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O.S.A.No.98 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

O.S.A.No.98 of 2024

and

C.M.P.No.12014 of 2024

1.R.Thiruvengadam

2.R.Raghavan

3.R.Revathy

... Appellants

Vs.

1.Venkata Narayanan

2.R.Palani

3.A.Sankara Subramanian

4.A.Shanmuga Sundaram @ D.A.Shanmugam

5.B.Umadevi

6.A.Padmini

... Respondents

Original Side Appeal filed under Order XXXVI Rule 11 of Original Side Rules r/w. Clause 15 of the Letters Patent against the judgment and decree dated 16.11.2023 in C.S.No.872 of 2015 on the file of this Court.



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For Appellants : Mr.P.Valliappan
Senior Counsel
for M/s.PV Law Associates

For R1 : M/s.B.Kavya

For R2 to R6 : No appearance

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

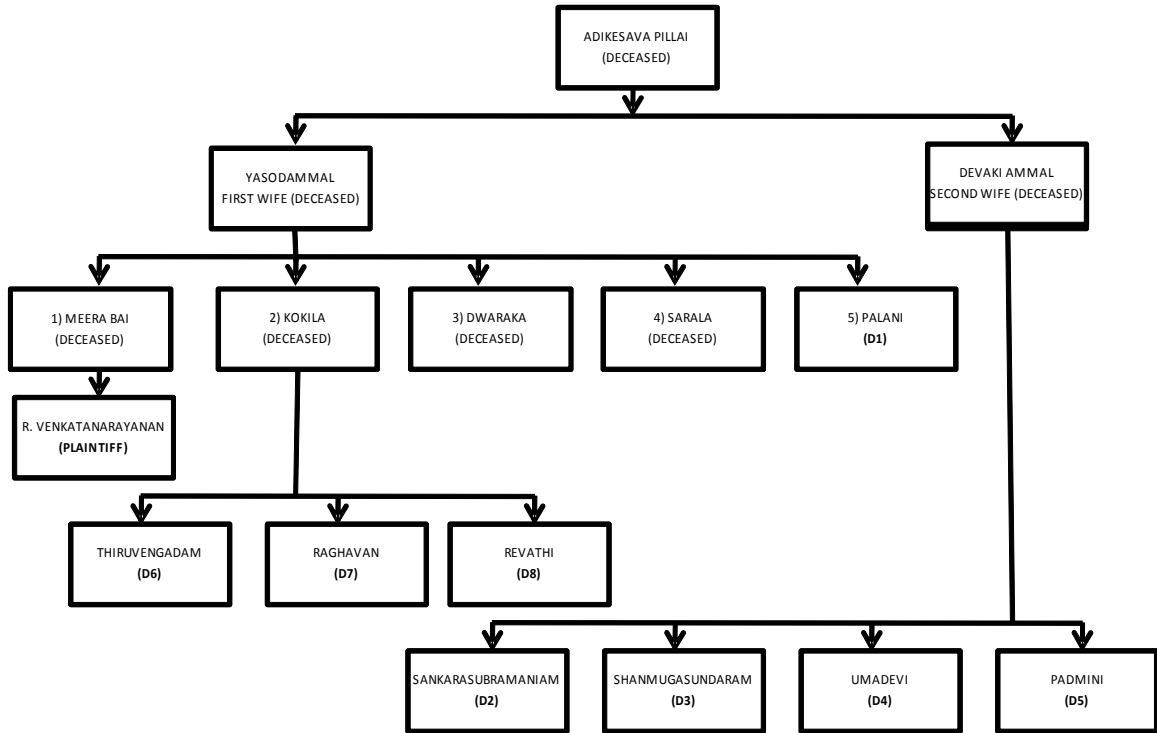
This Original Side Appeal is directed against the judgment and decree passed by the learned Single Judge, dated 16.11.2023, in C.S.No.872 of 2015.

2.The 1st respondent herein as plaintiff filed the suit in C.S.No.872 of 2015 for partition of the suit property by metes and bounds and to allot 1/7th share to the plaintiff. The suit is also for rendition of accounts and to pay the plaintiff his 1/7 share of mesne profits.



