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A.S.NO.455 OF 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

A.S.NO.455 OF 2019

Minor S.Saran
Rep. by natural guardian
S.MeenaSarumathi

... Plaintiff / Appellant

Vs.

1.S.Thirumoorthy
2.A.T.Meighnakumar
3.A.T.Sridhar

... Defendants / Respondents

PRAYER: Appeal Suit filed under Section 96 read with Order 41 Rules 1 and 2 of the Code of Civil Procedure, praying to set aside the judgment and decree dated 21.12.2018 made in O.S.No.231 of 2014 on the file of I Additional District Court, Tiruppur.

For Appellant : Ms.T.R.Gayathri
for M/s.Sarvabhauman Associates

For Respondents : Mr.V.Anandhamoorthy

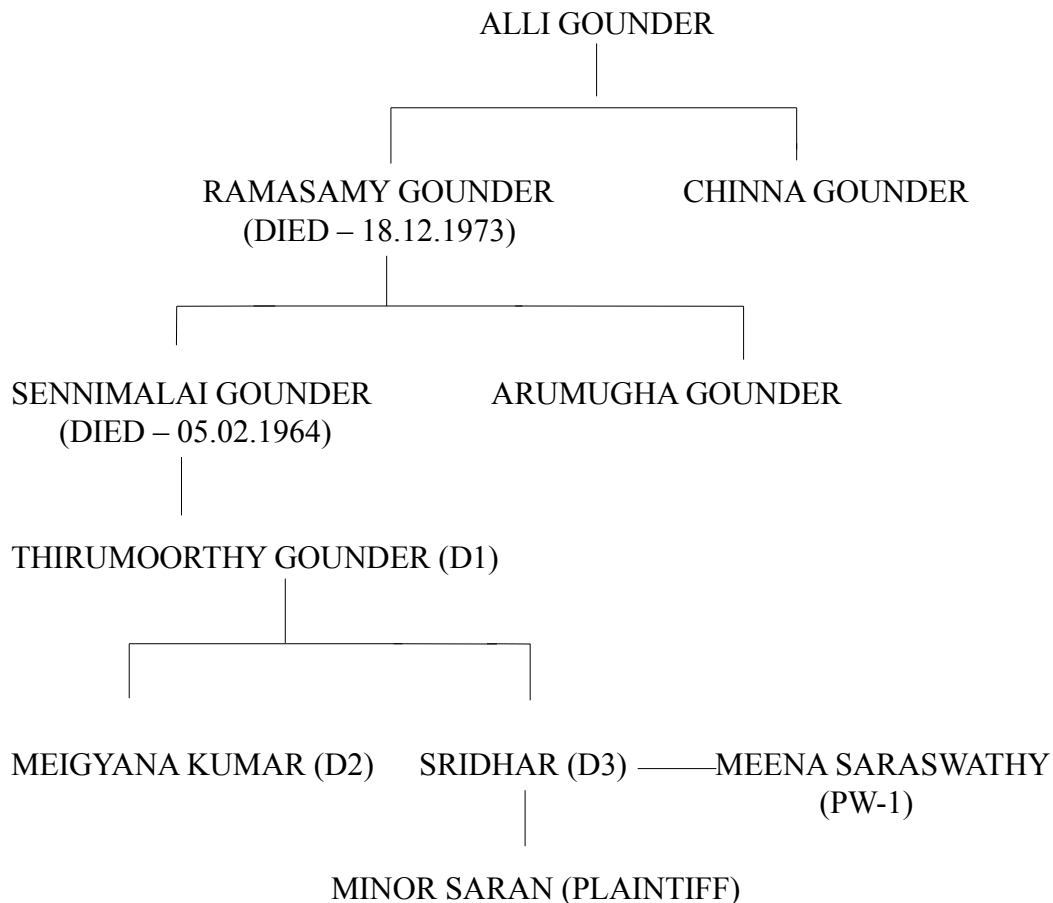


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J U D G M E N T

WEB COPY (Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The plaintiff in O.S.No.231 of 2014 is the appellant. The said Suit was launched by the appellant seeking partition and separate possession of his 1/6th share in the Suit properties. The plaintiff has set out the Genealogy as follows:





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2.For the sake of convenience, henceforth, the parties will be referred to as per their rank in the Suit.

