



S.A.Nos.498 and 500 of 2018 &
502 and 503 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	: 12.03.2024
Judgment pronounced on	: 28.03.2024

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

**S.A.Nos.498 and 500 of 2018 &
502 and 503 of 2020**

and

**C.M.P. Nos.10890, 10894, 10895
and 10898 of 2020 of 2018**

S.A.No.498 of 2018:

1.Damodhara Sankar
2.Banumathy

... 3rd Plaintiff/1st Respondent/1st Appellant
... 4th Plaintiff/2nd Respondent/2nd Appellant

Vs.

1.P.Arivudainambi

... 3rd Party/Appellant/Respondent

D.Shanthagunam Pillai (Deceased)
D.Chidambaram (Deceased)
D.Deivayani Ammal (Deceased)

... Defendants 1 to 3

2.Manoharan
3.Sasikala
4.Loganathan
5.Girija
6.Sundari

...Defendants 4 to 8/Respondents 3 to 7
/Respondents 2 to 6 and 9



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7.Swaminathan

8.Muthukumar

9.Mohan

10.Damodaran

11.Vasu

12.Baskar

13.Ammayi

Meenakshi (Deceased)

14.Sathyanarayanan

Lakshmi (Deceased)

Lakshmi Ammal (Deceased)

Jagadeeswari (Deceased)

15.Selvarani

16.Mallika

17.Udhayakumar

18.N.Ethiraj

19.S.Neelavathi

20.Koteeswaran

21.Renukadevi

22.Mahendra Babu

23.Nandakumar

24.Sampathkumar

25.Geetha

26.Balachandar

27.Ramu Pillai

28.Sudha

29.Sujatha

30.Swarnalatha

...Defendants 10 to 16/Respondents 8 to 14
/Respondents 7 to 13

... 17th Defendant

...18th Defendant/15th Respondent
/14th Respondent

... 19th Defendant

... 20th Defendant

... 21st Defendant

...Defendants 22 to 24/Respondents 18 to 20
/Respondents 15 to 17

...Defendants 32 to 34/Respondents 27 to 29
/Respondents 24 to 26

... 35th Defendant/30th Respondent/27th Respondent

...Defendants 36 to 38/Respondents 31 to 33



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/27th Respondents

31.D.John
32.J.Edward
33.J.Albert
34.J.Hitlar
35.J.Stephan
36.J.Aruldoss

... L.R's of 21st Defendant/Respondents 34 to 39/
Respondents 31 to 36

S.A.No.500 of 2018:

Thiruvengadaswamy (Deceased)
Saroja (Deceased)

... 1st Plaintiff
... 2nd Plaintiff

1.Damodhara Sankar
2.Banumathy

... 3rd Plaintiff/1st Respondent/1st Appellant
... 4th Plaintiff/2nd Respondent/2nd Appellant

Vs.

1.S.Neelavathi
2.Koteeswaran
3.Renukadevi
4.Mahendra Babu
5.Nandakumar

... Defendants 26 to 30/Appellants/
Respondents 1 to 5

6.Manoharan
7.Sasikala
8.Loganathan
9.Girija
10.Sundari

... Defendants 4 to 8/Respondents 3 to 7/
Respondents 6 to 10
... 9th Defendant

Saraswathi (Deceased)

11.Swaminathan
12.Muthukumar
13.Mohan



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14.Damodaran

15.Vasu

16.Baskar

17.Ammayi

...Defendants 10 to 16/Respondents 8 to 14
/Respondents 11 to 17

Meenakshi (Deceased)

... 17th Defendant

18.Sathyanarayanan

...18th Defendant/15th Respondent
/14th Respondent

Lakshmi (Deceased)

... 19th Defendant

Lakshmi Ammal (Deceased)

... 20th Defendant

Jagadeeswari (Deceased)

... 21st Defendant

19.Selvarani

20.Mallika

21.Udhayakumar

22.N.Ethiraj

...Defendants 22 to 24/Respondents 18 to 20
/Respondents 15 to 17

Palani Pillai (Deceased)

23.Sampathkumar

24.Geetha

25.Balachandar

26.Ramu Pillai

27.Sudha

28.Sujatha

29.Swarnalatha

...Defendants 32 to 38/Respondents 22 to 28
/Respondents 23 to 29

30.J.Edward

31.J.Albert

32.J.Hitlar

33.J.Stephan

34.J.Aruldoss

... L.R's of 21st Defendant/Respondents 30 to 34/
Respondents 30 to 34

S.A.No.502 of 2020:

Selvarani

... Appellant/18th Respondent/22nd Defendant



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Vs.