3.Before going into the pleadings, the Geneology that is admitted in

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4.It is admitted even in the plaint that the entire suit property originally belonged to one Kannabiran Pillai, who is none else than the father of one Yesodhammal. Yesodhammal married Sri Adikesava Pillai. It is admitted that Adikesava Pillai also married one Devaki Ammal as his second wife. The children of Adikesava Pillai through Devaki Ammal are defendants 2 to 5. The plaintiff is the son of Meera Bai, who is the daughter



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of Yesodhammal. It is also admitted that the husband of Meera Bai, by name N.Ramasamy, married the second daughter of Yesodhammal, by name Kokila, after the death of first daughter Meera Bai. Meera Bai had only a son, who is the plaintiff in the suit. The second daughter of Yesodhammal, by name Kokila, who has also married N.Ramasamy after the lifetime of Meera Bai, died leaving behind defendants 6 to 8, who are the appellants in this Appeal. From the pleadings, it is also admitted that the other two daughters of Yesodhammal, by name Dwaraka and Sarala, died as spinsters without any heir. The only son of Yesodhammal, by name Palani, is the 1st defendant in the suit. From the above Geneology, it is seen that all the parties to this lis alone are the people who have a share in the suit property.

5.Though it is admitted that Kannabiran Pillai, the original owner, executed a settlement deed dated 28.04.1937 in favour of Yesodhammal for life and then to her surviving children male and female, it is also contended that the said Kannabiran Pillai cancelled the previous settlement deed in favour of Yesodhammal and executed another settlement deed dated 05.05.1938 under Ex.P2 giving life estate in favour of Yesodhammal and the



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vested interest in favour of Adikesava Pillai. It is stated in the second settlement deed that Kannabiran Pillai had reserved his right to revoke the settlement. From the reading of first settlement deed, the conveyance had taken place under the document. It is stated in the second settlement deed that the first settlement deed has been cancelled by a deed of revocation dated 02.05.1938. It appears that, except 1st defendant, all other defendants have not claimed any right over the property. Even though defendants 2 and 3 also supported the plaintiff's case initially, during the pendency of the suit, defendants 2 and 3 filed a separate memo on 17.04.2023, stating that they do not claim any right over the suit properties. It is further stated that they also relinquished their shares in the suit property in favour of children of first wife (Yesodhammal), namely, plaintiff, 1st defendant and defendants 6 to 8. It is now admitted that the memo was also recorded by the trial Court on 15.06.2023.

6.The 1st defendant, in his written statement, relying upon the second settlement deed executed by Kannabiran Pillai in favour of Adikesava Pillai, claimed exclusive right over the property. From the recitals of the said



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settlement deed, it is seen that Adikesava Pillai was given the absolute right over the property of Yesodhammal.

7.One of the facts that is admitted by both sides is that Adikesava Pillai died prior to Yesodhammal. However, the learned Single Judge, relying upon the second settlement deed, ignoring that Kannabiran had no right to execute another settlement deed and that Adikesava Pillai predeceased his wife, held that the suit property is the ancestral property of Adikesava Pillai. As a consequence, he found that the plaintiff and all the defendants are entitled to 1/9 share in the suit property. It is against the judgment and decree of the learned Single Judge, the above Appeal is filed.

8.The title of Kannabiran Pillai is not in issue and it is admitted that everyone claims title through Kannabiran Pillai, the father of Yesodhammal and father-in-law of Adikesava Pillai. The 4th defendant filed a written statement independently and in Para No.8 of the written statement, she has stated that the plaintiff, 1st defendant, defendants 6 to 8 are alone entitled to a share in the suit property. The statement of 4th defendant is an admission and



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it is in tune with the Geneology Tree filed by the appellant. The Geneology Tree produced by the appellant is admitted and it can be reconciled from the pleadings and the evidence in this case as a whole.

9.The learned Single Judge found that the suit property is not the self acquired property of Adikesava Pillai and it is the ancestral property of Adikesava Pillai. Therefore, the first question which we need to consider is whether the suit property is the ancestral property or self acquired property of Adikesava Pillai. In the absence of any dispute as to the Geneology and the relationship between the parties, this Court is of the view that the subsequent settlement deed dated 05.05.1938, alleged to have been executed by Kannabiran Pillai in favour of Adikesava Pillai, is not valid, as he had no right over the property after executing the settlement deed dated 28.04.1937 in favour of Yesodhammal. We are unable to find any defence in the written statement that the settlement deed executed by Adikesava Pillai in favour of Yesodhammal was not acted upon or it is invalid for any reason. It is also brought to the notice that, in the subsequent settlement deed, the execution of the first settlement deed in favour of Yesodhammal, is also referred to.