3.According to the plaintiff, the Suit properties are ancestral properties in the hands of his grandfather Thirumoorthy Gounder, who figures as first defendant in the Suit. Therefore, according to the plaintiff, being the grandson, through his son the third defendant, he would be entitled to a share in the Suit properties by birth. The plaintiff would trace the title to the property under a registered Partition Deed dated 29.11.1962 entered into between Ramasamy Gounder, Sennimalai Gounder and Arumugha Gounder and it is also contended that the property is enjoyed by the said Thirumoorthy Gounder, first defendant herein and defendants 2 and 3 who are his sons jointly. There were some matrimonial disputes between the guardian of the plaintiff and the third defendant which are not very relevant for our purposes.

4.The defendants resisted the Suit contending that the Suit properties are not ancestral properties. They would trace their title through a Partition Deed entered into between Ramasamy Gounder, Chinna Gounder



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and two others dated 16.05.1948 which has been marked as Ex-B.3. In the said Partition Deed, it is recited that the properties that were acquired by Ramasamy Gounder, Chinna Gounder and the ancestral properties of the two other parties, namely, one Rakkammal W/o. Pacha Gounder and Ramasamy Gounder S/o.Palani Gounder were being divided among the four parties. Subsequently, under Ex-B.1 dated 24.07.1948, Chinna Gounder settled the property that was allotted to him in the partition that took place on 16.05.1948 and thus, Ramasamy Gounder became the absolute owner of the properties that were allotted to him in the partition and the properties that were settled under Ex-B.1 by his brother Chinna Gounder. Subsequently, on 29.11.1962, Ramasamy Gounder and his two sons namely, Sennimalai Gounder and Arumugha Gounder entered into a Partition Deed, in and by which, certain properties were allotted to Ramasamy Gounder for life and to be taken by his two sons after his lifetime. Certain properties were allotted to Sennimalai Gounder and Arumugha Gounder independently.

4.1.It is the defendants' case that since Ramasamy Gounder is the person who acquired the property originally and three generations have



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not passed, hence the property in the hands of the first defendant namely Thirumoorthy Gounder could not be termed as 'ancestral property'.

5.On the above pleadings, the learned Trial Judge framed the following issues:

- “i. Whether the suit is maintainable?*
- ii. Whether the suit is bad for non joinder of necessary parties?*
- iii. Whether the plaintiff is entitled for share in the suit property?*
- iv. To what other reliefs, the plaintiff is entitled for?”*

6.At trial, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.3 were marked. First defendant was examined as D.W.1 and Ex-B.1 to Ex-B.26 were marked. The learned Trial Judge, upon consideration of the evidence on record, agreed with the defense.

7.The findings of the learned Trial Court are based on the recitals in Ex-B.1 and Ex-B.3 namely, the Settlement Deed dated 24.07.1948



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and Partition Deed dated 16.05.1948 respectively. From the recitals in those two documents, the learned Trial Judge concluded that it was Ramasamy Gounder and Chinna Gounder who had purchased the properties and those properties were divided among them. Chinna Gounder settled the properties that were allotted to him in the partition that took place on 16.05.1948 by his brother under Ex-B.1 dated 24.07.1948. Therefore, the properties that were possessed by Ramasamy Gounder after 24.07.1948 were his self acquisition. Thereafter, a partition took place between Ramasamy Gounder and his two sons on 29.11.1962 under Ex-B.2 under which a portion of the properties were allotted to Ramasamy Gounder for life and it devolved on his two sons namely Sennimalai Gounder and Arumugha Gounder after the lifetime of Ramasamy Gounder. Certain properties were allotted to Sennimalai Gounder and Arumugha Gounder independently. No doubt, the said document recites that the properties belonged to the parties ancestrally. The said recital alone cannot be the basis for the conclusion that the properties are ancestral properties while specific evidence is available to show that they were acquired by Ramasamy Gounder.



