



Second Appeal No.609 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.609 of 2019
and C.M.P.No.5843 of 2024

Ranganayaki

.... Appellant

-Vs-

- 1.Saraswathy @ palaniammal
- 2.Sivashanmugam
- 3.S.N. velumani (given up)
- 4.S.N.Selvarathinam(given up)
- 5.S.N.Gopalakrishnan (given up)
- 6.N.P.Periyamayaki (given up)
- 7.S.P.Shanmugam (given up)
- 8.Rathinasamy (given up)
- 9.S.P.Geethalakshmi (given up)
- 10.S.P.Rajeswari (given up)
- 11.Kalaiselvi (given up)
- 12.Santhi Devi (given up)
- 13.S.R.Venkatachalam (given up)
- 14.Jayaseeli(given up)

Memo recorded.

(R1 and 2 are contesting respondents in
SA.No 609 of 2019 and RR3 to 14 are given up
recorded as per the memo dated 16/12/2019
USR no 38359 and court order dated 18/12/2023
made in SA No. 609 of 2019(SSJ)

- 15.M/s.Rock Lines Farms and Resorts Pvt Ltd
Rep by its General Manager, Rock Lines House,
No.9/2, Museum Road, Bangalore 560001.

(R15 impleaded as party respondent
vide court order dated 10/03/2023
made in cmp no 557 of 2020
in SA no 609 of 2019(NSSJ)



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16. M/s.Sri Velayudhaswamy Spinning Mills (P) Ltd
Represented by its Authorised Signatory,
having registered office at S.F.1350/5,
Nagampatty, Vedasandur Taluk, Dindigul-624 710.

17. Sivaraj Spinning Mills Private Limited
Rep.by its authorised signatory, having
registered office at Shri Vari Shrimat,
4th Floor, No.1045 Avinashi Road,
Coimbatore 641 018
(RR 16 and 17 are impleaded vide court order
dated 05/03/2024 made in CMP nos
10535 of 2023 and 3520 of 2024 in
SA.No.609 of 2019 (PBBJ)

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.49 of 2012 dated 16.04.2014 on the file of the V Additional District and Sessions Court at Coimbatore in confirming the judgment and decree made in O.S.No.336 of 2006 dated 07.12.2011 on the file of the I Additional Subordinate Judge at Coimbatore.

For Appellant	: Ms.Hema Sampath Senior Counsel for Mr.S.Arjun
For Respondents	: R1- Served, No appearance R2 - Mrs.V.S.Usha Rani RR 3 to 14 - Given up R15 - Mr.Muniruddin Sheriff R16&17 - Mr.Karthik Ranganathan

J U D G M E N T

The present Second Appeal arises out of the judgment and decree of the Court of the V Additional District and Sessions Judge at Coimbatore in A.S.No.49 of 2012 dated 16.04.2014 in confirming the judgment and decree in O.S.No.336 of 2006 dated 07.12.2011 on the file of the I Additional Subordinate Judge at Coimbatore.



