



S.A.Nos.246 & 247 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.Nos. 246 & 247 of 2013

S.A.No.246 of 2013

Chitra

.. Appellant

vs.

1. Rukmani
2. Srinivasan
- 3.K.M.Arunachalam
4. Annakodi
- 5.Subramani
6. Nirmaladevi
- 7.Selvi

..Respondents

Second Appeal filed under Section 100 of CPC against the judgment and decree dated 02.08.2011 made in Cross Appeal in A.S.No.102 of 2010 on the file of the Principal District Court, Erode modifying the judgment and decree dated 23.02.2010 made in O.S.No.123 of 2004 on the file of the Principal Sub-Court, Gobichettipalayam.

S.A.No.247 of 2013

Chitra

.. Appellant

vs.

1. K.M.Arunachalam
2. Rukmani
3. Seenivasan
4. Annakkodi



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5. Subramani
6. Nirmaladevi
7. Selvi

..Respondents

Second Appeal filed under Section 100 of CPC against the judgment and decree dated 02.08.2011 made in Cross Appeal in A.S.No.72 of 2010 on the file of the Principal District Court, Erode reversing the judgment and decree dated 23.02.2010 made in O.S.No.123 of 2004 on the file of the Principal Sub-Court, Gobichettipalayam.

For Appellant : Mr.Roshan Atiq
in both appeals

For Respondent : Mr.Titus Enock
for Mr.I.C.Vasudevan for R1
in both appeals

COMMON JUDGMENT

There was one Nalla Gounder. He had three sons, namely Eswara Gounder, Peruma Gounder and Kolandasamy Gounder. Kolandasamy Gounder married Rukmani and begot two girl children. They are the sole plaintiff Chitra and one Nirmala Devi. Kolandasamy Gounder's eldest brother Eswara Gounder married Annakodi. They had two sons namely Srinivasan and Subramani. Srinivasan was given in adoption to Kolandasamy Gounder and Rukmani, who in turn gave Nirmala Devi in adoption to Eswara Gounder and Annakodi.

2. Nalla Gounder and his three sons partitioned their ancestral property by way of a registered partition deed dated 08.07.1976. In this



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partition, Nalla Gounder took 'A' Schedule property, Eswara Gounder took 'B' schedule property, Peruma Gounder took 'C' schedule property and Kolandasamy Gounder took 'D' schedule property.

3. The property which came to Nalla Gounder under the partition deed dated 08.07.1976, under Ex.A6, termed as 'A Schedule' was given away by way of a 'WILL' under Ex.B1 to Kolandasamy Gounder. The 'WILL' is dated 07.04.1977. The eldest brother Eswara Gounder sold the 'B' schedule property that was allotted to him, under Ex.A6 to Kolandasamy Gounder. The sale deed is dated 13.06.1979. It is evidenced under Ex.A7. Insofar as 'C' schedule property which was given to Peruma Gounder, Peruma Gounder and Kolandasamy Gounder entered into an Exchange Deed under Ex.A8 dated 04.07.1984.

4. By virtue of this Exchange Deed, the ancestral property which was allotted to Peruma Gounder was exchanged with the ancestral property of Kolandasamy Gounder.

5. On 11.07.2000, Kolandasamy Gounder sold the properties that he obtained under Ex.B1 & Ex.A7 to his brother Eswara Gounder, who in turn sold the property to the fourth defendant K.M.Arunachalam on 25.05.2004. This document is evidenced under Ex.B6. This completes the narration for the item 1 of the schedule mentioned property.



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6. Insofar as Items 2 and 3 of the suit mentioned properties are concerned, they were allotted to Kolandasamy Gounder in the Partition Deed dated 08.07.1976 [Ex.A6]. It is not in dispute that Kolandasamy Gounder died in the year 2001. It is the specific case of the plaintiff that she was married on 01.02.1999. Seeking to enforce her right under Chapter II A of the Hindu Succession Act, 1956 which inserted Section 29A of the Hindu Succession Act, the plaintiff brought forth this suit for partition.

7. The learned trial Judge decreed the suit insofar as the 'D' schedule mentioned property which was granted to Kolandasamy Gounder under Ex.A6 but dismissed the suit insofar as the other items are concerned.

8. Aggrieved by the said judgment and decree, the plaintiff Chitra filed A.S.No.102 of 2010 and the second defendant Srinivasan [biological son of Eswara Gounder and Annakodi and adopted son of Kolandasamy Gounder and Rukmani] filed A.S.No.72 of 2010. A cross-appeal was preferred by the purchaser K.M.Arunachalam in A.S.No.72 of 2010. As all the three appeals arose out of the common judgment and decree in O.S.No.123 of 2004 dated 23.02.2010 on the file of the Principal Sub-ordinate Judge, Gobichettipalayam, learned Principal District Judge at



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Erode heard them together.

