



IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.441 of 2002
and
Cros.Obj.No.80 of 2002

Judgment reserved on 23.07.2024	Judgment pronounced on 03.10.2024
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1.Meenambal
2.Thavau Vellaithambi
3.Kanagasundaram
4.Chithra
5.Hema Dayalan
6.Sundari Jawahar

....Appellants

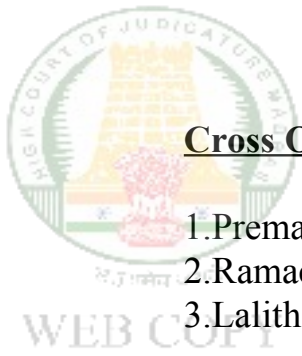
...Vs...

1.Shantha
2.Soundaravalli (Deceased)
3.Prema
4.Ramachandran (Died)
5.Lalitha
6.Dayalan Rajesh
7.Mohan Rajesh
8.Vijayan Rajesh
9.Gowri Pandianathan

[RR6 to RR9 brought on record as LR's of deceased R2
vide order dated 15.12.2015 made in memo in A.S.No.441 of 2002]
10.Sundarathammal Dharmachatiram charities

Represented by its Trustees
R10 is impleaded, vide order of Court dated 09.07.2024
made in C.M.P.No.1109 of 2016 in A.S.No.441 of 2002 (TKRJ)]

... Respondents



Cross Objection No.80 of 2002:-

- 1.Prema
- 2.Ramachandran (deceased)
- 3.Lalitha

...Cross Objectors / Defendants 8 to 10

Vs.

- 1.Meenambal
- 2.Thavu Vellaithambi
- 3.Kanagasundaram
- 4.Chitra
- 5.Hema Dayalan
- 6.Sundari Jawahar
- 7.Shantha
- 8.Soundaravalli (deceased)
- 9.Dayalan Rajesh
- 10.Mohan Rajesh
- 11.Vijayan Rajesh
- 12.Tmt.Gowri Pandianathan

[Respondents 9 to 12 brought on record as LR's of deceased
8th respondent vide order of Court dated 21.07.2010 made in
CMP.Nos.1106 to 1108 of 2009 in Cross.Objn.No.80 of 2002
in A.S.No.441 of 2002]

....Respondents

Prayer: Appeal Suit filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 13.08.2001 made in O.S.No.110 of 1999, on the file of learned Additional Subordinate Judge, Mayiladuthurai.

Cross Objection filed against the judgment and decree dated 13.08.2001 made in O.S.No.110 of 1999, on the file of learned Additional Subordinate Judge, Mayiladuthurai.



For Appellants : Mr.N.C.Ashok Kumar
For R1 : Mr.A.Muthukumar
For R3&R5 : Mr.K.V.Sundarajan
For R7&R9 : Mr.S.Sethuraman
For R15 : Mr.V.Raghavachari, Senior Counsel
For Mr.B.Ramkumar

J U D G M E N T

The defendants 1 to 6 are the appellants herein.

2. The first respondent original plaintiff Santha filed a suit in O.S.No.110 of 1999 seeking partition of the suit property and for separate possession and partition allotment of share 1/5th share in the suit property.

3.Written statement of D1, D4 and D5 adopted by D3 was filed.

4. The above appeal arises against the judgment and decree passed in O.S.No.110 of 1999 on the file of learned Additional Subordinate Judge, Mayiladuthurai. The defendants 1 to 6 are the appellants.

5. The brief facts arising for the consideration of the appeal suit are as under:-

The first respondent is the plaintiff. The respondents 6 to 9 are the legal representatives of the deceased second respondent, who is the seventh



defendant in the suit. The third respondent is the 8th defendant. The 4th defendant, who was the 9th defendant had died during the pendency of the appeal and the 5th respondent was recorded as the legal representatives of the 4th respondent.

6. The plaintiff filed a suit in O.S.No.110 of 1999 to declare that she is entitled to 1/5th share in the suit property and for separate possession in respect of her 1/5th share and for other reliefs.

7. As per plaint averments, according to the plaintiff, she and the defendants 7 and 8 are the daughters of one Kanagasapa Nadar and Thirupurasundari Ammal. The said Kanagasabai Nadar died intestate on 22.05.1973 and his wife died on 28.11.1989. The said Kanagasabai Nadar and Thirupurasundari Ammal had one son and four daughters viz., Vellaithambi Nadar (son) and daughters viz., Shantha (plaintiff), Soundaravalli (7th defendant), Prema (8th defendant) and Sarojini, who had died prior to the filing of the suit. The defendants 9 and 10 are the legal representatives of the deceased Sarojini. The 9th defendant had died on 06.07.2008 leaving behind the 10th defendant as his surviving legal representative.