1.S.Neelavathi
2.Koteeswaran
3.Renukadevi
4.Mahendra Babu
5.Nandakumar

... Respondents/Appellants/Defendants 26 to 30

6.Damodhara Sankar
7.Banumathy
8.Manoharan
9.Sasikala
10.Loganathan
11.Girija
12.Sundari
13.Swaminathan
14.Muthukumar
15.Mohan
16.Damodaran
17.Vasu
18.Baskar
19.Ammayi
20.Sathyanarayanan

Lakshmi Ammal (Deceased)
Jagadeeswari (Deceased)

21.Mallika
22.Udhayakumar
23.N.Ethiraj
24.Sampathkumar
25.Geetha
26.Balachandar
27.Ramu Pillai
28.Sudha



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29.Sujatha
30.Swarnalatha
31.J.Edward
32.J.Albert
33.J.Hitlar
34.J.Stephan
35.J.Aruldoss

... Respondents/Respondents/Defendants

S.A.No.503 of 2020:

Selvarani

... Appellant/18th Respondent/22nd Defendant

Vs.

1.P.Arivudainambi
2.Damodhara Sankar
3.Banumathy
4.Manoharan
5.Sasikala
6.Loganathan
7.Girija
8.Sundari
9.Swaminathan
10.Muthukumar
11.Mohan
12.Damodaran
13.Vasu
14.Baskar
15.Ammayi
16.Sathyanarayanan

Lakshmi Ammal (Deceased)
Jagadeeswari (Deceased)

17.Mallika
18.Udhayakumar



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19.N.Ethiraj
20.S.Neelavathi
21.Koteeswaran
22.Renukadevi
23.Mahendra Babu
24.Nandakumar
25.Sampathkumar
26.Geetha
27.Balachandar
28.Ramu Pillai
29.Sudha
30.Sujatha
31.Swarnalatha
32.John
33.J.Edward
34.J.Albert
35.J.Hitlar
36.J.Stephan
37.J.Aruldoss

... Respondents/Respondents/Defendants

PRAYER in S.A.Nos.498 of 2018 and 503 of 2020: Second Appeals filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S. No.72 of 2017 dated 20.12.2017 on the file of the Court of XV Additional Judge, City Civil Court, Chennai, in confirming the judgment and preliminary decree passed in O.S. No.4927 of 1996 dated 26.08.2013 on the file of the Court of VI Assistant Judge, City Civil Court, Chennai.

PRAYER in S.A.Nos.500 of 2018 and 502 of 2020: Second Appeals filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S. No.145 of 2014 dated 20.12.2017 on the file of the Court of XV Additional Judge, City Civil Court, Chennai, in confirming the judgment and preliminary decree passed in O.S. No.4927 of 1996 dated 26.08.2013 on the file of



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the Court of VI Assistant Judge, City Civil Court, Chennai.

In S.A.No.498 of 2018:

For Appellants : Mr.N.Sivaprakash
For Respondents : Mr.S.Mukunth, Senior Counsel
for Mr.D.Veerasekaran for R1
Mr.C.Venkatesan for RR2 to 7, 31, 33 to 36
for RR8 to 13, 15 to 17, 19, 20, 22, 23, 25,
27 to 30, 33 to 36 – Not ready in notice
for RR 18, 21, 24 and 26 – No appearance (Served)
R32 -Died

In S.A.No.500 of 2018:

