



S.A.No.624 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 20.03.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.624 of 2013 &
Cross Objection No.22 of 2024

In S.A.No.624 of 2013

A.Siddhan(died)

2. Vidya

3. Minor Dharani Priya

4. Minor Shobika

5. Minor Sugantha

... Appellants

(Minor respondents 3 to 5
represented by their mother and
natural guardian S.Vidya)

-Versus-

1.Ramayee

2.Pappa

3.Lakshmi

4.Mariyaayee

5.Palaniammal

6.Alamelu

7.Dhanam

8.Dhanapal

9.Palanivel

10.Sasikala

11.Manimegalai

... Respondents

(Appellants 2 to 5 and
respondents 10 & 11 brought
on record as legal heirs of the



S.A.No.624 of 2013

deceased 1st appellant.)

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Appeal filed under Section 100 of C.P.C. against the judgement and decree dated 27.12.2011 made in A.S.No.81 of 2011 on the file of the Additional District Court, Salem, Fast Track Court I, Salem – modifying the Judgment and decree dated 22.07.2011 made in O.S.No.516 of 2010 on the file of the II Additional Sub Court, Salem.

For Appellants : *Mr.T.Murugamanickam,*
Senior Counsel,
for Mrs.Zeenath Begum

For Respondents : *Mr.T.M.Hariharan*
1 to 3

For Respondents : *Given up*
4 to 9

For Respondents : *Mr.T.Balaji*
10 & 11

In Cros.Obj.No.22 of 2014

1.Ramayee

2.Pappa

3.Lakshmi

... Cross Objectors

-Versus-

A.Siddhan(died)

2. Vidya

3. Minor Dharani Priya

4. Minor Shobika

5. Minor Sugantha

... Appellants



S.A.No.624 of 2013

(Minor respondents 3 to 5
represented by their mother and
natural guardian S.Vidya)

6.Mariyaayee

7.Palaniammal

8.Alamelu

9.Dhanam

10.Dhanapal

11.Palanivel

12.Sasikala

13.Manimegalai

... Respondents

(Appellants 2 to 5 and
respondents 10 & 11 brought
on record as legal heirs of the
deceased 1st appellant.)

Cross Objection filed under Order 41 Rule 22 read with Order 42 of
Code of Civil Procedure against the judgement and decree of the Additional
District Court, Salem, Fast Track Court I, Salem dated 27.12.2011 in
A.S.No.81 of 2011 partly reversing the Judgment and decree of the II
Additional Sub Court, Salem dated 22.07.2011 in O.S.No.516 of 2010.

For Cross Objectors : Mr.T.M.Hariharan

*For Respondents : Mr.T.Murugamanickam,
2 to 5 Senior Counsel,
for Mrs.Zeenath Begum*

*For Respondents : Given up
6 to 11*

*For Respondents : Mr.T.Balaji
12 & 13*

JUDGMENT



S.A.No.624 of 2013

The present second appeal and the cross objection arises out of the judgment and decree of the court of Additional District Judge, Fast Track Court-I at Salem in A.S.No.81 of 2011 dated 27.12.2011 in reversing the judgment and decree of the court of II Additional Subordinate Judge, Salem in O.S.No.516 of 2010 dated 22.07.2011.

2. For the sake of convenience, the parties will be referred to as their ranks in the suit.

3. O.S.No.516 of 2010 is a suit for partition. The claim of the plaintiffs is that their father/Arumugha Gounder married twice. Through his first wife/Palaniammal, he begot a child by name Kanjamalai Gounder. Kanjamalai Gounder has two daughters namely Mariyayee and Palaniammal who are the second and third defendants. Arumugha Gounder married one Vellaiammal for the second time and through her, he begot a son viz., Siddhan/the first defendant and five daughters viz., Ramayee, Pappa, Lakshmi, Alamelu and Dhanam. The plaintiffs are Ramayee, Pappa and Lakshmi.