8. The plaint proceeds further Vellaithambi Nadar, the son of Kanagasabai Nadar had died on 05.02.1996 leaving behind the defendants 1 to 6 as his legal representatives. The 7th defendant Soundaravalli had died on 24.11.2008 leaving behind the respondents 6 to 9 as her legal representatives.

9. According to the plaintiff, Kanagasabai Nadar was allotted the suit property in the suit in O.S.No.655 of 1921 on the file of High Court of Madras by decree dated 25.04.1941. They are the absolute property of the above Kanagasabai Nadar and the income derived from half of the said property is to be spent for the performance of the Charitable Trust. After the death of Kanagasabai Nadar, Vellaithambi Nadar was looking after the affairs of the family and managing the estate including the “ Chatram Dharmam”, assisted by his mother.

10. After issuing legal notice, she claimed 1/5th share in the property and also denied that she never relinquished her right and interest in the suit property as claimed by the defendant in the reply notice and also denied that Vellaithambi Nadar has never prescribed title by adverse possession. She is specifically pleaded that the plaintiff never released or relinquished or interest in the suit property and since her mother



Thirupurasundari Ammal was alive, she did not choose to demand partition during the life time of mother after her death she filed the suit.

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11. Written statement of D1, D3 to D5 filed and the sum and substance are as under:-

(a) According to the defendants, the suit properties were allotted to Kanagasabai Nadar by the decree dated 25.04.1941 in O.S.No.655 of 1921 on the file of High Court of Madras. After the death of Kanagasabai Nadar, his only son Vellaithambi Nadar was in possession and enjoyment of the property. Since the marriages of the plaintiff, defendants 8, 9 and 10 were celebrated, spending huge money, they relinquished their rights in the suit property and in the year 1973 itself, they gave a letter to that effect in favour of Vellaithambi Nadar. By virtue of the relinquishment letter, the said Vellaithambi Nadar was enjoying the property as absolute owner till his death i.e., in the year 1996. Vellaithambi Nadar also effected the change of name in his favour in the patta and the property tax assessment records.

(b) From 1973 to 05.02.1996, the said Vellaithambi Nadar did not share the income from the suit property with his sisters. He was enjoying the property as absolute owner of the same. Since Vellaithambi Nadar was enjoying the property from 1973 to 1996 with the knowledge of sisters, he had prescribed title by adverse possession



(c) The plaintiff cannot claim any right in the suit property as a co-sharer. Since the plaintiff failed to claim any right for the past 27 years, the claim now made by her is barred by limitation. After the death of Vellaithambi Nadar in the year 1996, the defendants 1 to 6 are enjoying the property as the legal heirs of Vellaithambi Nadar.

(d) Since the plaintiff, the other sisters of Vellaithambi Nadar and Thirupurasundari Ammal have relinquished their rights in respect of the suit property, Vellaithambi Nadar had effected mutation of records in his name. The suit property was not enjoyed jointly by the plaintiff and the defendants 1 to 6. There is no cause of action for filing of the suit. The plaintiff got married in the year 1953 and living with her husband. She never enjoyed the suit property jointly along with the defendants 1 to 6.

(e) Further stated that pursuant to the release deed and letter of relinquishment, the Vellaithambi Nadar has effected mutation of records in the revenue and mortgage property made several improvements put up several constructions and converted the lands into Thope and also repaid various trust in the property.

(f) It is further case of the defendant in the written statement that in the decree dated 24.11.1943, passed in O.S.No. 39 of 1942, half of the suit properties and half of the income derived from the shops were allotted for charitable purpose. Only the remaining half of the suit properties and the half



of the income derived from the shops were allotted to Kanagasabai Nadar and his legal heirs absolutely. Since half of the properties were allotted for charitable purpose, the plaintiff cannot claim right in those properties.

Therefore the claim made by the plaintiff in respect of the properties which were allotted for the charitable purpose, cannot be partitioned. In these circumstances, the defendants prayed for dismissal of the suit.

(g)The defendants D8 to D10 have filed a separate written statement sailing with a plaintiff and claimed that they are jointly entitled to D9 and D10 are jointly entitled to 1/5th share while 8th defendant is entitled for 1/5th share.

12. Before the trial Court, on the side of the plaintiff, the plaintiff was examined as P.W.1 and two documents viz., Exs.A1 and A2 were marked. On the side of the defendants, three witnesses were examined and 22 documents Exs.B1 to B22 were marked.

13. Based upon the both oral and documentary evidence, the trial Court had come to a conclusion that the plaintiff is entitled for a preliminary decree of partition only to the extent of 1/20th share and defendants 7 to 10 are entitled to 1/20th share each in the entire suit property.