For Appellants : Mr.N.Sivaprakash
For Respondents : Mr.Haja Nazirudeen, Senior Counsel
for Mr.P.Haribabu for RR1 to 5
Mr.C.Venkatesan, for RR6 to 11, 30 to 34
for RR12 to 21, 24, 26 to 29 - Not ready in notice
for RR 22, 23 and 25 – No appearance (Served)
R30 -Died

In S.A.No.502 of 2020:

For Appellants : Mr.R.Ravindran
For Respondents : Mr.Haja Nazirudeen, Senior Counsel
for Mr.P.Haribabu for RR1 to 5
Mr.N.Sivaprakash for RR6 to 7

In S.A.No.503 of 2020:

For Appellants : Mr.R.Ravindran
For Respondents : Mr.Haja Nazirudeen, Senior Counsel
for Mr.P.Haribabu for RR22 to 26
Mr.S.Mukunth, Senior Counsel
for Mr.D.Veerasekaran for R1



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COMMON JUDGMENT

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All these Second Appeals arise out of a suit for partition in O.S.No.4927 of 1996.

2. For the sake of convenience, parties are described as per their litigative status before the Trial Court.

3. The material particulars that are necessary to decide the above Second Appeals are as under:-

3.1. The plaintiff claiming to be the maternal grandson of one Krishnasamy Pillai, who was owning an extent of 3 acres and 44 cents in S.No.300 in Patta No.183, as ancestral properties, died in the year 1958, leaving behind his wife Pappathi Ammal, two sons and two daughters and that the plaintiff's mother was one of the daughters of the said Krishnasamy Pillai, namely Pattammal, filed the suit, seeking a partition.

3.2. It is the specific case of the plaintiff that Pattammal, being one of the daughters of Krishnasamy Pillai, was entitled to 1/4th share in the suit property and



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consequent to her demise, the plaintiff being her son, is entitled to the said 1/4th share in the joint family property. The plaintiff issued a notice on 02.07.1988 to the 25th defendant and another notice dated 06.07.1988 to the defendants 1 and 2 seeking partition. According to the plaintiff, the defendants 1 and 2 were trying to dispose of the suit property as plots to various purchasers, without having any right to deal with the undivided joint family property. Hence the suit came to be instituted.

3.3. The plaintiff died and his wife and children were brought on record as plaintiffs 2 to 4. It is also to be noted that the said Krishnasamy Pillai had two sons, Duraiswamy and Gangadharan and two daughters viz., Pattammal and Govindammal. The 1/4th share of Duraiswamy devolved on the defendants 1 to 8; 1/4th share of Pattammal devolved on the plaintiffs; 1/4th share of Govindammal devolved on defendants 9 to 19 and 1/4th share of Gangadharan devolved on the defendants 20 to 24. The 25th defendant was impleaded as an intending purchaser from defendants 1 and 2.

3.4. Pending suit, the 1st defendant died and defendants 26 to 30 were



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brought on record as his legal heirs. Similarly, 9th defendant also died and 31st defendant was brought on record as his legal heir. The 17th defendant died and defendants 32 to 34 were brought on record as his legal heirs. The 31st defendant also died and his legal heirs were brought on record as defendants 36 to 38.

3.5. The suit was resisted by the defendants 26 to 30, viz., the legal heirs of the 1st defendant. The defendants 4 to 8, 10 and 22 to 24 supported the case of the plaintiff. The defendants 26 to 30 filed a written statement contending that the suit property admittedly being ancestral properties, were exclusively allotted in favour of Duraiswamy, who is the son of Krishnasamy Pillai and father of the 1st defendant – Shanthagunam Pillai. After the demise of Duraiswamy, the suit property was in joint possession of Shanthagunam Pillai and Chidambaram. According to the defendants 26 to 30, sons of Duraiswamy viz., Shanthagunam Pillai and Chidambaram entered into a Koorchit partition dated 11.03.1974, in and by which an extent of 1 acre and 44 cents out of the total extent of 3 acres and 44 cents was allotted in favour of Shanthagunam Pillai and he was in possession and enjoyment of the said extent of 1.44 acres, till his demise. He has also mutated the revenue records in his name, besides obtaining patta in respect of the said extent.



