 of 2022 in S.A.No.536 of 2006 (RHJ)]

10.K.Kasthuri Bai

11.T.K.Thiruppura Sundari

12.T.K.Senbagavalli

13.T.K.Vijaya shanthi

14.T.K.Divviya Sundari

(R3 died R10 to R14 brought on record as Lrs of the deceased R3 vide order of Court dated 15.03.2023 made in CMP.Nos.5385, 5386, 5391 of 2022 in S.A.No.536 of 2006)

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree made in O.S.No.1409 of 1992 dated 26.02.1997 on the file of the XI Assistant City Civil Court, Madras as confirmed in A.S.No.141 of 1998 dated 09.04.2002 on the file of VII Additional Judge, City Civil Court, Madras.

For Appellants : Mr.Maria Joseph David
for Mr.A.Amalraj

For Respondents : Ms.U.Dhivya
for Mr.D.Padmanabhan
for R4 to R14
R1 and R3 died
No appearance for R2

J U D G M E N T

Originally the suit property belongs to one M.C.Tulukkanam, he has got three sons and five daughters. The sons are arrayed as D1 to D3



S.A.No.536 of 2006

before the trial Court and daughters are arrayed as defendants 4 to 7. Apart from the above legal heirs, Tulukkanam has got another daughter C.T.Pangajavalli who died, even prior to filing of the suit and her legal heir has been arrayed as defendants 8 to 13 before the trial Court.

2. After the demise of first defendant viz., C.T.Saravana Perumal, his legal heirs have been arrayed as respondents 4 to 9 and after the demise of 3rd respondent viz., C.T.Kothandapani his legal heirs are arrayed as respondents 10 to 14 and 5th respondent namely Kamatchi's legal heir is arrayed as 11th appellant. Likewise, Pangajavalli's legal heirs, who are the defendants 8 to 13 are arrayed as the appellants 5 to 10.

3. It appears that during the pendency of this appeal, the appellants 5 and 8 died and their legal heirs are already on record. According to the plaint averment, the suit property is the self acquired property of M.C.Tulukkanam. Therefore, the suit was instituted by Tulukkanam's wife Pattammal, who is the mother of the defendants 1 to 7, seeking for partition to divide the suit property into 1/3rd share and for allotment of one such share.



S.A.No.536 of 2006

4. Evidence and findings before the Trial Court:

Before, the trial Court, the plaintiff herself was examined as PW.1 and seven documents have been marked as A1 to A7. On behalf of the defendants, defendants 2 and 5 were examined as DW.1 and DW.2 and nine documents have been marked as Exs.B1 to B9. The trial Court after having considered oral and documentary evidence arrived at a conclusion that the suit property was ancestral property and accordingly allotted 1/4th share to each son, and in the M.C.Tulukkanam share the plaintiff was allotted 1/36th share.

5. Aggrieved by the same, when the plaintiff Pattammal preferred the first appeal, the First Appellate Court has also concurred with the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the appellants who are the daughters and legal heirs of deceased daughter Pangajavalli have preferred the instant second appeal.

6. At the time of admission, this Court formulated the following substantial question of law by order dated 18.09.2006:

“Whether the suit property is the ancestral property or self acquired property of the deceased Tulukanam?”



S.A.No.536 of 2006

7. This Court has given its anxious consideration to the submissions made by both sides.

8. The learned counsel appearing for the appellant would vehemently contend that after the advent the amendment of Hindu Succession Act during 2005 and after the advent of of the judgment of the Hon'ble Supreme Court in **(2020) 9 SCC 1** reported in ***Vineeta Sharma vs Rakesh Sharma*** there is no distinction between the sons and daughters in respect of the ancestral property. Though it is their contention that the suit property is the absolute property of the Tulukkanam, in view of the change in circumstances, even if the suit property is construed as the ancestral property still the daughters will have equal share as like that of the sons of the deceased Tulukkanam.

9. Though the trial Court and the First Appellate Court arrived at conclusion that the suit property is the ancestral property, still by change in circumstances of the law, the daughters will have to be allotted equal share at par like son. It is an admitted case, Tulukkanam has got three sons namely C.T.Saravana Perumal, C.T.Sambandamurthy and C.T.Kothandapani.



S.A.No.536 of 2006

Similarly, Tulukkanam has got five daughters namely C.T.Chellammal, C.T.Jeeva Rathinam, C.T.Kamatchi (died), C.T.Padmini and C.T.Pangajavalli (died). Therefore, the suit property has to be divided equally among the legal heirs of Tulukkanam and 1/8 share to be allotted to each son and daughter. The heirs of deceased daughter Kamatchi will take 1/8th share jointly between them.

10. In view of the discussion made earlier, the substantial question of law framed at the time of admission is answered in favour of the appellants and against the respondents. Hence, the second appeal is allowed by setting aside the judgment and decree passed by the First Appellate Court, thereby the decree of the trial Court is modified as indicated above.

11. In nutshell:

a) The Second Appeal is allowed by setting aside the judgment and decree passed by the First Appellate Court and the decree is modified granting 1/8th share each to the surviving sons and daughters. Similarly the heirs of the deceased daughter Kamatchi will jointly take 1/8th share between them;



S.A.No.536 of 2006

WEB COPY

b) In the facts and circumstances of the case, there shall be no order as to costs;

08.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
ub

To

1. The XI Assistant City Civil Court, Madras.
2. The VII Additional Judge, City Civil Court, Madras.



WEB COPY



S.A.No.536 of 2006

C.KUMARAPPAN, J.
ub

S.A.No.536 of 2006

08.04.2024