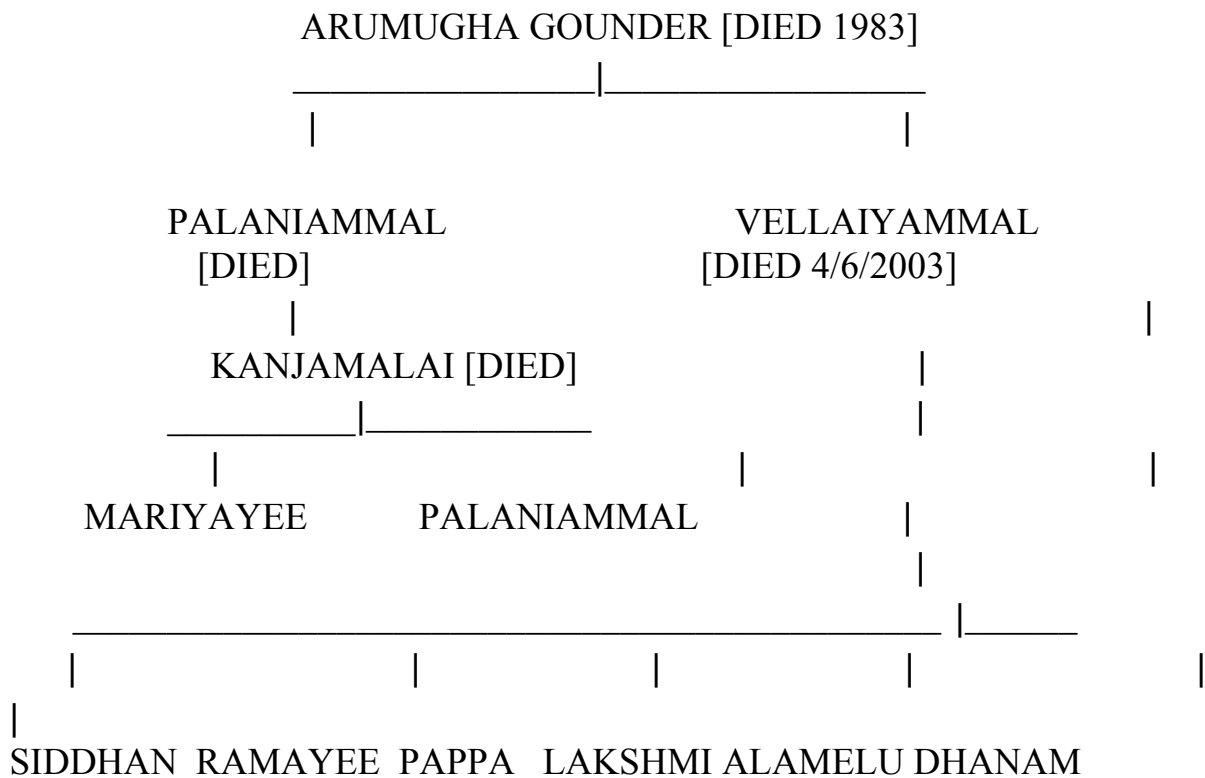
4. In the written statement, the defendants pleaded that the property had



S.A.No.624 of 2013

been alienated in favour of Dhanapal and Palanivel and therefore, they were impleaded as defendants 6 and 7, pursuant to the order passed in I.A.No.1267 of 2008 dated 23.06.2009.

5. The Genealogy chart of the family is as hereunder:



6. There are two items of the property. Item I of the property is the purchase made by Vellaiyammal in her name on 27.11.1948. The sale deed has been exhibited under Ex.A1. Item II consists of five items which are ancestral



S.A.No.624 of 2013

properties. The plaintiffs claimed that Vellaiyammal died intestate on 04.06.2003 and therefore, succession opened. Being the legal heirs of Vellaiyammal, the plaintiffs claimed 1/6th share each in the item I of the suit property and 1/7th share each in the item II of the suit property.

7. On service of summons, the first defendant entered appearance and filed a written statement. It is pertinent to point out that the defendants 2 and 3 entered appearance and filed their statement but remained exparte. Defendants 6 and 7 though served, did not contest the suit, and hence, they also remained exparte.

8. The case of the first defendant/Siddhan is that there was an oral family arrangement between the Kanjamalai Gounder and Siddhan, the sons of Arumugha Gounder and in the said family arrangement, the property purchased by Vellaiyammal was allotted to the share of Siddhan. After the property had been allotted to him, he had sold a portion of the property on 29.08.1986 in favour of the fourth defendant Alamelu who in turn sold the property in favour of the fifth defendant/ Dhanam on 27.05.1988. According to him, since there was no property in the hands of Vellaiyammal, when she passed away on



S.A.No.624 of 2013

04.06.2003, the property is incapable for partition and hence, the suit for partition is not maintainable.

9. Insofar as items 1 and 2 of Item II of the suit property is concerned, Siddhan would state that Arumugha Gounder together with his father/Muthu Gounder, Kanjamalai Gounder and representing him as a minor sold the property in favour of Ramasamy Pillai and others on 04.05.1959. He would state that he purchased this property from the said Ramasamy Pillai and others by way of Ex.B3 and hence, the property by virtue of sale under Ex.B9 stopped being a joint family property. According to him, items 4 and 5 are a part of items 1 and 2 of item II of the suit property and therefore, the same logic would apply. Insofar as item 3 of the IInd item of the suit property is concerned, he would plead that through a muchalika, this property was allotted to the share of Kanjamalai Gounder and he took the property on lease from Kanjamalai Gounder under Ex.B4 on 21.09.1979. Therefore, the plea of defendant is as none of the properties are ancestral nature, the plaintiffs are not entitled to any share in Item II of the suit schedule mentioned property.

10. On the basis of these pleadings, the learned II Additional Subordinate



S.A.No.624 of 2013

Judge framed the following issues:

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“1) Whether the 1st item of property was given to the 1st defendant by the mother in the family arrangement in the year 1985?

2) Whether the 2nd item of the suit property is ancestral property of the plaintiffs and the defendants?

3) Whether the plaintiffs are entitled to 3/6th share in the 1st item of the suit property?

4) Whether the plaintiffs are entitled to 3/7th share in the suit 2nd item of the property?

5) To what reliefs the plaint are entitled to?”

11. On the side of the plaintiffs, the third plaintiff entered the witness box and deposed as PW1 and marked Ex.A1 to Ex.A8. On the side of the defendants, the first defendant examined himself as DW1 and marked Ex.B1 to B12. Ex.B10 corresponds to Ex.A1 i.e., the purchase made by Vellaiyammal from one Sambamurthy Chettiar.

12. On a consideration of oral and documentary evidence, the learned trial judge came to the conclusion that the plaintiffs are not entitled for a decree of partition and therefore, dismissed the suit.



S.A.No.624 of 2013

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13. Aggrieved by the same, an appeal was preferred before the learned Additional District Judge, Fast Track Court-I, at Salem. The appeal was taken on filed in A.S.No.81 of 2011.

14. The learned Appellate Judge held that as the purchase was made by Vellaiyammal under Ex.A1, there cannot be a family arrangement for the said property and the mere silence of Vellaiyammal with respect to Ex.B2 and Ex.B3 would not take away her right and therefore, granted a decree for partition with respect to Item I. Insofar as Item II is concerned, the learned judge came to the conclusion that as the family had alienated the property under Ex.B9, the property lost the character of being a joint family property and therefore, dismissed the suit with respect to item II of the suit property.

15. Feeling aggrieved by the grant of partition decree with respect to item I, S.A.No.624 of 2013 has been preferred before this Court. Cross Objection No.22 of 2024 has been preferred as against the denial of partition decree with respect to Item II of the property.



S.A.No.624 of 2013

16. Being connected matters, they were clubbed together and heard by me today.

17. This second appeal was admitted on the following substantial question of law on 21.08.2013:

“Whether the Lower Appellate Court was right in disbelieving the family arrangement pleaded by the appellant, when the appellant had sold the property mentioned as first item in the suit schedule in favour of his sister-fourth defendant, under Ex.B1 who in turn sold the property to the fifth defendant and no objection was raised regarding the sale of the property by the appellant during the lifetime of the mother?”

18. I heard Mr.T.Murugamanickam for Mrs.Zeenath Begum for the appellants in S.A.No.624 of 2013 who are the respondents 2 to 5 in Cros.Obj.No.22 of 2024, Mr.T.M.Hariharan for the respondents 1 to 3 in S.A.No.624 of 2013 who are the cross objectors in Cros.Obj.No.22 of 2024 and Mr.T.Balaji for the respondents 10 & 11 in S.A.No.624 of 2013 who are the respondents 12 & 13 in Cros.Obj.No.22 of 2024.



S.A.No.624 of 2013

19. The facts narrated above would make it clear that insofar as item I is concerned, the same was purchased by the mother of Plaintiffs 1 to 3 and the defendants 1, 4 & 5 from one Sambamurthy Chettiyar. She had purchased the property under Ex.A1 which is equivalent under Ex.B10 on 27.11.1948. Therefore, this is an acquisition which took in the name of Vellaiyammal.

20. In order to show that Vellaiyammal had agreed to the family arrangement, whereby this property was allotted to Siddhan, there is absolutely no evidence. Therefore, the property having stood in the name of Vellaiyammal, she was an absolute owner of the same. At best, the children of Vellaiyammal viz., the defendants 1, 4 & 5 only had *spes successionis* over the property. Therefore, the alienation of the said property under Ex.B1 by Siddhan in favour of Alamelu and under Ex.B2 by Alamelu in favour of Dhanam does not bind Vellaiyammal herself and consequently, her other legal heirs.

21. The alienation under Ex.B1 and Ex.B2 cannot carry any weight at all because on the date of execution of the sale deed, the original owner Vellaiyammal was alive and therefore, nothing could have been conveyed under the said deed. The fact that Vellaiyammal remained quiet despite the



S.A.No.624 of 2013

execution of Ex.B1 and Ex.B2 also does not help the defendants. Vellaiyammal was the true owner of the property and therefore, the fact that somebody had dealt with her property without her knowledge does not confer any rights on the purchasers. There is no dispute that Vellaiyammal had passed away intestate and therefore, Hindu Succession Act will operate on her death on 04.06.2003. Consequently, the findings of the lower appellate court that the plaintiffs are not entitled to a share in item I of the suit schedule property does not require any interference.

22. Insofar as the cross objection is concerned, it relates to item II of the suit schedule property.

23. Mr.T.M.Hariharan would argue that sale deed executed by Muthu Gounder, Arumugha Gounder, Kanjamalai Gounder and Siddhan is a sham and nominal document in favour of Ramasamy Pillai and others and this factum had been admitted by Siddhan in his cross examination. Therefore, he would plead that item 1 and 2 of the IInd item of the suit property continue to have joint family property status.



S.A.No.624 of 2013

24. The law that prevailed during the relevant point of time of alienation in 1959 is that the daughters did not have a share in the joint family property.

Therefore, the joint family which consisted of vendors, viz., grandfather, father, stepbrother and the first defendant, had alienated the property in favour of Ramasamy Pillai and others.

25. I am not willing to go into the aspects i.e., (i) whether the said alienation was for family necessity or otherwise or (ii) whether it is a sham and nominal because Ramasamy Pillai and others have not been made parties to the suit. I cannot give a finding that the document is a sham and nominal, in the absence of a person who has benefited under the document viz., Ramasamy Pillai. Hence, I have to assume that the document had been properly executed and the admission made by Siddhan, who would benefit from such a declaration that the document is sham and nominal, especially after having alienated the same, is of absolutely no use to the plaintiffs. Had Ramasamy Pillai been impleaded as a party and he had conceded to the factum that it is a sham and nominal document, things would have been different. The plaintiffs did not do so. Therefore, I am not willing to probe into that issue.

26. The fact that Ramasamy Pillai had purchased the property on



S.A.No.624 of 2013

04.05.1959 is not in dispute. The further fact that $\frac{1}{2}$ share of the property was repurchased by Siddhan under Ex.B3 on 02.09.1964 is also not in dispute.

27. A joint family property, when alienated in favour of a third party, loses the character of joint family status on such alienation. Thereafter, on that property being repurchased by a coparcener and it becomes his self acquisition and cannot be treated as an acquisition on behalf of the family. I am not able to lay down this as the statement as a binding proposition. There could be cases where evidence is let in to show that the purchase was made by coparcener from and out of the funds of coparcenery which existed. Fortunately for me, no such evidence is available on record. Therefore, I have to hold that the repurchase of items 1 and 2 of the suit IInd item by the first defendant from Ramasamy Pillai and others has lost its character of joint family status and by virtue of the repurchase, it has become the self-acquisition of Siddhan. Hence the argument of Mr.T.M.Hariharan with respect to items 1 and 2 of the suit IInd item of the joint family deserves rejection and accordingly, rejected.

28. Insofar as item 3 of the suit IInd item is concerned, it is the case of the first defendant that the oral family arrangement between himself and



S.A.No.624 of 2013

stepbrother Kanjamalai Gounder, this property had been divided equally between themselves and subsequently Kanjamalai Gounder executed an unregistered lease deed under Ex.B4. Kanjamalai Gounder took possession of entire extent of item 3 of suit Item II.

29. Mr.T.M.Hariharan would submit that the lease deed under Ex.B4 is inadmissible in evidence as unregistered and unstamped. Here also, I am not willing to go into the debate as to Ex.B4 is admissible or not. Suffice it to say, Ex.B4 is an unregistered document and after the amendment of Section 6 of Hindu Succession Act, the daughter is entitled to claim a share in the property on and from 09.09.2005, if a property has not been partitioned by way of registered document or on passing of a final decree.

30. This position has been settled by constitution bench of Supreme court in *Vineeta Sharma vs. Rakesh Sharma & Others, (2020) 9 SCC 1* and as rightly cited by Mr.T.M.Hariharan reiterated in *Prasanta Kumar Sahoo and others vs. Charulata Sahu and others, (2023) 9 SCC 641*. The position of law laid down by the Supreme Court is that unless and until a coparcener is able to show that the joint family property had been partitioned by way of a registered



S.A.No.624 of 2013

document or by way of final decree in a partition suit, the properties will be liable to be partitioned in the suit presented by the daughter or any other coparcener.

31. That position of law prevails in the present case. I necessarily have to ignore Ex.B4 and grant a decree for partition with respect to item 3 of suit IInd item. Insofar as items 4 and 5 of suit IInd item are concerned, it is the case of the appellants/respondents 2 to 5 in the cross objection that he had alienated the property in favour of the 7th defendant. Though this plea has been taken in the written statement, alienation made by him has not been substantiated by way of filing any document. Unfortunately for the 7th defendant, even though he had been impleaded as a party, as stated above, he has not produced his sale deed. Therefore, I am unable to conclude that it is the same property that had been purchased by Siddhan under Ex.B3 from Ramasamy Pillai and others.

32. In the light of the above discussion, the cross objection succeeds in part i.e., insofar as items 1 and 2 of suit item II is concerned, it is dismissed and insofar as items 3, 4 and 5 of suit item II is concerned, the suit is decreed.



S.A.No.624 of 2013

33. In fine, the substantial question of law is answered against the appellant/first defendant and in favour of the respondents 1 to 3. Accordingly, the second appeal stands dismissed. Cross Objection stands partly allowed. The suit in O.S.No.516 of 2010 on the file of the learned II Additional Subordinate Judge at Salem shall stand decreed for 1/6th each share with respect to the suit item I and 1/7th each with respect of items 3 to 5 of suit item II. Costs thoroughout.

20.03.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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S.A.No.624 of 2013

To

- 1.The Additional District Court, Salem, Fast Track Court I, Salem
- 2.The II Additional Sub Court, Salem.



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S.A.No.624 of 2013

V.LAKSHMINARAYANAN, J.

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S.A.No.624 of 2013

20.03.2024