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The said Shanthagunam Pillai died on 22.11.1998, leaving behind the defendants 26 to 30 as his legal heirs. According to these defendants, the plaintiffs had full knowledge about the oral partition as well as the Koorchit executed between Shanthagunam Pillai and Chidambaram and only in order to create a cloud over their right, the suit has been filed seeking partition. The defendants also stated that the 1st plaintiff's mother had no pre-existing right and consequently the plaintiffs were not entitled to maintain the suit for partition, especially when there was no existence of undivided joint family property.

3.6. Before the Trial Court, parties led evidence, both oral and documentary and the Trial Court finding that the plaintiff was entitled to 1/4th share (in view of the demise of the 1st plaintiff – Thiruvengkadaswamy) and subsequent demise of the 2nd plaintiff, his wife Saroja, plaintiffs 3 and 4 were jointly entitled to the said 1/4th share. The defendants 4 to 8 entitled to 1/11th share each, in total 5/11 share, out of the 1/4th share devolved to the share of Duraiswamy. The 10th defendant was entitled to 1/7th share out of 1/4th share devolved to the share of Govindammal and similarly, 22nd defendant was entitled for 1/5th share out of 1/4th share of Gangadharan Pillai.



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3.7. Aggrieved by the preliminary decree passed by the Trial Court, the following first appeals came to be filed,

- (i) A.S.No.145 of 2014 was filed by the defendants 26 to 30,
- (ii) A.S.No.72 of 2017 was filed by the third party, purchaser of one of the plot made out in the extent of 1.44 acres.

3.8. Both these appeals were heard together and disposed of by a common Judgment and decree dated 20.12.2017. The 1st Appellate Court reversed the Judgment and decree of the Trial Court and dismissed the suit by allowing both the appeals.

3.9. Aggrieved by the common Judgment and decree in the above first appeals,

- (i) S.A.No.498 of 2018 has been preferred by the plaintiffs 3 and 4 as against the A.S.No.72 of 2017;
- (ii) S.A.No.500 of 2018 has been preferred by the plaintiffs 3 and 4 as against the A.S.No.145 of 2014;



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(iii) Similarly, S.A.Nos.502 and 503 of 2020 have been preferred by the 22nd defendant as against the A.S.Nos.145 of 2014 and 72 of 2017.

4. I have heard, Mr.N.Sivaprakash, learned counsel for the appellants in S.A.Nos.498 and 500 of 2018 and for the respondents 6 and 7 in S.A.No.502 of 2020.; Mr.R.Ravindran, learned counsel for the appellants in S.A.Nos.502 and 503 of 2020; Mr.S.Mukunth, learned Senior Counsel for the 1st respondent in S.A.Nos.498 of 2018 and 503 of 2020; Mr.C.Venkatesan, learned counsel for the respondents 2 to 7, 31, 33 to 36 in S.A.No.498 of 2018 and for the respondents 6 to 11, 30 to 34 in S.A.No.500 of 2018; Mr.Haja Nazirudeen, learned Senior Counsel for the respondents 1 to 5 in S.A.Nos.500 of 2018 and 502 of 2020 and for the respondents 22 to 26 in S.A.No.503 of 2020.

5. It is seen from the records that none of the Second Appeals have been admitted as on date. However, all the learned counsel appearing for the parties argued for final hearing of the Second Appeals.

6. Mr.N.Sivaprakash, the learned counsel appearing on behalf of the



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appellants in S.A.Nos.498 of 2018 and 500 of 2018/plaintiffs would submit that the court below has erred in dismissing the suit for partition, after having held that the Ex.B1 – Koor Chit to be invalid in the eye of law. The learned counsel would invite my attention to the said Ex.B1, in order to contend that the said document was inadmissible in the eye of law, as the parties to the said document had chosen to divide the properties under the very same unregistered Koor Chit. According to the learned counsel for the appellants, it was not a memorandum of record of any past transaction and therefore, the Koor Chit in Ex.B1 dated 11.03.1974 having been rightly rejected by both the Courts below, the 1st Appellate Court ought not to have dismissed the suit for partition, especially after noticing that the 1st plaintiff's mother was admittedly one of the daughters of Krishnasamy Pillai.