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9. By a judgment dated 02.08.2011, he allowed A.S.No.72 of 2010 granting 1/3rd share in the properties covered under Ex.B1-WILL to the son Srinivasan, he allowed the cross appeal and granted a decree with regard to the properties mentioned under Ex.A6, items 2 and 3, and dismissed A.S.No.102 of 2010 holding that the plaintiff will be entitled only to 1/3rd share in the property that Kolandasamy Gounder had obtained by virtue of the “WILL” executed by Nalla Gounder in favour of Kolandasamy Gounder. Against these two appeals, the present second appeals have been presented.

10. When the matter came up before this Court on 19.03.2013, notice regarding admission had been ordered by the Court. Subsequently by an order dated 26.02.2019, the second appeals were admitted on the following substantial questions of law:

“1) Whether the Court below erred in law in dismissing the suit for partition filed by the plaintiff notwithstanding the effect of the amendment to the Hindu Succession (Amendment) Act 39 of 2005 w.e.f 09.09.2005 in the absence of any final partition between the sharers prior to 24.12.2004?

2. Whether the Court below have committed an error in non suiting the plaintiff by misusing the date of death of her father on 30.04.2001 even though there was no partition among



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the family members till the date of the suit?

3. Whether the findings of the first Appellate Court for holding the suit property as that of his self acquired property is sustainable when the defendants have neither placed nor proved any independent source of income for Kolandasamy to purchase the suit property except the source of income from the ancestral nucleus?

4) Whether the Courts below have rightly appreciated the nature of, and entitlement of the parties to the suit under Ex.A7=Ex.B2, Ex.A8=Ex.B3 and Ex.A7 and Ex.B1 in view of the relationship of the parties and their legal rights to get share in the suit property?

11. Heard Mr.Roshan Atiq for the appellant and Mr.Titus Enock, for Mr.I.C.Vasudevan for the respondents. Mr.Srinivasan, the appellant in A.S.No.72 of 2010, though had been served has not entered appearance in the appeal.

12. The narration of the aforesaid facts would go to show that the ancestral property which had been derived by Kolandasamy Gounder are shown as Item No.1 of the suit schedule mentioned property. The total extent that has been shown is about 4.18 acres in old S.F.Nos.4A, 4B, 5A and 5B which correspond to new S.F.No.45/3. As per Ex.A6, each of the family members i.e., Nalla Gounder, Eswara Gounder,



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Peruma Gounder and Kolandasamy Gounder were given 1.045 acres each. 'A' schedule property which came to Nalla Gounder was bequeathed by him by way of a "WILL" under Ex.B1 in favour of Kolandasamy Gounder. Similarly, Kolandasamy Gounder purchased the share that fell under 'B' schedule property of Eswara Gounder on 13.06.1979.

13. I have to point out no evidence has been let in by the plaintiff in order to prove that the ancestral nucleus in the hands of Kolandasamy Gounder was sufficient for him to purchase the property under Ex.A7. Therefore, 'A' schedule property that came to Nalla Gounder and 'B' schedule property which came to Eswara Gounder had been parted away under Exs.B1 and B7 dated 07.04.1977 and 13.06.1979 respectively. These properties are self-acquisitions in the hands of Kolandasamy Gounder.

14. Kolandasamy Gounder having enjoyed for a couple of decades alienated the same in favour of his brother Eswara Gounder on 11.07.2000. This sale has not been challenged by the plaintiff in the present suit. On purchase from Kolandasamy Gounder, Eswara Gounder and the members of his family, alienated this property in favour of 3rd respondent herein, Arunachalam by way of a sale dated 25.05.2004



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under Ex.B6. Therefore, the self-acquired property which came to the share of Kolandasamy Gounder stood alienated first to Eswara Gounder and thereafter to Arunachalam. Consequently, the suit necessarily has to fail insofar as it seeks partition of the properties which are covered under Ex.B1, Ex.A7, Ex.B5 and Ex.B6 i.e., the sale of self-acquired properties of Kolandasamy Gounder which he obtained by sale from his brother and by a WILL from his father, have to be treated as self-acquisitions and therefore, he was perfectly entitled to alienate the same. Hence, the suit for partition insofar as those properties are concerned is not maintainable.

15. Now turning to the point in issue with respect to the shares that came to Kolandasamy Gounder under Ex.A6 and the property which was exchanged under Ex.A8 are concerned, since Kolandasamy Gounder had legal heirs, namely Chitra and Srinivasan, the property does not lose the character of ancestral property. Though Srinivasan came in adoption, he would be entitled to all the benefits that a son will be entitled, as the adoption is not in dispute. The lower appellate Court fell in error in holding that the plaintiff will not be entitled to the benefit of Tamil Nadu Amendment Act Section 29A to the Hindu Succession Act by holding that the plaintiff had not pleaded the date of her marriage.