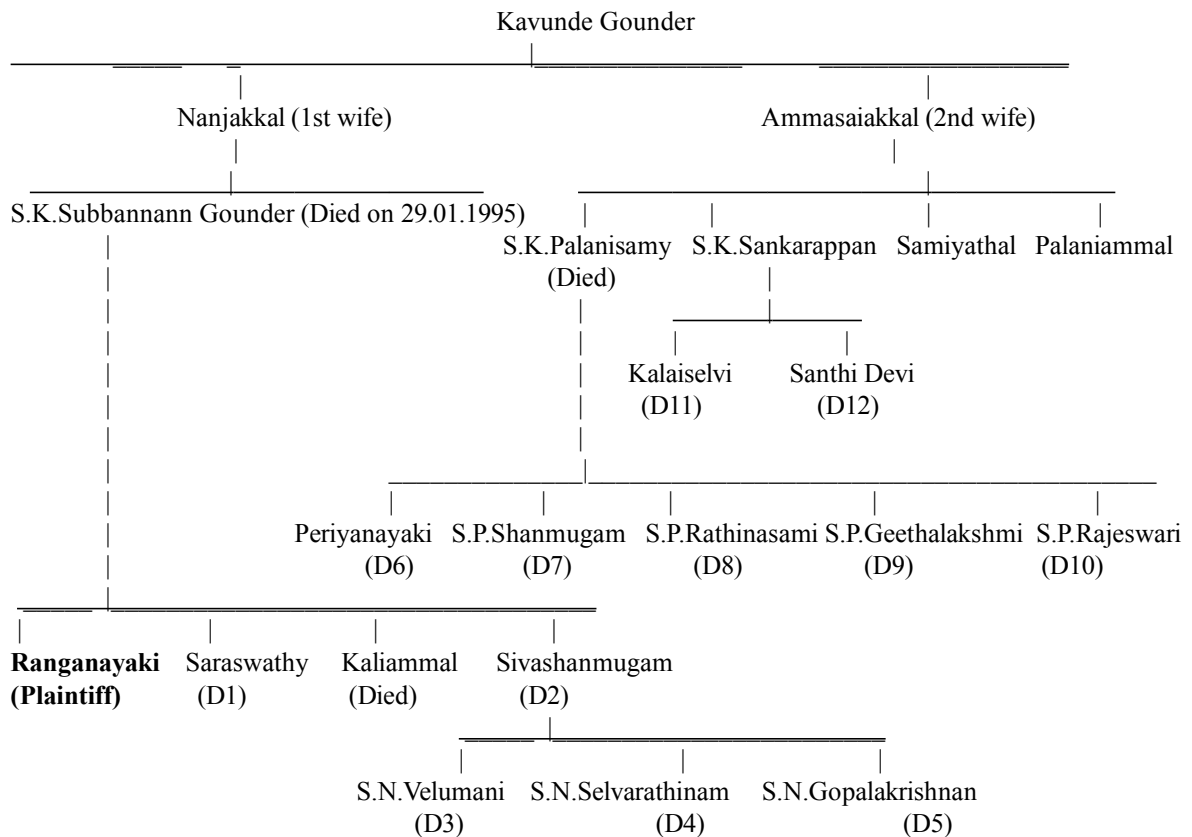
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For the sake of convenience, the parties will be referred to as per their ranking in the suit.

2. The facts necessary for the disposal of this appeal are as follows:

The suit is one for partition and separate possession. The properties originally belonged to one Kavunde Gounder. The said Kavunde Gounder was married twice and the litigation today is confined to the legal heirs through his first wife. For ready understanding, the genealogical chart is extracted hereunder:

GENEALOGICAL TREE





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3. The plaintiff Ranganayaki is the granddaughter of Kavunde Gounder.

Kavunde Gounder got the suit schedule mentioned properties by virtue of a partition between the family members of the legal representatives of Kavunde Gounder dated 05.04.1960. His son Subbannann Gounder and the sibling of the plaintiff Sivashanmugam, who has been arrayed as the second defendant, entered into a registered partition deed dated 19.05.1972. By virtue of this partition, Subbannan Gounder and Sivashanmugam were allotted separate and distinct properties from the assets of Kavunde Gounder which came to the hands of Subbannan Gounder. By virtue of Ex.B2 dated 23.02.1977, Subbannan Gounder settled all the properties that came to him by virtue of the registered partition deed dated 19.05.1972 to an extent of 4 acres 3 cents in S.No.493/5 of Alandurai Village, Coimbatore Taluk in favour of the second defendant. In order to enforce partition for all the properties left behind by Subbannan Gounder, the plaintiff presented O.S.No.336 of 2006. Even prior to the suit, there were exchange of notices between the parties', with the plaintiff issuing a notice on 27.03.2006 and a reply being issued under Ex.A4 by the second defendant on 25.04.2006. In the reply notice issued by the second defendant, he had admitted to the relationship between the parties, but pleaded that the deceased Subbannan Gounder, out of natural love and affection had executed a WILL on 13.06.1994 bequeathing the properties situated in the aforesaid survey number



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exclusively in favour of the second defendant. He would plead that as he became the absolute owner of the property, he had alienated the same in favour of a third party. It is pertinent to mention here that the identity of the third party to whom the property had been sold had not been disclosed by the second defendant. The written statement of the second defendant is more or less on the same lines as his reply notice.

4. On the basis of these pleadings, the learned Judge framed the following issues:

- (1) Whether the plaintiff is entitled for the relief of partition and other reliefs as prayed for?*
- (2) To what other relief the plaintiff is entitled to?*
- (3) Whether the suit is barred by joinder of unnecessary party?*

5. On behalf of the plaintiff, she examined herself as P.W.1 and marked Exs.A1 to A10. The second defendant entered the witness box and examined himself as D.W.1 and another witness as D.W.2. He marked Exs.B1 to B14.

6. The learned trial Judge came to a conclusion that the plaintiff has a share in the property as the second defendant had failed to produce the "Will" before the Court. On account of the fact the defendant had sold the property



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and that the suit for partition is not maintainable without impleading the purchaser, the learned trial Judge dismissed the suit on the ground of non-joinder of necessary parties. Insofar as the other properties are concerned, the learned Judge came to a conclusion that the properties had been sold away on 06.01.2005.

