

A.S.(MD)Nos.6 of 2014 and 102 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 28.02.2024

Delivered On : **21.05.2024**

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

A.S.(MD)Nos.6 of 2014 and 102 of 2015

and

M.P.(MD)Nos.1 of 2014 and 1 of 2015

A.S.(MD)No.6 of 2014:-

1.Alagar
2.M.Mangammal(Died) ... Appellants
(Memo dated 17.04.2022 filed on 22.06.2022
in USR No.16150, is recorded, as appellant
no.2 died and appellant no.1 and R1 to 3, who are already
on record, are recorded as Lrs of the deceased appellant
no.2 vide Court order dated 05.12.2023 made in
A.S.(MD)No.6 of 2014 by LVGJ)

Vs.

1.S.Bala Nagammal (Died)
2.L.Baby Chandra
3.M.Akilandam
4.M.Vijayalakshmi
5.Pandian @ Pandiyarajan
6.Vinoth @ Vinothkumar
7.Rajeswari
8.Priya
9.S.Santhadevi
10.Subbaiah @ Mani
11.Rajendran
12.Chandrasekaran



A.S.(MD)Nos.6 of 2014 and 102 of 2015

13.Kathiravan

... Respondents

(Respondents 10 to 13 are brought on record
as LRS of the deceased 1st respondent vide
Court order dated 20.07.2023 made in
C.M.P.(MD)No.135 of 2023 in
A.S.(MD)No.6 of 2014 by KMSJ)

PRAYER : Appeal Suit is filed under Section 96 read with Order 41
Rule 1 of C.P.C., to set aside the judgment and decree made in O.S.No.
123 of 2007 dated 24.09.2013 by the learned Sixth Additional District
Judge, Madurai.

For Appellants : Mr.M.Thirunavukkarasu
For 2nd Respondent : Mr.S.Kumar
For 3rd Respondent : Mr.D.Deepak Arasu
For 4th Respondent : Mr.K.Muraleedharan
For Respondents 5 to 8 : Mr.R.Lakshmanan
For Respondents 10 to 13 : Mr.M.Kannan

A.S.(MD)No.102 of 2015:-

1.Bala Nagammal
2.Subbiah
3.Rajendran
4.S.Chandrasekaran
5.S.Kathiravan

... Appellants

(Appellants 2 to 5 are brought on record as
Lrs of the deceased sole appellant vide Court
order dated 08.12.2022 made in C.M.P.(MD)No.3617 of 2018
in A.S.(MD)No.102 of 2015 by NMJ)

Vs.

1.Alagar
2.Baby Chandra
3.Akilandam
4.Vijayalakshmi
5.Mangammal
6.Pandian @ Pandiyarajan



A.S.(MD)Nos.6 of 2014 and 102 of 2015

7.Vinoth @ Vinothkumar
8.Rajeswari
9.Priya
10.S.Santhadevi

... Respondents

PRAYER : Appeal Suit is filed under Order 41 Rule 1 of C.P.C., r/w Section 96 of C.P.C., to set aside the judgment and decree made in O.S.No.123 of 2007 dated 24.09.2013 by the learned Sixth Additional District Judge, Madurai.

For Appellants : Mr.M.Kannan
For Respondents 1, 3, 5 : Mr.M.Thirunavukkarasu
For 2nd Respondent : Mr.S.Kumar
For 4th Respondent : Mr.V.Murugenandam
For Respondents 6 to 9 : Mr.H.Arumugam
For 10th Respondent : Mr.M.Gururaj

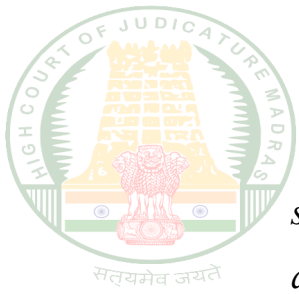
COMMON JUDGMENT

These Appeal Suits are directed against the judgment and decree passed in O.S.No.123 of 2007, dated 24.09.2013 on the file of the learned VI Additional District Judge, at Madurai.

2.A.S.No.6 of 2014, has been filed by the defendants 1 to 5 as appellants, while A.S.102 of 2015 has been filed by the plaintiff in the original suit.

3.The 1st appellant/plaintiff in A.S.No.102 of 2015 had filed the original suit in O.S.No.123 of 2007, claiming the following reliefs:-

“A)For partition of plaintiff's one-sixth share in the suit properties by metes and bounds and allot the plaintiff's



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A.S.(MD)Nos.6 of 2014 and 102 of 2015

specific portion of the same to plaintiff by metes and bounds and put the plaintiff in possession of such share therein.

B)Directing the first defendant to give the accounts in respect of income from the suit properties to the plaintiff from the date of presentation of plaint till the date of delivering the possession of the plaintiff's one-sixth share in respect of suit properties.

C)To grant permanent injunction restraining the defendants, not to alienate or encumber or alter structure of the suit scheduled properties A and B and also not to part with bank deposit amounts till the disposal of the suit.

D)Directing the contesting defendants to pay the plaintiff the cost of suit.