16. A causal glance of the plaint, in particular paragraph 4 would

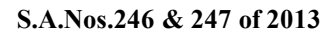


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disclose that the plaintiff had specifically pleaded that she married on 01.02.1999. There being ancestral property in the hands of the family and the State legislation having granted her the right in case she was unmarried on the date of amendment, the plaintiff is naturally entitled to succeed. Therefore, the finding of the lower appellate Court that the plaintiff not having pleaded the date of marriage is not entitled to the benefit of the legislation has to be reversed and accordingly it is reversed.

17. Apart from that, the learned Appellate Judge allowed the appeal on the ground that as Kolandasamy Gounder died in the year 2001, plaintiff is not entitled to the benefit of the amendment made to Section 6 of the Hindu Succession Act which came into effect on and from 09.09.2005. According to him, since Kolandasamy Gounder died before the legislation, the girl child will not be entitled to the benefit of the legislation.

18. The very same issue was a subject matter of reference in *Vineeta Sharma Vs. Rakesh Sharma & Others* reported in **2020 (5) CTC 302**. The three Judge Bench of the Supreme Court held that since the right in coparcenary is by birth, it is not necessary that the father coparcener should be alive on 09.09.2005. This answer is clarified by



Supreme Court in Paragraph Nos.55, 75 and 78 of *Vineet Sharma* case and the same read as follows:

“55. The amended provisions of [section 6\(1\)](#) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. [Section 6\(1\)\(a\)](#) makes daughter by birth a coparcener "in her own right" and "in the same manner as the son." [Section 6\(1\)\(a\)](#) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. [Section 6\(1\)\(b\)](#) confers the same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9.9.2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20.12.2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated. “

“75. A finding has been recorded in Prakash v. Phulavati that the rights under the substituted section 6 accrue to living daughters of living coparceners as on 9.9.2005 irrespective of



when such daughters are born. We find that the attention of this Court was not drawn to the aspect as to how a coparcenary is created. It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends. Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of "living coparcener", as [laid down in Prakash v. Phulavati](#). In our opinion, the daughters should be living on 9.9.2005. In substituted [section 6](#), the expression 'daughter of a living coparcener' has not been used. Right is given under [section 6\(1\)\(a\)](#) to the daughter by birth. Declaration of right based on the past event was made on 9.9.2005 and as provided in [section 6\(1\)\(b\)](#), daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in [section 6\(1\)\(c\)](#). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of [section 6\(1\)](#) leave no room to entertain the proposition that coparcener should be living on 9.9.2005 through whom the daughter is claiming. We are unable to be in unison with the effect of deemed partition for the reasons mentioned in the latter part. “

“78. In Danamma, it is pertinent to mention that Gurulingappa, propositus of a Hindu joint family and the father of living daughter coparcener died in 2001, before the [Amendment Act, 2005](#) came into force, leaving behind two daughters, son and a widow. Daughters were given equal rights



by this Court. We agree with certain observations made in paras 23 and 25 to 27 (supra) but find ourselves unable to agree with the earlier part approving the decision in [Prakash v. Phulavati](#) and the discussion with respect to the effect of the statutory partition. As a matter of fact, in substance, there is a divergence of opinion in [Prakash v. Phulavati and Danamma](#) with respect to the aspect of living daughter of a living coparcener. In the latter case, the proposition of the living daughter of a living coparcener was not dealt with specifically. However, the effect of reasons given in para 23 had been carried out to logical end by giving an equal share to the daughter. “

19. Therefore, the finding of the lower appellate Court being contrary to law laid down by the Supreme Court in **Vineeta Sharma's** case, this appeal has to be allowed. Consequently, the following order is passed:

i) The suit in O.S.No.123 of 2004 shall stand decreed insofar as the properties that came to the hands of Kolandasamy Gounder under 'D' schedule to Ex.A6 and Schedule II under Ex.A8.

ii) The suit shall stand dismissed insofar the properties which fell to Kolandasamy Gounder under Ex.B1 & Ex.A7. In other words, the purchase made by Mr.Arunachalam is upheld



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and the plaintiff will not have any right over those properties.

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iii) Insofar as Items 2 and 3 are concerned, they are covered under 'D' schedule of Ex.A6 which are admittedly ancestral properties as seen from the contents of the document. Therefore a preliminary decree is passed that the plaintiff is entitled to 4/9th share, as would be Srinivasan the adopted son of Kolandasamy Gounder. The mother Rukmani will be entitled to the remaining share of 1/9th share.

20. In fine, this second appeal is allowed in part. The judgment and decree of the learned Principal District Judge at Erode in A.S.No.72 of 2010, A.S.No.102 of 2010 and cross appeal dated 02.08.2011 are set aside. The suit for partition is decreed with the plaintiff being entitled to 4/9th share of the suit schedule mentioned properties in exclusion of the properties purchased by Arunachalam, the third defendant. Insofar as the third defendant is concerned, the suit shall stand dismissed. The parties being close relatives, they shall bear their own costs.

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Index:Yes/No

Neutral Citation:Yes/No

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V. LAKSHMINARAYANAN, J.

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To

1. The Principal District Court
Erode
2. The Principal Sub-Court
Gobichettipalayam.

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