7. Aggrieved by the same, a regular appeal was presented before the learned V Additional District and Sessions Judge, Coimbatore. The appeal was received as A.S.No.49 of 2012. Pending the appeal, an application was moved to implead the purchaser. The learned Judge came to the conclusion that the application for impleading is not maintainable and consequently dismissed the petition. He came to the following conclusions:

- a) 'A' schedule properties have been gifted to the second defendant and it has been proved by virtue of Ex.B2.
- b) Insofar as the 'B' schedule property is concerned, no document was produced by the plaintiff that her father Subbannan Gounder was in enjoyment of the same. Consequently, the Court held 'B' schedule property is not a joint family property.
- c) He rejected the argument that the property situated in S.No.493/5 has been bequeathed by way of a "Will" in favour of the second defendant, as the "Will" has not been produced



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and proved. Therefore, leaving it open to the parties to file a separate suit for partition after impleading the purchasers, the learned Judge dismissed the appeal as well as the impleading application by a common order dated 16.04.2014.

8. Aggrieved by the said findings of the Court below, the present Second Appeal came up before the Court. This Court did not admit the appeal, but ordered notice regarding admission on 26.04.2019.

9. The respondent Nos.3 to 14 were given up as they were not contesting respondents in the appeal and this appeal was confined only to respondents 1 and 2.

10. On coming to know about the sale made by the second defendant Sivashanmugam in favour of M/s.Rockline Farms and Resorts Private Limited, an application was filed to implead the said party as respondent in the appeal. This application came to be allowed by an order of this Court on 10.03.2023. Pending the application for impleading the 15th respondent, the property had been sold in favour of the 16th respondent by virtue of a sale deed dated 11.12.2021. Subsequently, the said 16th respondent viz., Shri Velayudhaswamy Spinning Mills (Private) Ltd, by virtue of an order of the National Company Law Tribunal,



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Chennai alienated the same in favour of the 17th respondent M/s.Sivaraj Spinning Mills Private Limited.

11. In order to implead the respondents 16 and 17, an application came to be filed in C.M.P.No.10535 of 2023 and C.M.P.No.3520 of 2024. After contest, the applications came to be allowed on 05.03.2024. The order of impleading the subsequent purchasers has become final, as it was not taken on further appeal to the Supreme Court.

12. The matter was listed before me today for passing orders on admission and for disposal. Ms.Hema Sampath, learned Senior Counsel representing Mr.S.Arjun presented the following substantial questions of law for consideration of this Court.

- 1. Whether the Courts below are right in dismissing the suit in entirety after finding that the property in S.No.493/5 is a joint family property?*
- 2. Whether the Courts below are right in holding that once the joint family property is sold, then no question of partition would arise?*
- 3. Whether the Courts below are right in dismissing the suit holding non-impleadment of the purchaser from one of the co-owners is fatal?*



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4. *Whether the Courts below are right in misplacing the burden on the appellant when she discharged her part which is against Section 102 of the Indian Evidence Act?*

13. The appeal was opposed by Mrs.V.S.Usha Rani representing the second defendant / second respondent and by Mr.Karthik Ranganathan appearing for respondents 16 and 17.

14. Ms.Hema Sampath would submit that by virtue of Exs.B1 and B2, the properties that came to the hands of Subbannan Gounder were transferred in favour of Sivashanmugam. She would invite my attention to the pre-suit reply notice as well as to the written statement filed by the second defendant Sivashanmugam to state that, insofar as the property situated in S.No.493/5 to an extent of 4 Acres and 3 Cents is concerned, there is no dispute that it stood in the name of Subbannan Gounder. She would plead that as the second defendant has set up a "Will", which he did not prove during the course of trial, the plaintiff will be entitled to a share in the said property.

15. Mrs.V.S.Usharani and Mr.Karthik Ranganathan would submit that as the second defendant has disclosed the alienation of the property even prior to the suit and as his successor has not been impleaded as a party, the suit had



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been rightly dismissed for non-joinder of necessary parties. They would plead that there is no necessity to interfere with the judgment and decree of the Courts below.

16. In addition, Mr.Karthik Ranganathan would state that the order dismissing the application to implead the purchasers by the lower appellate Court had not been challenged by way of a revision or appeal independently and therefore it is fatal to the proceedings. He would place staunch reliance upon two judgments of this Court in

- Vasantha and Others -vs- Thirugnambal and Others
(2017 SCC Online Mad 22395)
- Kuruvamani and Others - vs- A.Muthu and Others
(2014 (4) CTC 653)

to assert that, by the very fact that the subsequent purchasers had been impleaded as party to the appeal, it will not enure to the benefit of the appellant. The decree as it is passed deserves confirmation.

17. I have carefully considered the arguments on either side.

18. Taking the last objection of Mr.Karthik Ranganathan first that the plaintiff has not challenged the dismissal of the application to implead by way of



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a revision independently, I have to take note of Section 105(1) of the Civil Procedure Code. It is not necessary that all and any of the orders passed during the course of trial have to be challenged independently by way of a revision or appeal. If an order is passed by the Court in exercise of its original or appellate jurisdiction and the final judgment passed in a suit is challenged by way of an appeal, any error, defect, irregularity **in any order** affecting the decision of the case can be agitated in the main appeal presented against the decree.

19. Going through the grounds of appeal, I find that the ground of non-impleading of the third party has been set forth as a ground in the Second Appeal grounds. No doubt, the specific I.A.number dismissing the impleading petition has not been mentioned, but a ground has been set forth to dispute the same. Apart from that, a question of law had also been suggested to that effect. This I find is, sufficient compliance in terms of Section 105(1) and I would reject the argument of Mr.Karthik Ranganathan that since no revision or appeal had been presented as against the order passed by the learned V Additional District Judge, Coimbatore in I.A.No.812 of 2013, impleading cannot be raised for the first time in Second Appeal. In fact, this argument pales into insignificance by virtue of the orders passed by this Court in C.M.P.No.557 of 2020 dated 10.03.2023 and C.M.P.No.3250 of 2024 dated 05.03.2024.



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20. By the effect of the orders I have referred to above, this Court has impleaded the subsequent purchasers as parties to the litigation. I have to hold that the Courts below have correctly come to the conclusion that the non-impleading of the subsequent purchasers is fatal to the suit. However, it is not a suit for declaration of title or such other reliefs, but it is a suit for partition. In a suit for partition, when the plaintiff comes up with an application to implead the subsequent purchaser, the application should normally be allowed. This is because the subsequent purchaser only gets the right, title and interest as alienated by a co-parcener / co-sharer. He does not have any independent right over the property.

21. In the undisputed facts of this case, insofar as S.No.493/5 of the aforesaid village is concerned, Sivashanmugam claiming an independent right by virtue of a "Will" said to have been written by his father on 13.06.1994 had alienated the property in favour of the 15th respondent. In fact, the respondents Mr.Karthik Ranganathan represents viz., Respondents 16 and 17 are the purchasers of the property *lis pendens*. The respondents 15 to 17 cannot claim an independent right and can only claim a right which the second defendant had in the property. The second defendant had projected a "Will", but unfortunately had not even bothered to produce the "Will" before the Court, which implies that the share of Subbannan Gounder remained unpartitioned. Had the lower



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appellate Court allowed the application for impleading, the litigation would not have been prolonged. The lower appellate Court however came to the conclusion that if the petition to implead is allowed, the matter would have to be remanded to the trial Court in order to receive the written statement from the purchasers and this would in turn prolong the litigation, and therefore chose to dismiss the petition.

22. By virtue of this erroneous order, the litigation has only been given some more life. I have already pointed out, in a suit for partition the subsequent purchaser is a necessary party. This is because at the time of final decree, he can plead that the property purchased by him should be allotted to his vendor and in turn should fall to his share. The lower appellate Court, without taking into consideration the fundamental principles regarding impleading the subsequent purchasers, dismissed the application. Therefore, that portion of the order necessarily has to be interfered with and accordingly, the order passed by the learned Judge in I.A.No.812 of 2013 dated 16.04.2014 requires to be set aside. It is accordingly set aside.

23. By virtue of the orders passed by this Court dated 10.03.2023 and 05.03.2024, the parties have already come on record. Therefore, the said orders have impliedly set aside the order passed by the first appellate Court dated



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16.04.2014. When this aspect was pointed out to Mr.Karthik Ranganathan, he would submit that this Court had already taken a view in **2017 SCC Online Mad 22395 (Vasantha and Others -vs- Thirugnambal and Others)** that impleading of the legal heirs pending the litigation will not improve the case of the plaintiff in a suit for partition.

24. A careful perusal of the facts of that case showed that it was a suit for partition for the properties which belonged to one Annamalai Nadar. The said Annamalai Nadar had two wives in the present case. Even when the suit notice had been issued seeking for partition, a reply had been given stating that the children born to Annamalai Nadar through his first wife viz., Kanakambujammal and Manonmaniammal have a share in the property and therefore they should be impleaded. However, the plaintiff in that suit refused to implead the daughters, which resulted in the dismissal of the suit for non-joinder of necessary parties. As against the decree of dismissal, an appeal was brought before this Court in A.S.No.730 of 2008. A reading of Paragraphs 17 to 19 of the said judgment shows that an attempt was made to implead the legal representatives of Annamalai Nadar viz., two daughters and therefore, it was argued that the plea of non-impleading stands satisfied. The learned Judge rejected this argument holding that as the daughters of Annamalai Nadar, Kanakambujammal and Manonmaniammal have an independent right to the



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property, the mere fact that they were impleaded as legal representatives of Annamalai Nadar would not cure the defect originally existing in the plaint.

25. It is a settled position of law that a person being impleaded as a representative only represents the case as his predecessor had projected before the Court. If by virtue of the fact that a legal representative is impleaded in the suit, it does not mean that the legal representative is entitled to plead something more than the person on behalf of whom he or she had been impleaded. This is by virtue of the principle that a legal representative cannot plead more than what the predecessor had projected before the Court. In fact if the legal representative has an independent right, that cannot be gone into in a suit where the party is impleaded as representing the estate of the deceased.

26. It was in those circumstances that the learned Judge came to a conclusion that, by the mere fact that Kanakambujammal and Manonmaniammal have been impleaded as legal representatives of the deceased Annamalai Nadar does not mean they are present before the Court to agitate their independent right. To put it in other words, the presence of parties as legal representatives does not mean they are present before the Court agitating their independent right. Therefore, the judgment though seemingly in favour of the argument of Mr.Karthik Ranganathan, is distinguishable on facts



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and law. In the present case, the purchasers have been impleaded in their independent capacity and not as the legal representatives of the second defendant.

27. Insofar as the the judgment in **Kuruvamani and Others - vs- A.Muthu and Others (2014 (4) CTC 653)** is concerned, in Paragraph 21 of the said judgment, the learned Judge more specifically holds that the suit **not** being a suit for partition, but one for declaration of title, the subsequent purchasers are necessary and they ought to have been impleaded as a party. This is not a judgment for the proposition that a subsequent purchaser not having been impleaded as a party in the suit for partition, the Second Appeal still has to go against the plaintiff.

28. The position of law as it prevails from 1993 is that, once a new party is added in the appellate stage, the newly impleaded parties must be given an opportunity to file the pleadings and let in evidence. This position has been settled by a Division Bench judgment of this Court in **Peter.A and 8 others -vs. Royappan and 7 others (1993 (2) Law Weekly 141)**. The Division Bench in that case followed the principles laid down by the Calcutta High Court in **Uzir Alisardar -vs-Savai Pehra (I.L.R 43 Calcutta 938)** and that of this Court **Venkata Radhakrishna Rao -vs- Venkata Rao (I.L.R 48 Madras 713)**.



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29. Since the subsequent purchasers have been impleaded as parties to the appeal, following the judgment laid down by **Justice M.Srinivasan** (as his Lordship then was), I necessarily have to set aside the judgment and decrees of the Courts below and remit the matter back to the trial Court in order to enable the 15th and 17th respondents to file their written statement and contest the matter on the merits of the case.

30. I only have to recollect the principle that in a suit for partition, unlike any other suits where a co-sharer or co-parcener alienates the property in favour of a third party and the suit is dismissed for non-joinder of necessary parties, impleading of the subsequent purchasers cures the defect that originally prevailed on the presentation of the plaint and the proposed party should be given a right to contest the suit on the merits of the case.

31. In the light of the above discussion, the judgments and decrees of the Courts below are set aside. The Second Appeal is allowed. No costs. The suit in O.S.No.366 of 2006 stands restored on to the file of the I Additional Subordinate Judge at Coimbatore. The trial Judge will take note of the fact that the suit is today confined only to the properties in S.No.493/5, Alandurai Village, Coimbatore Taluk to an extent of 4 acres and 3 cents. The trial Judge shall give



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an opportunity to the newly impleaded parties to file their written statements. It shall frame the issues afresh and thereafter proceed to decide the matter in accordance with law. The Court below shall also take note of the fact that being a suit remanded for fresh disposal, the suit must be expedited at all stages.

32. C.M.P.No.5843 of 2024 : As I have remanded the suit for fresh disposal in the light of impleading of the subsequent purchasers, I am not inclined to consider the application under Order XLI Rule 27 of CPC. The plaintiffs may produce the proposed documents if they so desire before the trial Court on remand. With the above observation, the CMP is dismissed.

10.07.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST



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To

1. V Additional District and Sessions Judge
Coimbatore.

2. I Additional Subordinate Judge
Coimbatore.



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V.LAKSHMINARAYANAN, J.

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