14. Aggrieved by the preliminary decree passed by the trial Court, the defendants 1 to 6 have filed the above appeal and as against disallowed portion, I find there is a Cross Objection No.80 of 2002 is filed.



C.M.P.No.1109 of 2016 is filed to raise the additional grounds.

15. By an order dated 02.02.2016, the appeal was dismissed after hearing the rival submissions.

16. Pending appeal, C.M.P.No.1109 of 2016 was filed to implead 15th respondent in the Miscellaneous Application as the 10th respondent in the appeal namely the “Thavasimuthu Nadar's wife Sundarathammal Dharma Chathiram and Charitable Trust” as a necessary party to the appeal. Both the C.M.P as well as Appeal Suit was dismissed on 2.2.2006. They preferred an appeal to the Hon'ble Supreme Court.

16. By an earlier order dated 04.07.2024, the following order was passed by this Court.

“ 2. By an order dated 13.02.2024, the Hon'ble Supreme Court in Civil Appeal Nos.2163-2165 of 2024 has passed the following order:-

“ Be that as it may, we are inclined to set aside the impugned order. Since the High Court has not gone into the merits, but has merely held that the Trust is also entitled to be heard as a party Respondent.

The impugned order is accordingly set aside to be heard afresh, which would mean hearing of A.S.No.441 of 2002 and Cross Objection No.80 of 2002 after deciding the petition filed in C.M.P.No.1109 of 2016. Hence, the matter stands remitted back to the High Court.

We request the High Court to decide the petition filed in C.M.P.No.1109 of 2016 by first issuing notice to the proposed respondent, namely, Sundarathammal Dharamachathiram and Charitable Trust and after deciding the said application, the Appeal and the Cross Objection ought to be taken up to be decided.”

3. After the orders of the Hon'ble Supreme Court remanding both C.M.P.No.1109 of 2016 and A.S.No.441 of 2002 along with Cross.Obj.No.80 of 2002, the matter is



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posted before this Court today.

4. Mr.B.Ramkumar, learned counsel appearing for R15 in C.M.P.No.1109 of 2016 and proposed 10th respondent in A.S.No.441 of 2002 made endorsement in the court bundle that he has no objection for allowing C.M.P.No.1109 of 2016. It is represented that the 9th defendant in the suit viz., Ramachandran died without legal heirs and hence, the present party has to be added as defendant No.10 in the suit.

5. A.S.No.441 of 2002 was filed against the judgment and decree passed in O.S.No.110 of 1999 dated 13.08.2001, wherein after contest 1/5th share in respect of 1/2 share in 'A' & 'B' schedule was granted. In the said order, the trial Court at paragraph No.14, based on Ex.B22 and the attending circumstances therein, rendered a finding that 50% of the schedule property viz., 'A' & 'B' shall go to Trust functioning in the name of "Thavasimuthu Nadar's wife Sundarathammal Dharma Chathiram and Charitable Trust" and the Trust property cannot be treated as family property and cannot be divided for the family and accordingly, the said O.S was partly allowed.

17. After amendment of the cause title whereby the said "Thavasimuthu Nadar's wife Sundarathammal Dharma Chathiram and Charitable Trust" (herein after trust) was included as a 16th respondent in this appeal.

18. Mr.Raghavachari, learned Senior Advocate appearing for the newly added party relied upon judgement of this Court in A.S.No.104 of 1991 wherein, the Division Bench of this Court has taken the view that once a new party has been added at the appellate stage he should be given an opportunity to file his pleadings and let in evidence and hence sought for



remanding a matter for re-consideration for the trial Court so as to enabling newly added party namely the trust which is having 50% of the suit property as early as since 1942.

19. Heard the learned counsel for the first respondent-plaintiff.

20. The learned counsel for the appellant/defendant No.1 to 6 contended that the trial Court has not formulated the necessary issues and draw my attention toward the issues framed by the trial Court and commented that proper issues are not framed.

21. The lower Court records reveals that the trial Court has framed the following issues:-

(i) Whether the plea of the plaintiffs/defendants 8&9 have relinquished their rights trust in the property to the father to the third defendant is true?

(ii) Whether the third defendant has obtained adverse possession in the suit property?

(iii) Whether the plaintiff is entitled for declaratory relief?

(iv) Whether the plaintiff is entitled the relief of partition?

(v) To what other relief, the plaintiff is entitled to?

22. After perusing the written statement so far available on record , I find that, the sum and substance of the contesting defendants D1 to D6 are twofold.



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(a) Pursuant to the decree granted by the Hon'ble High Court in O.S.A.No.39/1942 dated 29.11.1943, $\frac{1}{2}$ share of the suit property was earmarked specifically for the trust and trust was created and hence, these 50% share of properties that are in sole possession and exclusive enjoyment of the trust, and they are not available for partition.

(b) In respect of the other $\frac{1}{2}$ portion of the suit property, the sisters of the family namely the plaintiffs/defendants 8&9 and mother of the third defendant-Sarojini have relinquished their right in favour of the father of the third defendant and hence, no property is available for partition. Since the contesting defendants have rightly relinquished their right by way of relinquishing a letter that are marked before the trial Court dated 26.06.1973, 06.07.1973 and 12.11.1995 and hence, the plea of the defendant is that by virtue of these 5 letters Sarojini, Prema, Thirupurasoundara Rajesh, Thiurpurasundari and the plaintiff Santha have relinquished and released their share in favour of the Vellaithambi Nadar.

(c) Hence, I find that in view of the order passed by this Court in C.M.P.No.1109 of 2016 dated 09.07.2024 whereby "Sundarammal Dharma Chatiram Charity Trust" was added as a party defendant/respondent R16 namely D15 - 10th respondent in the appeal.

(d) Consequently, he is added as a 11th defendant in the original plaint and he must be given an opportunity to file his written statement and



to place his pleadings.

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(e) Additional issues has to be framed by the trial Court.

(f) If the plaintiff and defendant wants to let in further evidence they can do so however the newly added party must also been afforded within a opportunity to cross examining the evidence already available on record.

23(a). At this juncture, it remains to be stated that in view of the pleadings raised by the contesting defendants/appellants in the written statement about the judgment and decree passed by this Court in O.S.A.No.39 of 1942 dated 29.11.1943 and admission made by the plaintiff and the pleadings that the trust is in possession and enjoyment of half of the suit property and hence whether the plaintiff can be considered to be in a joint possession of the property. Even as per the pleadings, as stated supra charitable trust is in sole possession and exclusive possession of 1/2 share in the property and carrying on the charitable purpose and hence the additional issues as to whether the plaintiff is said to be in joint possession of the suit property which is admittedly with charitable trust, a newly added party and additional issues with regard to whether the court fee paid is adequate since by virtue of admission of plaintiff that the newly added party is in possession and necessary additional court fee has to be paid as per the Tamil Nadu Court



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(b) Since this Court has observed in the previous paragraphs, the matter is remanded to trial Court, this Court is not expressing any opinion as to whether any additional court fee is to be paid or not however additional issues has to be framed on the above factual background by the trial Court to put the lis to end and if the trial Court comes to the conclusion that the additional court fee has to be paid by the plaintiff then necessary check slip to be issued in accordance under the Tamil Nadu Court Fees and Valuation Act.

24. Hence, in the interest of justice, the following order is passed:-

(i) This Appeal Suit is allowed.

(ii) The judgment and decree in O.S.No.110 of 1999 dated 30.08.2001 on the file of the Additional Sub-Court, Mayiladuthurai is set aside.

(iii) The matter is remitted back to Additional Sub-Court, Mayiladuthurai for re-consideration after affording the opportunity to the newly impleaded defendant D11 namely the trust and the trust is at liberty to file written statement within the required time fixed by trial Court. Thereafter, the trial Court is hereby required to frame the additional issues as



indicated above besides any other issues that may be come to light during the submissions of the respective parties.

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(iv) Thereafter, the original plaintiffs and defendants are at liberty either to retain the existing evidence or to adduce additional evidence as they may so be advised.

(v) It is hereby made clear that the newly added party must be given opportunity of cross examination already existing witnesses examined by parties to lis viz., both plaintiffs and defendants side to ensure due process of law.

(vi) The trial Court shall consider the points that has been referred to in the main body of this judgment para No.22 for framing additional issues with regard to alleged joint possession by the plaintiffs and plea of ouster by the contesting defendants 1 to 4 and plea of adverse possession by the 1 to 4 and theory of grant and the principle of presumption as applicable to the facts and circumstances of this case and to decide the issue in accordance with law.

(vii) This Appeal Suit is allowed as observed earlier. Cross objection No.80 of 2002 is dismissed.

(viii) There shall be no order as to costs.

03.10.2024

nvi



Index : Yes / No
Neutral Citation : Yes/No

To

- 1.The Additional Subordinate Judge, Mayiladuthurai.
- 2.The Section Officer,
VR Section, High Court, Madras.



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RMT.TEEKAA RAMAN,J.,

nvi

Judgment in
A.S.No.441 of 2002 and
Cros.Obj.No.80 of 2002



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03.10.2024