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WEB COPY 10. When it is admitted that Adikesava Pillai died before

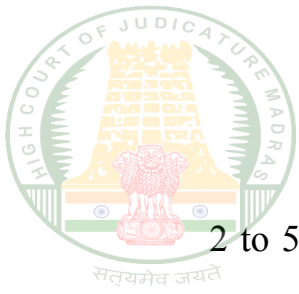
Yesodhammal, assuming for a moment that the subsequent settlement deed in favour of Adikesava Pillai is valid, Yesodhammal gets the property under the settlement deed and therefore, it is her absolute property. Even though the property is held to be the property of Adikesava Pillai by accepting the second settlement deed, when Yesodhammal gets the property, subsequent settlement deed cannot be valid in view of a valid disposition under the first settlement deed by Kannabiran Pillai in favour of Yesodhammal. Unless there is a specific plea and evidence that the first settlement deed was challenged as void or not acted upon, on the admitted facts, this Court is unable to sustain the judgment of the learned Single Judge holding that the suit properties are the ancestral properties of Adikesava Pillai and therefore, they should be treated as joint family properties of the parties. Therefore, the findings of the learned Single Judge that the suit property is a joint family property, is erroneous, and this Court, therefore, set aside the finding of the learned Single Judge as to the character of the property. Though the 1st defendant claims exclusive title to the property in the written statement,



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from the facts that are stated in the written statement, this Court finds no substance in such claim made by the 1st defendant.

11.The next question is about allotment of shares among the parties. Once the property is held to be the property of Yesodhammal, the property would devolve only on Meera Bai, Kokila and Palani, who are the children of Yesodhammal. The plaintiff, being the only son of Meera Bai, is entitled to 1/3 share. Similarly, defendants 6 to 8 altogether, as the children of Kokila, are entitled to 1/3 share. Similarly, the 1st defendant, being the only son of Yesodhammal, is entitled to another 1/3 share. Even though this is the only conclusion that could be reached on the admitted facts, the learned Single Judge, on an assumption that the entire property is a joint family property, held that each one is entitled to 1/9 share. When the parties are representing different branches, it is not known as to how equal share can be distributed among all the parties to the suit. Therefore, the learned Single Judge has again committed a grave error in allotment of shares. Since this Court has now found the character of the suit property as property of Yesodhammal, there is no scope for giving any share in favour of defendants



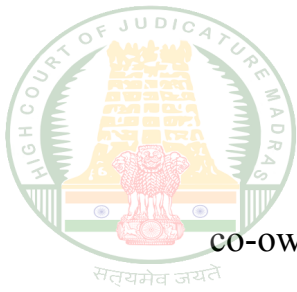
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2 to 5. By the memo filed by counsel for 2nd defendant dated 17.04.2023, the 2nd defendant relinquished his share in favour of plaintiff's children.

Similar memo is also filed by 3rd defendant. The memo filed by defendants 2 and 3 were recorded by Court on 15.06.2023. In the written statement filed by defendants 3 and 4, it is admitted that plaintiff, 1st defendant, and defendants 6 to 8 alone are entitled to the suit property. When there is no claim from the legal heirs of Adikesava Pillai through his second wife and they admit that the suit property should be divided among the plaintiff, 1st defendant, and defendants 6 to 8, this Court is unable to reject the case of Senior Counsel Mr.P.Valliyappan.

12.For the above reasons, this Original Side Appeal is allowed and the judgment and decree of the learned Single Judge, dated 16.11.2023, in C.S.No.872 of 2015, is set aside.

13.Even though the plaintiff has not filed any appeal as against the judgment and decree of the learned Single Judge, this Court, in a suit for partition, can modify the decree at the request of co-defendants who are also



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co-owners. Therefore, the shares of all the parties to the *lis* are declared in the following manner :

- i. The plaintiff is entitled to 1/3 share;
- ii. All the appellants, who are defendants 6 to 8, altogether, are entitled to 1/3 share;
- iii. Since the 1st defendant has claimed exclusive title over the property, in the absence of any separate appeal, we are not declaring the share of 1st defendant.

No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (A.D.M.C., J.)
25.10.2024

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

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and
Dr.A.D. MARIA CLETE, J.

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