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8.As it is commonly understood, ancestral property is one which passes off for three generations, when the Trial Court found that Ramasamy Gounder was the original owner and it is his grandson Thirumoorthy Gounder in whose hands the properties are now lying. Only two generations have passed by. Therefore, the properties are yet to acquire the colour of ancestral property in the hands of Thirumoorthy Gounder in order to enable his grandson to make a claim for partition. On the above findings, the learned Trial Judge dismissed the Suit. Hence, this Appeal.

9.We have heard Ms.T.R.Gayathri, learned counsel appearing for the appellant and Mr.V.Anandhamoorthy, learned counsel appearing for the respondents.

10.Ms.T.R.Gayathri, learned counsel appearing for the appellant would vehemently contend that the recitals in Ex-B.2 – Partition Deed dated 29.11.1962 would determine the nature of the property and therefore, it should be treated as ancestral property in the hands of Thirumoorthy Gounder, the grandfather. She would also point out that Sennimalai Gounder



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Son of Ramasamy Gounder died before Ramasamy Gounder and therefore, the property devolved from Ramasamy Gounder to Thirumoothy Gounder and hence, it should be treated as ancestral property.

11.Contending contra, Mr.V.Anandhamoorthy, learned counsel appearing for the respondents would submit that, no doubt, in Ex-B.2, there is a recital that the properties are ancestral in nature. But, that by itself cannot be a determining factor. The learned counsel would point out in Ex-B.3 Partition Deed dated 16.05.1948, there is a specific recital that these properties were acquired by Ramasamy Gounder and his brother Chinna Gounder and under Ex-B.1 / Settlement Deed dated 24.07.1948, Chinna Gounder has settled his share on Ramasamy Gounder and therefore, the character of the property in the hands of Ramasamy Gounder remained as his self acquired property. The fact that Ramasamy Gounder has chosen to partition it along with his sons in 1962 under Ex-B.2 will not change the character of the property in the hands of Ramasamy Gounder as it is open to a Hindu father to partition his self acquired property also along with his sons.



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12. On the above contentions of the counsel, the following point arises for determination:

What is the character of the property in the hands of the first defendant?

13. As we have already pointed out, on the execution of Settlement Deed – Ex-B.1 dated 24.07.1948, the entire property in the hands of Ramasamy Gounder was his self acquisition. Only if the property has passed on in a family for three generations, it will acquire the character of ancestral property in order to enable the subsequent born child to claim a right by birth. Once it is found that the property in the hands of first defendant was his self acquired property until it passes from Thirumoorthy Gounder to his sons, it will not acquire the character of ancestral property.

14. As of today, Thirumoorthy Gounder is alive and his sons are also alive. Therefore, the property in the hands of Thirumoorthy Gounder would be his self acquisition and the grandson of Thirumoorthy Gounder



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cannot lay a claim by birth to the properties that are in the hands of Thirumoorthy Gounder. We are therefore, unable to conclude that the trial court went wrong in concluding that the properties are not ancestral in nature. The description in Ex-B.2 by itself cannot change the character of the property, in the light of the concrete evidence that is available to show the nature of the property in the hands of Thirumoorthy Gounder. Hence, we are unable to fault the Trial Court for having come to the conclusion that the Suit properties in the hands of the first defendant are his self acquisition and therefore, the plaintiff is not entitled to claim a share during the lifetime of the first defendant. The Appeal therefore fails and accordingly, it is dismissed. However, in the circumstances, we make no order as to costs.

[R.S.M., J.] [R.S.V., J.]

17.04.2024

Index : No
Internet : Yes
Neutral Citation : No
Speaking order
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To
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The I Additional District Judge
I Additional District Court
Tiruppur.



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AND
R.SAKTHIVEL, J.

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