E)Granting the plaintiff such other and further relief as the Court may deem fit and proper in the circumstances of the case.”

4.For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the original suit.

5.The plaintiff's case as in the amended plaint in short is as follows:-

(i)The plaintiff and the defendants 1 to 4 are the son and daughters of one Mani Goundar through his wife Mangammal, 5th defendant herein. Originally the plaint scheduled properties belonged to said Mani



A.S.(MD)Nos.6 of 2014 and 102 of 2015

Goundar who obtained the same as his share of property by means of one registered partition deed dated 31.03.1976 entered between himself and his two brothers Mari Goundar and Arumuga Goundar at the time of partition of their joint family properties. In the partition deed dated 31.3.1976, several properties consisting of dry and agricultural lands and buildings with land have been allotted as 'A' schedule property towards Mani Goundar's share. The said Mani Goundar constructed many new buildings over the suit lands and they are being leased as commercial shops, Kalyana Mandapam and rental houses to several tenants therein on monthly rental basis etc. The properties allotted to Mani Goundar is mentioned as plaint A' schedule properties.

(ii)The said Mani Goundar, father of the plaintiff, died intestate on 27.01.2007 leaving behind him as his legal heirs, his widow Mangammal, 5th defendant, his only son Alagar, first defendant and four daughters namely Baby Chandra, Akilandam, Vijayalakshmi and Balanagammal, the defendants 2 to 5 and the plaintiff respectively to succeed to his property. On the death of said Mani Goundar, all the rights and interest of suit properties devolved upon his son, daughters and widow equally as per the provisions of Hindu Succession Act. Therefore, the plaintiff and defendants 1 to 5 being the legal representatives of



A.S.(MD)Nos.6 of 2014 and 102 of 2015

deceased Mani Goundar, are entitled to get equal share (ie) 1/6 share in respect of all the suit properties which belongs to the plaintiff as well as defendants 1 to 5. The plaintiff and defendants 1 to 5 are in legally joint possession and enjoyment of the suit properties.

(iii) During the life time of Mani Goundar, he had deposited huge amount in his name with Canara Bank, Madurai Town Hall Road Branch, in the fixed deposit account No. KDR 060560, a sum of Rs. 2,32,785/- and also another account No. KDR 060559, a sum of Rs. 28,71,198/- as on February 2007 and also in savings bank account No. 17270 in his name, a sum of Rs.2,44,935/- which are all belonging to plaintiff as well as defendants 1 to 5 with equal rights. The plaintiff has got 1/6 share and defendants 1 to 5 have got 1/6 share each as they all succeeded to the estate of deceased Mani Goundar. The above said bank deposits amount maintained by the deceased Mani Goundar and even now existing in his name are mentioned in 'C' Schedule properties in the suit schedule.

(iv) Further a few items of properties in the said partition deed allotted to Mani Goundar, (ie) survey No.7/5A an extent of 66 cent, Survey No.11/.2B, an extent of 1 Acre 20 cents, Survey No.11/484, an



A.S.(MD)Nos.6 of 2014 and 102 of 2015

extent of 41 cents have been acquired by the Special Tahsildar, Madurai for the purpose of forming Housing Board Colony, Ellis Nagar. The plaintiff has got right to get her equal share in respect of the compensation amount awarded in respect of lands acquired, which is included in 2 item of 'C' schedule property.

(v)As per the partition deed dated 31.03.1976 executed between said Mani Goundar, one Mari Goundar and Arumuga Goundar, the 'B' schedule properties therein was allotted to the share of plaintiff's father's brother, Mari goundar. At the time of partition, Mari goundar was of unsound mind and hence Mangammal and Amma pillai were appointed as the curators of the said Mari Gounder. The said Mari Goundar died as bachelor in the year 1979. Since the Mari Goundar died intestate and on the death of Mari Goundar, his interest devolved on his two brothers Mani Goundar and Arumuga Goundar as per Hindu Succession Act. 'B' schedule property in the partition deed dated 31.03.1976 was equally divided under oral partition entered between Mani Goundar and Arumuga Gounder in the year 1980. Mani Gounder got the northern half share in respect of 1st item of B schedule in the deed which is mentioned as 1st item property of plaintiff 'B' schedule. Likewise Mani Gounder got western half share in respect of 2nd item of 'B' schedule in the deed which



A.S.(MD)Nos.6 of 2014 and 102 of 2015

is mentioned as 2nd item of plaint 'B' schedule property. Therefore, the plaintiff is entitled to get 1/6 share in these properties and also for the division of it by metes and bounds.

(vi)The first defendant is collecting the rental and agricultural income from the suit properties and realizing it without sharing after the death of Mani Goundar. Due to misunderstanding arose between the plaintiff and defendants with regard to the division of properties, the first defendant is adamant in not giving the equal share to the plaintiff even after mediators attempted to make peaceful settlement between themselves. At last the plaintiff sent a registered legal notices dated 14.06.2007 and 15.06.2007 to the defendants demanding partition of the suit properties seeking partition of the joint family properties into separate share according to law by metes and bounds and hand over separate possession and enjoyment of her property divided. The Canara Bank sent a reply notice to the plaintiff dated 23.07.2007 On the basis of some created false and forged documents in their favour which is not binding on the plaintiff and her share in any manner, the plaintiff apprehends that the defendants are jointly acting in order to encumber the suit properties to third party without the knowledge and consent of the plaintiff and if it is so it will not bind her.



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(vii) During the pendency of this suit, the defendants 6 to 9 claiming to have got different portions of suit properties in item No.8 of the plaint schedule properties by means of alleged regd. Settlement deed 17.2.1993 in their favour by the deceased Mani Goundar and hence they have been impleaded as defendants 6 to 9 in the suit. The allegation that Mani Gounder, during his life time, has executed three settlements dated 17.02.1993 in their favour in respect of 10th item of 'A' schedule property in the alleged partition deed dated 31.03.1976 executed between Mani Gounder and Alagar etc., are all false and are denied by the plaintiff. The plaintiff's father Mani Gounder never executed at any time any partition deed or settlement deeds as such and also he never signed in the deeds. Likewise the 10th defendant, Santhadevi, also claiming to be sharer of the suit properties by way of purchasing a part of property in item No.7 from the 1st defendant Alagar, and hence she is added as defendant. The first defendant had no right or separate title to execute sale of different portions to any one as the said alleged partition deed dated 31.03.1976 is illegal and forged one. Hence, this suit is for partition of plaintiff's 1/6th share in the suit properties by metes and bounds and allot the plaintiff's specific portion of the same to plaintiff by metes and bounds and other reliefs.



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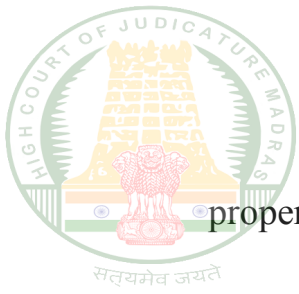


A.S.(MD)Nos.6 of 2014 and 102 of 2015

6.The defense of the first defendant in short is as follows:-

(i)The averments in the plaint that the defendants 1 to 4 are the son and daughters of Mani Goundar and 5th defendant is his wife is correct. It is also correct to state that the father of this defendant got the suit properties under registered partition deed dated 31.03.1976 entered into between himself and his brothers. In the said partition 'A' schedule properties were allotted to the father of this defendant. Subsequently out of his own earnings and hard work, he has improve the properties by putting up constructions.

(ii)Originally the suit 'A' schedule properties and other properties belonged to L.Veerappa Goundar and after his death, his 1st wife Valliammal has filed the suit for partition of the properties of L.Veerappa Goundar against his 2nd Wife Kullammal and the son and daughters in [O.S.No.2](#) of 1957 and in that 7/12 shares was allotted together to Kullammal and her sons Mani Goundar, Mari Goundar and Arumuga Goundar. Subsequently, Kullammal died intestate on 19.08.1973 leaving behind her 3 sons mentioned above as her legal heirs. Thereafter, under registered parition deed dated 31.03.1976, Mani Goundar, Mari Gounder and Arumua Goundar partitioned the properties, in which 'A' schedule



A.S.(MD)Nos.6 of 2014 and 102 of 2015

properties were allotted to the share of Mani Goundar.

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(iii) Even during the life time of Mani Goundar with the full knowledge of the Plaintiff and his other daughters, partition was effected between Mani Goundar and 1st and 5th defendants on 12.11.1984, in respect of 9th Item in the 'A' Schedule of the Partition deed dated 31.03.1976. In the said partition deed, 'A' Schedule was allotted to Mani Goundar himself and 'B' Schedule to his wife, Mangammal and 'C' Schedule to this defendant. Partition deed was acted upon and Mani Goundar has sold the property allotted to him in 'A' Schedule of the partition deed dated 12.11.1984. Similarly this defendant and 5th defendant also sold major extent in the 'B' Schedule and 'C' Schedule of the partition deed dated 12.11.1984. Neither the Plaintiff nor the defendants 2 to 4 challenged the partition. Hence, the Plaintiff and other daughters who were having knowledge about the said partition deed, cannot claim any partition in respect of 7th Item of Suit 'A' Schedule properties.

(iv) During the life time of Mani Goundar, he has executed three registered settlement deeds dated 17.02.1993 in favour of this defendant's son Pandian, Vinoth and daughters Rajeswari and Priya in



A.S.(MD)Nos.6 of 2014 and 102 of 2015

respect of 10th item of 'A' schedule property in the partition deed dated 31.03.1976 which is Item No.8 in the plaint 'A' Schedule property. Out of total extent of 53 cents in item No.8 of the plaint 'A' Schedule property, under the said settlement deeds, the father of this defendant has settled 39 cents in favour of his grand children and retained the remaining extent of 14 cents with him, he has constructed a Kalyana Mandapam in the said extent. Hence the plaintiff is not entitled to ask for the partition of 1/6th share in the entire properties of Mani Goundar. If at all the plaintiff is entitled for any partition, she is entitled only 1/6th share in his father's half share in the entire property i.e., 1/12th share alone. It is true that the father of this defendant died intestate on 27.01.2007 and the plaintiff and the defendants are his legal heirs. It is false to allege that on the death of Mani Goundar, all the Plaintiff and defendants inherited equal rights in respect of the entire properties in the 'A' schedule is not correct. The plaintiff is not entitled to ask for 1/6th share. The plaintiff is not in joint possession in respect of the plaint scheduled properties.

(v)The plaintiff is put to strict proof of the availability of amounts mentioned in the various banks in the name of Mani Goundar. For all the deposits, the deceased Mari Goundar has named this defendant's son and Wife Indira as nominees.



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(vi)The allegations of the plaint in the respect of acquisition of the properties by the Government is true. In a suit for partition, all the properties should be included and the non inclusion of certain properties is fatal and on this ground alone, the suit is liable to be dismissed.

(vii)The allegations in the plaint that after the death of Mari Goundar, his mother Küllammal inherited his properties and she died only subsequently and after her death, Mani Goundar and Arumuga Goundar inherited the properties of Mari Goundar as his legal heirs are denied. The plaintiff should strictly prove the oral partition Arumuga Goundar between Mani Goundar and Arumuga Goundar.

(viii)It is false to allege that due to misunderstanding arose between the plaintiff and defendants in respect of the division of properties, this defendant is adamant in not giving the equal share to the plaintiff even after the mediations. Even during the life time of his father, the 4th defendant has received a sum of Rs. 3,00,000/- and she has also given an agreement accepting the receipt of Rs. 3,00,000/- on 15.06.2005 by cheque No.353133 drawn in favour of Canara Bank, Town Hall Road Branch, Madurai and agreed that she will not claim any share in the

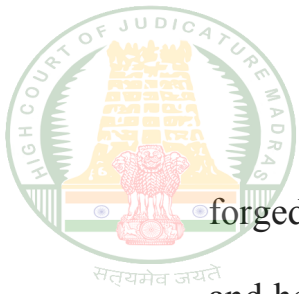


A.S.(MD)Nos.6 of 2014 and 102 of 2015

properties of Mani Goundar. Similarly the plaintiff also received a sum of Rs.3,50,000/- from the father of this defendant. But she insisted for cash payment, and accordingly the amount was paid by this defendant's father by cash. Hence the plaintiff promised not to claim any share in the properties of Mani Goundar and after receiving amount of Rs.3,50,000/- she is now estopped from claiming any share in the suit properties. The said amount of Rs.3,50,000/- was paid for the construction of her house at Palanganatham.

(ix)On receipt of the legal notice, this defendant convened a panchayat in the presence of elderly members and the plaintiff was advised not to proceed further as already her father has provided her with sufficient jewels for her marriage and also paid an amount of Rs. 3,50,000/- The plaintiff also assured that she will not take any further action. Only on that assumption, this defendant has not sent any reply to the legal notice sent by the plaintiff. Subsequently, the plaintiff asked this defendant's daughter for marriage to her son, for which this defendant refused. Being aggrieved by that, the plaintiff has come forward with the present suit with false and frivolous allegations.

(x)The allegations that on the basis of some created false and



A.S.(MD)Nos.6 of 2014 and 102 of 2015

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forged documents in their favour, which is not binding on the plaintiff and her share in any manner, the plaintiff apprehends that the defendants jointly are acting in order to encumber the suit properties to third parties without knowledge and consent of the plaintiff are all false. In fact, this defendant has not entered in to any document invididually as alleged by the plaintiff. The registered documents namely, partition deed, and settlement deeds have executed even by Mani Goundar himself; during his life time. The plaintiff has right to question the documents executed by her father Mani Goundar. There is no cause of action to seek for partition that too for 1/6th share. The plaintiff is not in joint possession of the suit property and hence, the Court Fee paid is not correct. Therefore, it is prayed to dismiss the suit with cost.

7.The crux of the additional points raised by the first defendant in the additional written statement is as follows:-

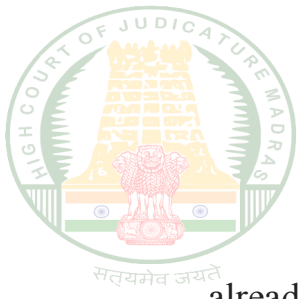
(i)The plaintiff has been examined as P.W.1 on her side. The P.W. 1 has deposed in her cross examination, that she is not in joint possession and enjoyment of the suit properties along with this defendant. She has stated that she is out of possession and enjoyment of the suit properties and also deposed that she had never possessed and enjoyed the suit properties along with defendant at any point of time eversince from the



A.S.(MD)Nos.6 of 2014 and 102 of 2015

date of her marriage. In addition to that, the defendant submitted that the above stated deposition given by the plaintiff are all against the allegations set forth in the plaint. As such, the plaintiff is not in joint possession and enjoyment of the suit properties. On the other hand, the plaintiff herein filed the above original suit by alleging that the plaintiff is in joint possession and enjoyment of the same. Hence the plaintiff filed the above original suit under Section 37(2) of Tamil Nadu Court Fees and Suit Valuation Act and paid a fixed Court fees of Rs.750/- alone.

(ii) The suit properties are very valuable properties and undervalued the suit properties as against the deposition given by P.W.1. The plaintiff herein is liable to pay the Court fees to the market value of the suit properties as on date of the filing of the suit. The plaintiff herein ought to have filed the above suit under Section 37(1) of Tamil Nadu Court Fees and Suits Valuable Act. As such, this suit is not maintainable in law and facts, unless she pays the Court fees to the market value of her share of 1/6th. The value of the 1/6th share of properties worth about more than Rs.1 Crore. It is submitted that unless the plaintiff pay the Court fee on the market value of the suit properties to her share, the plaint is liable to be rejected.



A.S.(MD)Nos.6 of 2014 and 102 of 2015

(iii)The plaintiff's father deceased Mani Gounder and 5th defendant

already sold out the plaint A schedule mentioned 7th item of property. It had been partitioned and had been sold out to several persons and they are alone in possession and enjoyment of the same except 17 cents. The plaintiff herein very well aware of the fact of alienation made by them and she knowing very well, failed to add the buyers of the said land as the defendants in the suit. The plaintiff herein vindictively included the said 7th item of property without adding the buyers as the defendants. The buyers of the above plaint A schedule 7th item of suit property are all necessary parties to the suit proceedings. If any order passed against the buyers of said 7th item of suit property definitely it will affect the right and interest of them. For proper adjudication and for ends of justice, the buyers of the plaint A schedule of 7th item of property has to be added as the defendants in the above original suit. That apart unless the buyers of the said 7th item of property are added as the defendant in the above original suit, the suit is bad for non joinder of necessary parties.

(iv)Moreover the plaint A schedule mentioned properties are jointly possessed and enjoyed by this defendant along with one Arumuga Gounder, who is none other then the brother of the deceased Mani Gounder without effecting partition of the same. The said Arumuga



A.S.(MD)Nos.6 of 2014 and 102 of 2015

Gounder is also one of the very necessary and essential party to the above suit with respect to the plaint B schedule properties. The plaintiff herein failed to add the said Arumuga Goundar as one of the defendant in the above original suit. While so, this suit suffers for non joinder of necessary party.

8.The crux of the additional points raised by the first defendant in the additional written statement is as follows:-

The plaintiff has no right and no locus standi to question the validity of the partition deed dated 12.11.1984 entered between the deceased Mani Gounder and by this defendant and the 5th defendant. The plaintiff had wrongly mentioned the date of partition entered between this defendant and his father deceased Mani Gounder and the 5th defendant. The plaintiff has no property right, title and interest over the properties gifted to the defendants No.6 to 9. In the same manner, the plaintiff has no right and no locus standi to question the validity of the gift settlement deeds dated 17.02.1993 executed by the defendant's father deceased Mani Gounder with respect to his share of property. Likewise the plaintiff has no right, title and interest with respect to the 7th item of the suit property. The plaintiff has no right and no locus-standi to question the validity of the sale deed executed to the 10th defendant



A.S.(MD)Nos.6 of 2014 and 102 of 2015

herein. The defendants 6 to 10 are all unnecessary parties to this suit.

This suit is suffers for mis-joinder of unnecessary parties to this suit. As such, this suit is not at all maintainable in law and facts. The plaintiff is not entitled to claim any share of properties over the item No. 7 and 8 of the plaint schedule properties.

9.Gist of the written statement filed by the second defendant is as follows:-

This defendant submits that she was not given any share in the family properties to which she is lawfully entitled to. This defendant was not given any income from the joint family properties. This defendant submits that she is also entitled to a 1/6th share in the suit properties and she is also entitled to the amount lying in Canara Bank. This defendant is also entitled for lawful share in the compensation amount deposited towards the credit of L.A.O.P.No.32 of 2001 as set out in C schedule to the plaint. In other aspect, this defendant supports the claim of the plaintiff and prays that 2nd defendant also is entitled to a share in the suit property.



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A.S.(MD)Nos.6 of 2014 and 102 of 2015

10.The crux of the defense of the third defendant is as follows:-

(i)This defendant Akilandam, admits that the plaintiff and defendants 1 to 4 are all the son and daughters of deceased Mani Goundar through his wife Mangammal, 5th defendant. It is true that the suit properties belonged to this defendant's father Mani Goundar who obtained these properties as his share from the family partition deed dated 31.03.1976 and was in possession and enjoyment of all his lands and buildings constructed by him out of the rental income, agricultural income and the land acquisition compensation amount realized by him.

(ii)The said Mani Goundar deposited several lakhs of rupees in his name in Canara Bank. Even today number of tenants in the suit properties have been paying the monthly rents and agricultural income. On the death of Mani Goundar who died intestate, this defendant has got equal share (i.e.) $1/6^{\text{th}}$ share, in respect of all the suit properties which belonged to her father. This defendant is also in joint possession and enjoyment of the suit properties as co-parceners along with plaintiff and other defendants since rights of suit properties devolved on plaintiff and defendants as per Hindu Succession Act.

(iii)This defendant has been residing at Item No.1 of suit property



A.S.(MD)Nos.6 of 2014 and 102 of 2015

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and also receiving a meagre amount Rs.1,500/- only per month from the rental amount towards her maintenance and hence, this defendant is striving for life without having any income even for paying the necessary Court fee for preferring separate proceeding to get her share. Even if it is so, she is entitled to get equal lawful share in the suit properties and allot separate share of properties by metes and bounds according to law and give separate possession and enjoyment of the properties divided and share of income to be given. The first defendant is now collecting the rental income regularly after the death of Mani Goundar and also mismanaging the properties by making othi and encumbering it which will not bind this defendant.

(iv) This defendant's father Mari Goundar put up new construction from out of his money in Alagappan Nagar wherein Alagar is residing with his family.

(v) It is therefore prayed that this Hon'ble Court may be pleased to pass a decree and judgment by making partition of the suit properties in favour of this defendant also according law.



A.S.(MD)Nos.6 of 2014 and 102 of 2015

11.The crux of the defense of the fourth defendant is extracted

as follows:-

(i)The plaintiff and defendants 1 to 4 are children of late Mani Goundar and the 5th defendant is the wife of Late.Mani Goundar and mother of plaintiff and defendants 1 to 4. The said Mani Goundar died intestate on 27.01.2007 leaving behind him his children, the plaintiff and defendants 1 to 4 and his wife 5th defendant as his legal representative to succeed all his estates.

(ii)The plaint schedule mentioned properties belonged to late. Mani Gounder who enjoyed the same till his life time and after his death, this defendant is in joint possession and enjoyment of the plaint schedule mentioned properties as co-parceners along with other defendants and plaintiff as per the provisions of Amended Hindu Succession Act.

(iii)This defendant has borrowed a sum of Rs.3,00,000/- (Rupees Three Lakhs only) from her father said Late.Mani Goundar to discharge their debts through a demand draft and her father has obtained her signature and her husband in the blank stamp paper for the only purpose of acknowledging the said borrowal.



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(iv) This defendant has not executed any agreement that she will not claim any share in the properties of said Mani Goundar as alleged by the 1st defendant in his written statement. If there is any such document as alleged by the first defendant in his written statement, it should be a false and created document by the first defendant for the purpose of this case and it is not valid under law and not binding on this document.

(v) As per the provisions of Hindu Succession Act, this defendant is entitled to 1/6th share in the properties left by the said Mani Goundar and her share also has to be allotted in this suit. For which, this defendant has paid a sum of Rs.375/- as per law under Section 37(3) of the Court Fees Act I.e., Half of the Court fees paid by the plaintiff; for partition and allotment of her share in the suit properties.

(vi) It is therefore just and necessary that this Honourable Court may graciously be pleased to pass decree and judgment in favour of this defendant allotting 1/6th share in the suit properties and thus render justice.

12. The crux of the defense of the sixth defendant is extracted



A.S.(MD)Nos.6 of 2014 and 102 of 2015

as follows:-

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(i)The Specific allegations stated in para 7A of the amended plaint by alleging that during the pendency of this suit, the defendant Nos.6 to 9 claiming to have got different portion of suit properties in item No.8 of the plaint schedule properties by means of alleged registered settlement deed 17.02.1993 in their favour by the deceased Mani Goundar and hence, they have been impleaded as defendants Nos. 6 to 9 in the suit and alleged that the Mani Goundar during his life time has executed three settlements dated 17.02.1993 in their favour in respect of 10th item of "A" schedule property in the alleged partition deed dated 31.03.1976 executed between Mani Goundar and Alagar, etc are all false and are hereby denied by the plaintiff and further alleged that the plaintiff's father Mani Goundar never executed at any time any partition deed or settlement deeds as such and also he never signed in the deeds and also alleged that the 10th defendant Santhadevi also claiming to be sharer of the suit properties by way of purchasing a part of suit property in item No.7 from the 1st defendant Alagar and hence, she is added as defendant herein and furthermore alleged that the 1st defendant had no any right or separate title to make sales at different portion to any on as the said alleged partition deed dated 31.03.1976 is illegal and forged one and alleged that the plaintiff already filed a reply statement in the suit which



A.S.(MD)Nos.6 of 2014 and 102 of 2015

is to be treated as part and parcel of the plaint are all totally denied as utter false, vexatious fraudulent and unsustainable in law and fact and the plaintiff is strictly held liable to prove the same.

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(ii)Infact the deceased Mani Goundar had executed, three registered settlement deeds with respect to the 7th and 8th item of the suit property infavour of the defendants 6 to 9. Prior to execution of the said settlement deeds, the deceased Mani Goundar and the defendants 1 and 5 had entered into a registered partition deed dated 12.11.1984 between them. The property executed in the said settlement deeds had been allotted as 10th item of A schedule property to the deceased Mani Goundar. The deceased Mani Goundar have got every right and interest to dispose of his share of properties to the will and pleasure of him. Whiles, the deceased Mani Goundar had executed the said three settlement deeds infavour of the defendants 6 to 9 out of his own share of properties due to love and affection towards them.

(iii)The settlement deeds dated 17.02.1993 in favour of the defendants No. 6 to 9 came into force and the defendants had acted upon. The defendants No. 6 to 9 had taken possession of the properties set forth in the said gift settlement deeds from the date of execution of the same.



A.S.(MD)Nos.6 of 2014 and 102 of 2015

The defendants 6 to 9 are in exclusive and independent possession and enjoyment of their respective properties as per the said settlement deeds dated 17.02.1993. The plaintiff has no right and interest to challenge the validity of the partition deed dated 12.11.1984 and has no locus standi to question the validity of the gift settlement deeds dated 17.02.1993. The plaintiff has no right to claim share over the properties gifted by the deceased Mani Goundar in favour of the defendants 6 to 9. Even assuming, that the plaintiff is having right over the properties of the deceased Mani Goundar, she has a right only over the properties which were left by the deceased Mani Goundar as on the date of his death. The succession is open only on the date of death of the deceased Mani Goundar. The Plaintiff is not entitled to claim any share of properties over the properties which were already disposed off by him. The defendants 6 to 9 are unnecessary parties to this suit. This suit suffers for mis joinder of defendants 6 to 9. The defendants 6 and to 9 are not claiming right, title and interest over the 7th and 8th item of the suit property after filing of this vexatious suit. The defendants 6 to 9 are in possession and enjoyment and right, title and interest over the suit item Nos.7th and 8th of the property ever since from the date of execution of the gift settlement deeds infavour of them. This defendants reserves his right to file additional written statement if any. There is no cause of



A.S.(MD)Nos.6 of 2014 and 102 of 2015

action against the defendants 6 to 9. There is no merit in this suit. There is no truth in this suit. The plaintiff herein under valued the suit properties and paid insufficient Court fees. This suit is not at all maintainable in law and fact.

13.The gist of the defense of the tenth defendant is extracted as follows:-

(i)This defendant denied joint possession of suit schedule item 7th of the plaint as false, fraudulent and misleading. Because, she purchased with possession of the schedule item 7th of the plaint in part through various sale deeds from 3rd parties from 1989 onwards. Ever since, she is in exclusive enjoyment and possession of the schedule property. She is bonafide purchaser after paying the valuable consideration to the vendors and she made constructions in the schedule property and the revenue records and house tax receipt are all stood in the name of this defendant.

(ii)This defendant strongly oppose the amended plaint by the plaintiff as not legally sustainable. Because, I.A.No.784 of 2010 is filed for impleading the parties alone. But in I.A.No.47 of 2011, they filed the application under Order 6 Rule 17 was not correct. At that time, due to



A.S.(MD)Nos.6 of 2014 and 102 of 2015

over sight, the discrepancy was not noticed. The 3rd item of the amendment was not permitted by this Hon'ble Court. So the amendment in plaint 7A is not legally sustainable. Because, the alleged above amendment would cause prejudice to this defendant by law of limitation.

(iii)The suit claim against this defendant barred by law of limitation. The execution of partition between Mani Goundar and 1st and 5th defendants dated 12.11.1984. By virtue of that partition deed, the 5th defendant sold the schedule "C" property allotted to him after receiving the valuable sale consideration from the vendee of him. This defendant purchased the schedule property in part on various dates from them. It is therefore, prayed to dismiss the suit with cost against this defendant.

14.The learned Trial Court upon considering the above pleadings has framed the following issues:-

“1]Whether the plaintiff is entitled to one-sixth share in the suit?

2]Whether the defendant is liable to render accounts as paid for in the plaint?

3]Whether the plaintiff is entitled to the relief of permanent injunction?

4]To what relief, the plaintiff is entitled to?”



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15. On 13.07.2010, additional issues were framed by the learned Trial Court and the same is as follows:-

“1] Whether the plaintiff proves that she is in joint possession and enjoyment of the suit property and the suit is valued correctly?

2] Whether the defendant proves that the suit is bad for non-joinder of necessary parties?”

16. On 28.04.2011, the learned Trial Court framed yet another three additional issues and the same is as follows:-

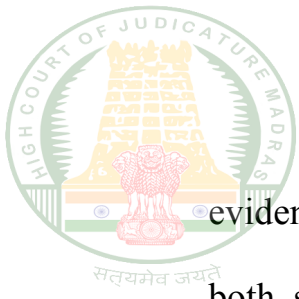
“1] Whether the partition deed dated 12.11.1984 is true and binding on the plaintiff?

2] Whether the settlement deed dated 17.02.1993 is true and valid and binding on the plaintiff?

3] Whether the suit is not maintainable?”

17. On the side of the plaintiff, three witnesses P.W.1 to P.W.3 were examined and Ex.A1 to Ex.A31 were marked. On the side of the defendants, D.W.1 to D.W.11 were examined and Ex.B1 to Ex.B90 were marked.

18. The learned Trial Judge upon considering the pleadings and the



A.S.(MD)Nos.6 of 2014 and 102 of 2015

evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree dated 24.09.2013 by answering both the additional issues framed on 13.07.2010 in favour of the plaintiff. The first additional issue dated 28.04.2011 in favour of the plaintiff. Second additional issue dated 28.04.2011 in favour of the defendants. First issue in favour of the plaintiff and defendants 2 and 4, second and third issues are against the plaintiff and third additional issue dated 28.04.2011 in favour of the plaintiff thereby, partly allowing the suit. Aggrieved by the impugned judgment and decree, both the plaintiff and the defendants 1 and 5 in the original suit have filed two Appeal Suits in A.S.No.6 of 2014 and A.S.No.102 of 2015 respectively.

19.The learned counsel appearing for the defendants 1 and 5 submitted that, P.W.1 during her examination deposed that she did not know about the partition deed dated 12.11.1984, which is marked as Ex.B1, which was entered into between Mani Goundar and the defendants 1 and 5. She further deposed that she did not know that the said partition was with respect to 7th item in suit A schedule property. P.W.1 also deposed that she did not know anything about the execution of settlement deeds in favour of the defendants 6 to 9 with respect to the suit A schedule item No.8 by the father of the plaintiff, Mani Goundar.



A.S.(MD)Nos.6 of 2014 and 102 of 2015

He further insisted that the plaintiff never denied Ex.B1 partition deed and Ex.B2 to Ex.B4 settlement deeds. He also submitted that the plaintiff had given up her share with respect to the portion of the property sold by her father, her mother and brother in respect of suit item No.7 in A schedule property.

20.The learned counsel vehemently contended that the learned Trial Court had erroneously held that since the plaintiff has given up her share in suit item No.7 of A schedule property, the purchasers of item No.7 are not necessary parties to the suit and that the suit is not hit by the principles of non-joinder of necessary parties. Condemning that the findings of the learned Trial Court is highly arbitrary and unsustainable in law, he insisted that Ex.B1 partition deed was registered on 12.11.1984 with respect to the self-acquired property of the plaintiff's father, Mani Goundar. Therefore, he is having every right to execute partition deed during his lifetime, thereby settling his property to any one of his legal heirs. That apart, he submitted that the plaintiff and defendants 2 to 4 are not entitled to get any share in item No.7 of the suit A schedule property. He contended that the findings of the learned Trial Court with respect to item No.7 holding that the plaintiff, the defendants 2 to 4 are entitled to get equal share in 17 cents is liable to be set aside.



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Categorically, contending that the learned Trial Judge erred in holding that the first defendant will not get any right over the share of the third defendant by way of Ex.B50 release deed and one-sixth share of the third defendant will enlarge to all the co-owners that is the plaintiff and the defendants 1, 2, 4 and 5. The learned counsel submitted that the learned Trial Court is totally wrong in making such an observation. He further submitted that in the instant case, the third defendant has executed a release deed under Ex.B50 in favor of the first defendant exclusively by releasing her one-sixth share as co-owner. The third defendant as co-owner is having every right to release her undivided share in the suit property to any co-owner. Therefore, the learned counsel contended that by virtue of Ex.B50 release deed, the first defendant is entitled to get two-sixth share in the suit properties except item No.7 in suit A schedule property in which the first defendant is having absolute right and on that basis, he prayed to dispose of the case.

21.Per contra, the learned counsel appearing for the plaintiff submitted that the findings regarding item No.8 of the plaint schedule property has been challenged in the appeal particularly with respect to the aforesaid 53 cents land. He further submitted that the learned Trial Court erred in upholding the validity of all the three settlement deeds

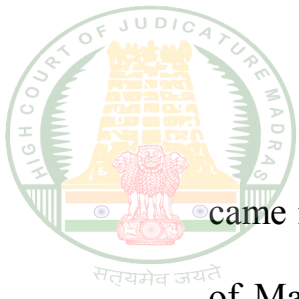


A.S.(MD)Nos.6 of 2014 and 102 of 2015

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with respect to item No.8 when the same is not proved in the manner known to law under Section 68 of the Indian Evidence Act and when the attesters to the said settlement deeds were not specifically examined before the learned Trial Court. As far as the release deed executed by the third defendant is concerned, the learned counsel contended that once a co-owner releases his share, the same should be for the benefit of all the other co-owners and not to one particular co-owner. On that basis, the learned counsel insisted that the release deed executed by the third defendant has to be eschewed. With regard to the argument put forth by the learned counsel for the first defendant that the suit is bad for non-joinder of necessary parties for not having impleaded the alienes with respect to the various sale deeds pertaining to item No.7 of the plaint A schedule property, the learned counsel submitted that the plaintiff is restricting her claim to whatever remain without challenging the aforesaid sales.

22.The learned counsel further categorically contended that Ex.B1's partition deed is not true and the contents of Ex.B1 is not reflected in the subsequent deeds, especially the release deed executed by the third defendant, which has been marked as Ex.B50. Thus, Ex.B1 partition deed can be fairly negated for the reason that the same never



A.S.(MD)Nos.6 of 2014 and 102 of 2015

came into force. Further, the learned counsel submitted that the signature of Mani Goundar in the aforesaid partition deed marked as Ex.B1 also differs from his usual signature. