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S.A.Nos.449 & 529 of 2014



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.Nos.449 & 529 of 2014

and

M.P.Nos.1, 1 & 2, 2 of 2014

S.A.No.449 of 2014:

Lalitha (died)

2.K.Rajagopal

3.Usha Rajagopal

4.Ravi Rajagopal

.. Appellants

(Appellants 2 to 4 brought on record as LRS of the deceased sole appellant viz., Lalitha vide order of Court dated 30.01.2020 made in C.M.P.No.1695 and 1696 of 2020 in S.A.No.449 of 2014)

Vs.

Gunabushanam (died)

Amended as per order in I.A.No.7 of 2013 dated 07.02.2013

1.Shanthi



2.M.Venkata Rajesh

3.Meena

4.Bama

5.Mani

.. Respondents

S.A.No.529 of 2014:

Bama

.. Appellant

Vs.

Gunabushanam (died)

1.Shanthi

2.M.Venkata Rajesh

3.Meena

4.Lalitha (died)

5.Mani

6.K.Rajagopal

7.Usha Rajagopal

8.Ravi Rajagopal

.. Respondents

(RR 6 to 8 brought on record as legal heirs of the deceased R4 viz., Lalitha vide order of Court dated 30.01.2020 made in C.M.P.No. 1712 and 1715 of 2020 in S.A.No.529 of 2014)



Common Prayer: Second Appeals are filed under XLII RI of CPC read with Section 100 of C.P.C. to set aside both judgment and decree passed in A.S.No.34 of 2012 on the file of Principal District Judge, Thiruvallur on 24.06.2013 modifying the decree and judgment passed in O.S.No.131 of 2006 on the file of Sub Judge, Thiruvallur on 01.12.2009 by allowing these Second Appeals.

In S.A.No.449 of 2014:

For Appellants	:	Mr.T.Mohan Senior Counsel for Mr.G.Krishna Kumar
For RR 1 & 2	:	Ms.R.Revathi
For R3	:	No appearance
For R4	:	Mr.S.Ashok Kumar

In S.A.No.529 of 2014:

For Appellants	:	Mr.T.Mohan Senior Counsel for Mr.S.Ashok Kumar
For RR 1 & 2	:	Ms.R.Revathi
For R3	:	Mr.S.T.Deiveekarajan
R4	:	Died
For RR 6 to 8	:	Mr.G.Krishna Kumar



COMMON JUDGMENT

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Both the appeals arise out of the judgment passed in A.S.No.34 of 2012 on the file of the Principal District Judge, Thiruvallur, modifying the decree and judgment passed in O.S.No.131 of 2006 on the file of Sub Judge, Thiruvallur.

2.Since the issues involved in both the appeals are one and the same, they are disposed of by this common judgment.

3.The appellant in S.A.No.449 of 2014 who is the 2nd defendant in the suit in O.S.No.131 of 2006 and appellant in S.A.No.529 of 2014 is the plaintiff in the said suit. Both the appeals challenging the reversal finding of the First Appellate Judge in A.S.No.34 of 2012. Both the appeals are admitted on the following questions of law:

(a) Whether the female coparceners can have the share of the suit property as same as male coparceners when admittedly there is no partition took place between the parties as specified in the Hon'ble Apex Court judgment in **2011 (9) SCC 788**



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(Ganduri Koteshwaramma and another V. Chakri Yanadi and another)?

(b) Whether the appellate court was right in modifying the lower court's judgment and decree when the legal position is settled that partition of a Joint Hindu Family can be effected by various modes, inter alia, two of these modes are (one) by a registered instrument of a partition and (two) by decree of the court before the Hindu Succession Amendment Act 2005 as per the Hon'ble Apex Court judgment in **2011 (9) SCC 788 (Ganduri Koteshwaramma and another V. Chakri Yanadi and another)?**

(c) Whether the trial court was right in passing a decree and judgment when there are other suits in O.S.No.131 of 2008 and O.S.No.99 of 2012 pending before the same trial court and the appellate court failed to remit the present suit to the trial court in order to club both suits and conduct the trial together?

(d) Whether the trial court is correct in examining and holding that the release deeds obtained by the



appellant's brother was without any fraud, undue influence, coercion or whatsoever, when there is a comprehensive suit refuting the same in O.S.No.131 of 2008 pending before the same trial judge and specifically denying receiving the legal considerations by the appellant and her sisters and causing prejudice to the pending suit?

Brief facts of the case:

4.The suit properties are the ancestral properties of one Pulliah Naidu and his daughters and sons. Pulliah Naidu died in the year 1992 leaving behind his wife / D1 and daughters / plaintiff, D2 & D3 and his son Munikrishnan. Munikrishnan also died during February 2006 leaving behind his mother / D1 and his wife and children / D4 to D6 as his legal heirs. As one of the daughter of the Pulliah Naidu, plaintiff filed the suit for partition claiming 6/25th share in the entire suit properties as described as Item Nos.1, 2, 3 & 4 in the plaint schedule property.

5.Coming to the plaint, the entire suit Items were enjoyed commonly by plaintiff and defendants 1 to 6 without any division between themselves. The defendants have not paid the share of profits due to which



Misunderstanding arose. Therefore, she demanded for division of the properties which was evaded by other defendants. As a coparcener, she is entitled to $1/5^{\text{th}}$ share along with her father and her brother and sisters. After the death of said Pulliah Naidu, $1/4^{\text{th}}$ share dwells upon all the five legal heirs. Accordingly, she gets $1/5^{\text{th}}$ share in addition to the share. Therefore, the plaintiff is entitled to $1/5 + 1/25$ ($6/25$) share. Hence, she issued notice on 26.08.2006 claiming partition. In spite of that, the defendants are not inclined. Hence, the present suit.

6.The 2nd defendant filed written statement separately, admittedly in which she admits the relationship as well as that entire property is the ancestral property of Pulliah Naidu and his legal heirs. She said her husband spent more than Rs.15 lakhs in order to redeem the family debts. But with regard to Item No.2 of the property, a release deed was fabricated, manipulated when she was unwell from 2005 onwards. In fact her brother Munikrishnan used to come down to her and obtained signatures in the blank papers without any recitals. But there is no necessity for her to execute the release deed of paultrism. Without her consent, her brother obtained fraudulently the said release deed after the exparte decree obtained by the



plaintiff in the said suit she came to know all the facts. She also demanding division of the suit properties. Defendants 1, 3 to 6 contesting the suit stating that after the demise of Pulliah Naidu, at the instance of the plaintiff's husband Subashchandran, a release deed was executed on 05.02.1996 regarding Item No.2 of the plaint schedule property in favour of Munikrishnan relinquishing all right and interest in the said Survey Number of Item No.2 by plaintiff, defendants 2 & 3 after receiving Rs.98,525/- from said Munikrishnan.

7. Similarly in respect of Item No.3 of plaint schedule property, the plaintiff, D2 & D3 executed another release deed on 05.02.1996 in favour of Munikrishnan / husband of D4 by receiving Rs.82,563/-. Further, all the daughters of the Pulliah Naidu are provided with gift and customary marriage presents. Therefore, during the lifetime of Munikrishnan, he was in absolute possession and enjoyment of the entire suit property till his death. After his demise, his Mother (D1), his wife and children (D4 to D6) are residing in Item No.1 of the suit property and therefore the plaintiff has no right over the suit property after the execution of the release deed and hence, they prayed to dismiss the suit as no merits.



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8.Before the Trial Court, both the parties adduced oral and documentary evidence. On considering the same, the Trial Judge framed four issues. The foremost issue is whether the plaintiff is entitled for partition of 6/25th share. The other issues pertaining to execution of release deed whether it is valid or not.

9.Considering the evidence adduced on both sides, the Trial Judge held that as per the recitals of the release deed, Ex.B1 & B2, the plaintiff and her sisters voluntarily relinquished their 3/4th share in favour of their Brother Munikrishnan by receiving consideration and also agreed that they would not claim any share in future by themselves or through their legal heirs.

10.After in that in those documents, the husband of the plaintiff Subashchandran was a witness along with other attestors. In such circumstances, the plaintiff and defendants 2 & 3 have not adduced any independent witness in order to establish that those release deeds were obtained by the Munikrishnan fraudulently without their consent. Further also, it is observed that if at all those documents are obtained fraudulently in



the year 2006, plaintiff ought not to have taken steps to raise objection in respect of the said documents. But nearly about 10 years later at the commencement of the trial, they claimed that those documents are fabricated documents. Even in the present suit they have not claimed any relief to cancel those documents. Therefore, the plaintiff failed to establish that release deeds were obtained fraudulently by her brother through material evidence.

11.On the other hand, the 4th defendant produced those release deeds wherein the recitals shows that the daughter of the Pulliah Naidu / Plaintiff with all consent executed the said release deed in favour of her husband Munikrishnan. Therefore, in respect of Item Nos.2 & 3 pertaining to the property in the release deed, the suit was dismissed. In respect of Item Nos.1 & 4, the property deemed as ancestral property. Accordingly, 6/25th share allotted in Item Nos.1 & 4 allotted in favour of the plaintiff.

12.Challenging the said findings, in A.S.No.34 of 2012 appeal was preferred by defendants 1, 4 to 6 i.e., Mother and legal heirs of plaintiff's brother. The learned First Appellate Judge independently analyzed all the facts and evidence on record, held that in respect of Item Nos.2 & 3, no cross



appeal was filed by the plaintiff and D2 & D3. Therefore, the findings of the trial Court with regard to Item Nos.2 & 3 was confirmed. Hence, in that appeal in respect of suit Item Nos.1 & 4 alone was adjudicated.

13.The learned First Appellate Judge relying Section 6 of Hindu Succession Act as amended in the year 2005 with effect from 09.09.2005, decided the right of the plaintiff who is the daughter of the said Pulliah Naidu, held that the father of the plaintiff died in the year 1992 and his only son also died in the year 2004, long prior to coming into force of amendment Act 2005. As the father of the plaintiff died in the year 1992, the plaintiff cannot claim status of a coparcener so also the brother of the plaintiff also died in the year 2004. There is no existence at all for a daughter to claim right of coparcener with the son as coparcener as admittedly under Section 6 of the Act, 2005. But the lower Appellate Judge held that Section 6 of the amended Act will not over-ride Section 8 of the Hindu Succession Act by which revolution of interest already taken place.

14.Further, there is nowhere it is stated in the said Act that the Act is retrospective in nature by relying the judgments **Sheela Devi and others Vs.**



Lal Chand and another, reported in **2006 (8) SCC 581** and **G.Sekar Vs.**

Geetha and others, reported in **AIR 2009 SC 2649**, wherein the Hon'ble

Apex Court held that the amendment Act is only prospective Act in nature.

Therefore, the First Appellate Judge held that in the entire suit property,

Pulliah Naidu is entitled to 1/2 share and his son is entitled to 1/2 share, who

were died prior to coming into force of the amendment Act. Therefore, the 1/2

share belonging to the Pulliah Naidu dwells upon his son, three daughters and

wife, each entitled to 1/5th. As the mother also died, three daughters and legal

heirs of the son each entitled to 1/8th in Item Nos.1 & 4 and remaining 1/2 in

the suit property dwells upon the legal heirs of the deceased son

Munikrishnan as such the plaintiff is entitled to 1/8th share in the suit

schedule Item Nos.3 & 4. Accordingly, modified the Lower Court decree by

allowing the appeal allotting 1/8th share to the plaintiff in respect of Item

Nos.1 & 4.

15.Challenging the said findings, the plaintiff and 2nd defendant preferred these two appeals.

16.The learned counsel for the appellant argues that the appellant in



S.A.No.449 of 2014 (2nd defendant) already filed a comprehensive suit in O.S.No.131 of 2008 on the file of Sub Court, Thiruvallur, to declare those two release deeds of the year 05.02.1996 as null and void. Therefore without disposing the comprehensive suit, the decree passed in O.S.No.131 of 2006 as such is erroneous one, since because the subject and issue of the present suit as well as in the another comprehensive suit are pertaining to the release deed. Therefore, disposing the present suit in O.S.No.131 of 2006 would lead to give contradictory verdict in subsequent suit in O.S.No.131 of 2008. Therefore, he prayed to set aside the entire findings and remand to the Trial Court to try along with O.S.No.131 of 2008.

17.Further he would also argues that the First Appellate Court failed to consider that the execution of the release deed has been challenged on the ground of fraud and undue influence as they denied the receipt of the consideration. But when taking out of all these facts as well the comprehensive suit in O.S.No.131 of 2008, the decree passed by the Lower Appellate Judge based upon the release deed are unjust and liable to be set aside.



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18.The First Appellate Judge failed to consider that the present suit has been filed only after the amendment of the Hindu Succession Act, 2005 thereby the appellant along with other female coparcener are entitled to claim share in the property equally with other male coparceners. But erroneously held that due to the death of her father and son, no coparceners right upon to the plaintiff on the date of amended Act as such is erroneous one. The first Appellate Judge also failed to consider the pendency of the another suit filed by the legal heirs of the Munikrishnan (defendants 3 to 5) in O.S.No.499 of 2012 in which they challenged the settlement deed executed by their mother in favour of Lalitha (D5). Therefore, without considering the pendency of the other connected suit, a comprehensive suit allotting the shares by modifying the judgment of the Lower Court Judge by the Lower Appellate Judge is liable to be set aside.

9.By way of reply, the learned counsel appearing for the legal heirs of the Munikrishnan namely the defendants 4 to 6 argues that the First Appellate Judge rightly concluded that in the entire suit property, 1/2 share belongs to son of the Pulliah Naidu namely Munikrishnan and in respect of other shares they executed the release deed. But however, he admits that they filed the suit



in O.S.No.499 of 2012. However, he admits that the exparte decree passed in O.S.No.131 of 2008 came to know at a later stage immediately they have filed an application to set aside the exparte decree. After obtaining the exparte decree, the appellant Lalitha obtained settlement deed from her mother / D1 fraudulently. Therefore to set aside the said settlement deed, they also filed O.S.No.91 of 2012. Therefore they prayed to remand back to try along with O.S.No.91 of 2012.

20.Before going to questions of law and considering both the submissions reveals that in respect of division of the properties after filing of the present suit by the plaintiff in O.S.No.131 of 2006, 5th defendant / another sister of the plaintiff namely Lalitha filed suit in O.S.No.131 of 2008 on the file of the Sub Judge, Thiruvallur and another suit filed by the defendants 4 to 6 in O.S.No.99 of 2012 on the file of the Sub Judge, Thiruvallur was pending at the time of disposal of O.S.No.131 of 2006 on 01.12.2009. The suit filed by one of the defendants Lalitha in O.S.No.131 of 2008 on the file of the Sub Judge, Thiruvallur, for a comprehensive relief to declare the release deeds as null and void, for partition and other consequential reliefs.



21. Therefore, it is suffice to note that both the suits in O.S.Nos.131 of 2006 and 131 of 2008 were pending before the same Sub Court, Thiruvallur.

But without joint trial, the suit filed by the present plaintiff in O.S.No.131 of 2006 was decided, as such is improper and since, because the parties and properties and issue of release deed involved are subject matter of both the suits. Moreover the plaintiff in O.S.No.131 of 2008 filed to declare the release deed as null and void, but without considering the pendency of the other suit, the present suit dealt by both the trial Court as well lower Appellate Court as such is erroneous one since already another suit was pending before the same Court in respect of the subject in issue of the present suit.

22. Therefore, as rightly pointed out further more in the year 2012, O.S.No.99 of 2012 was filed by the legal heirs of the Munikrishnan / brother of the plaintiff, plaint to declare the settlement deed executed by mother / D1 here is null and void. Therefore, all the three suits is to be tried together in order to decide the right of the plaintiff in the suit properties. If at all the release deeds are deemed proved as fabricated one, the plaintiff would have allotted share in the Item Nos.2 & 3 of the suit properties. Therefore, to avoid



multiplicity of proceedings, without going into the merits of the First Appellate Judge, the findings and the questions of law involved in the present appeal, this Court is inclined to set aside the findings of the Court below passed in O.S.No.131 of 2006 and remand back to Sub Court, Thiruvallur to try along with O.S.No.131 of 2008 and O.S.No.99 of 2012. Therefore, the questions of law involved in these appeals need not be discussed for the aforesaid reason of the remand.

23.As the suits are pending from the year 2006 onwards, the Trial Judge is directed to give opportunity to both the parties to adduce evidence and dispose the case within a period of four (4) months from the date of receipt of a copy of this common judgment.

24.The findings rendered by the learned Principal District Judge, Thiruvallur in A.S.No.34 of 2012 is set aside. So also the findings rendered in O.S.No.131 of 2006 is set aside in order to try the present suit along with O.S.No.131 of 2008 and O.S.No.99 of 2012 on the file of the Sub Court, Thiruvallur by way of remand. The Trial Judge is directed to conduct fresh trial in all the suits jointly and dispose of the cases on merits without



influence of the findings of the present suit. Therefore, the appeals are allowed by setting aside the findings of the Court below with a direction to try along with O.S.No.131 of 2008 and O.S.No.99 of 2012 by order of remand. The lower Court is directed to dispose of the cases within a period of four (4) months from the date of receipt of a copy of this common judgment without giving unnecessary aspects.

25.In the result, both the appeals are allowed and the judgment and decree passed in A.S.No.34 of 2012 on the file of Principal District Judge, Thiruvallur and also the judgment and decree passed in O.S.No.131 of 2006 on the file of Sub Judge, Thiruvallur, are set aside with order of remand. Consequently, the connected Miscellaneous Petitions are closed. No costs.

12.04.2024

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Index	:	Yes / No
Internet	:	Yes / No
Neutral Citation	:	Yes / No



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To

- 1.The Principal District Judge,
Thiruvallur.
- 2.The Sub Judge,
Thiruvallur.
- 3.The Record Keeper,
VR Section,
High Court of Madras,
Chennai.

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T.V.THAMILSELVI, J.

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