6.1. According to the learned counsel, once Ex.B1 – Koor Chit was held to be invalid, no rights could flow under Exs.B2, B4 and 9 and the third parties also cannot claim any independent right, being strangers to the joint family property. The learned counsel also took me through the oral evidence adduced by the parties in line with the respective pleadings and he would also refer to the discussions of the Trial Court as well as the 1st Appellate Court, in order to fortify his contentions



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that the 1st Appellate Court clearly fell in error in dismissing the suit for partition, overturning the well considered findings of the Trial Court in granting the preliminary decree in favour of the plaintiffs. He would refer to the inconsistent findings rendered by the 1st Appellate Court, where at one breadth, it has been stated that the Court held that the suit property is ancestral property and in another breadth, it is stated that the property is self acquired property of Krishnasamy Pillai. He would also challenge the findings of the Trial Court regarding the suit in O.S.No.110 of 2000 and the Judgment on appeal against the said suit in A.S.No.611 of 2007. According to the learned counsel for the appellants, there was no declaration in respect of 1.44 acres, being a portion of the suit property, in favour of the defendants 26 to 30 and consequently, the 1st Appellate Court has rendered a perverse finding and it is liable to be interfered with, in these appeals.

7. Mr.R.Ravindran, learned counsel appearing for the appellants in S.A.Nos.502 and 503 of 2020 would submit that the 1st Appellate Court arrived at a finding that the daughters were not entitled for share in the property and the same was incorrect, on the assumption that the property was an ancestral property. According to Mr.R.Ravindran, once the Ex.B1 – Koor Chit was declared to be



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invalid by both the Courts below, then Section 8 of the Hindu Succession Act would come into operation straight away. That apart, he would also state that having framed points for consideration, the 1st Appellate Court did not even answer the issue No.3 and had actually discussed only the issue No.4 under the heading 'Point No.3'. The learned counsel would therefore seek for restoration of the Judgment and decree of the Trial Court.

8. Per contra, Mr.Haja Nazirudeen, learned Senior Counsel appearing for the respondents 1 to 5 in S.A.Nos.500 of 2018 and 502 of 2020, who are the defendants 26 to 30, viz., the contesting defendants, being the legal heirs of the 1st defendant, would submit that admittedly, when the mother of the plaintiffs died on 21.12.1981 and the suit having been filed only on 15.07.1988, the suit was liable to be rejected. He would also submit that already 3 acres have been acquired by Mass Rapid Transit System (MRTS) out of the total extent of 3.44 acres and the right to partition opened on the death of Krishnasamy Pillai on 24.11.1958 and the mother of the plaintiffs never chose to claim a share in suit property at any point of time, during her lifetime. Even the plaintiffs approached the Court only after lapse of 7 ½ years, after their mother – Pattammal's demise. Therefore, the learned Senior



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Counsel would contend that the Pattammal's legal heirs cannot claim any right in the suit properties and it had already been divided amongst the brothers and in any event, according to the plaintiffs, the suit property was ancestral and joint family property and after the demise of Pattammal, the plaintiffs were not entitled to seek for partition, especially when their mother herself did not have any pre-existing right.

8.1. The learned Senior Counsel would also state that the properties have been sold and enjoyed only by the family members of defendants 1 and 2 and therefore, Pattammal herself had clearly acquiesced to the right of the defendants 1 and 2 in the suit property and when she herself did not choose to question any of the alienations, her legal heirs, that too after her demise cannot get any better right to seek for partition or challenge the alienations made by the defendants 1 and 2. The learned Senior Counsel would place reliance on the Section 29 (A) as Tamil Nadu Amendment Act, 1990 and state that the same will also not apply to the facts of the case to give Pattammal, a right by birth, treating the daughter as a coparcener, since Pattammal died on 21.12.1981 and even the suit was filed before coming into force of the Tamil Nadu State Amendment Act, giving unmarried



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daughters a birth right, treating them on the same pedestal, as a son, in so far as the coparcenary rights are concerned. The learned Senior Counsel would also invite my attention to the revenue document, Ex.B2 – Patta, which has been issued as early as on 12.05.1994 in the name of Santhagunam Pillai, the 1st defendant. He would also refer to the writ proceedings initiated by the Power Agent – Pandian who formed the layout to an extent of 1.44 acres as plots. He would also bring to the notice of this Court, the Judgment made in S.A.820 of 2008 where the Power Agent – M.C.Pandiyan had filed the said Second Appeal as against the Judgment in A.S.No.611 of 2007, reversing the Judgment in O.S.No.110 of 2000 and in the said Second Appeal, this Court taking note of the facts that the Power of Attorney executed by Santhagunam Pillai to the Power Agent - appellant in the said Second Appeal, was for the purpose of developing the suit property into a layout, the Judgment and decree of the 1st Appellate Court came to be affirmed. The Judgment in A.S.No.611 of 2007 has been marked as Ex.B8 and on perusal of the same, it is seen that the said appeal has been preferred by the defendants 26 to 30 herein aggrieved by the decree in O.S.No.110 of 2000 and in the said decree, the right of Santhagunam Pillai has been upheld. The same has also been confirmed by this Court in S.A.No.820 of 2008. The learned Senior Counsel would therefore pray for



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the Second Appeals being dismissed.

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9. Mr.S.Mukunth, learned Senior Counsel appearing for the 1st respondent in S.A.No.498 of 2018 and 503 of 2020 - one of the purchasers, who purchased a plot from Udhayakumar, who is the 24th defendant in the suit, who is the son of Gangadharan Pillai, would submit that according to the plaint, the plaintiffs came to the Court with the specific plea that the suit property is ancestral joint family property. Admittedly, the defendants have also contended that it is only a joint family property. He would refer to the Judgment of the Trial Court, where the Trial Court has found that the plaintiffs have themselves stated that it is a joint family property. He would also refer to the written statement of the defendants 26 to 30. The branch of Duraiswamy, who is one of the sons of Krishnasamy Pillai, have categorically admitted that the properties are ancestral in nature. He would also invite my attention to the findings of the 1st Appellate Court in this regard, where the 1st Appellate Court has also found that both the parties have not led any evidence to establish the character of the suit property and proceeded to hold that the suit property was not the absolute property of the said Krishnasamy Pillai, but only ancestral property, at his hands. Therefore, the learned Senior Counsel would



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submit that when the male coparceners had already dealt with the suit property prior to Act 39 of 2005, the daughters cannot claim any right by birth and especially when the mother of the 1st plaintiff died even prior to the Tamil Nadu State Amendment Act coming into force and she would not be entitled to any right and consequently the plaintiffs were also dis-entitled to claim the relief of partition.

10. Mr.Haja Nazirudeen, the learned Senior Counsel would invite my attention to Exs.A1 and A2 being the death certificates issued by the Corporation of Chennai and he drew my attention to the date of registration of death of Krishnasamy Pillai on 28.11.2007 and the certificate having been issued after about less than 2 months time. Referring to the Registration of Births and Deaths Act 1969 (Act 18 of 1969), the learned Senior Counsel drew my attention to Section 13 and would submit that any birth or death which was not registered within one year from the date of occurrence, can be registered only after obtaining an order from a 1st Class Magistrate or a Presidency Magistrate, after verifying the correctness of the birth or death and on meeting the demand of the prescribed fee. He would therefore state that the death certificates have no evidentiary value.



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11. In reply to the said contention of the learned Senior Counsel, Mr.N.Siva Prakash, learned counsel for the appellants would submit that the death certificates were marked without any objection and therefore, it was not open to the respondents now to contend that the death certificates cannot be looked into on the ground that the same have no probative value.

12. I have carefully considered the rival submissions advanced by the learned Senior Counsels and the learned counsels appearing for the parties. The claim for partition is made by a son of one of the daughters of Krishnasamy Pillai. There is no dispute with regard to the factum of death of said Krishnasamy Pillai on 24.11.1958. Even though there is a contention raised by Mr.Haja Nazirudeen, the learned Senior Counsel that the death certificate has no probative value in view of non compliance of Section 13 of Registration of Births and Deaths Act, I do not see that the death certificates would be of any serious consequences. It is admitted all round that the said Krishnasamy Pillai died as early as 24.11.1958 and he was aged about 80 years at the time of his demise. Admittedly, there is no evidence on the side of the parties as to when the suit property was purchased by Krishnasamy Pillai. However considering the fact that he had died in the year 1958 and that too



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at the age of 80 years and moreover, taking into account the admission of the plaintiffs themselves as well as the contesting defendants, the property was only an ancestral property at his hands. The right to seek partition opened on the death of Krishnasamy Pillai on 24.11.1958. Admittedly, he was survived by his wife, two sons and two daughters. Though, one of the daughters – Pattammal died only on 21.12.1981, during her lifetime, she never sought for her share to be declared and she also never questioned the enjoyment of the suit property, including alienations made by her two brothers. Ex.B2 also discloses the fact that there appears to have been some partition between the two brothers as separate patta has been issued in the name of Shanthagunam Pillai in Ex.B2, even in the year 1994 and in patta No.183, even earlier, patta in the name of Duraiswamy Pillai has been issued in the year 1986. Therefore, the properties have been enjoyed only by the two sons of Krishnasamy Pillai and the daughters have not raised any issue with regard to their enjoyment by claiming share in the said suit property. It is also seen from Ex.A12, which is a sale deed dated 06.06.2002, under which a portion of the suit property has been dealt with and admittedly, the sale deed was never challenged by any of the parties, including the plaintiffs. The said alienation is prior to the amendment of the Central Act, The Hindu Succession Act, by Amendment 39 of 2005. Therefore,



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even in terms of the amended provisions, transactions that are prior to 20.12.2004 have been saved and even from this angle, it only implies that the sons of Krishnasamy Pillai have been enjoying the suit properties. Though the Ex.B1 – Koorchit may not be admissible in evidence, as rightly found by the Trial Court as well as the 1st Appellate Court, that alone will not give rise to a cause of action to the plaintiffs to file a suit for partition. In fact even the 1st plaintiff's mother could not claim a right to file a suit for partition, since the properties were admittedly ancestral property. According to the plaintiffs, the suit property is an ancestral property and therefore, a married daughter or unmarried daughter of Krishnasamy Pillai was not entitled to any share in the suit property.

13. Though Ex.B1 – Koorchit has been disbelieved by both the Courts below, it does not straight away give rise to a presumption that there was no partition between the two sons of Krishnasamy Pillai. The fact that one of the sons who was allotted an extent of 1.44 acres, executed a Power of Attorney for the purpose of converting the said lands into a layout and also in view of Ex.B2 – Patta was issued in the name of Duraiswamy Pillai as early as on 13.06.1986 and subsequent to his demise, it has been mutated in the name of Shanthagunam Pillai



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on 12.05.1994. It would clearly evidence that the two brothers had divided the properties between themselves and they had been in enjoyment of separate portions allotted to them. When the 1st plaintiff's mother herself could not claim partition, it would not be open to her son, that too after 7 ½ years after her demise, to file a suit for partition.

14. The 1st Appellate Court has rightly held that even though the Ex.B1 – Koor Chit was inadmissible in the eye of law, the properties being ancestral properties, the mother of the plaintiffs herself did not have any pre-existing right to seek for partition and consequently in my considered view, the suit for partition was not maintainable and rightly dismissed.

15. I do not find any substantial question of law arising for consideration in the above Second Appeals. Consequently all the Second Appeals are dismissed, confirming the judgment and decree passed in A.S.No.72 of 2017 dated 20.12.2017 and A.S. No.145 of 2014 dated 20.12.2017 on the file of the Court of XV Additional Judge, City Civil Court, Chennai. No costs. Consequently connected miscellaneous petitions are closed.



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28.03.2024

Index :Yes/No
Internet :Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
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To

1. The XV Additional Judge
City Civil Court, Chennai.
2. The VI Assistant Judge
City Civil Court, Chennai.
- 3.The Section Officer
V.R.Section, High Court of Madras.

P.B.BALAJI, J.,

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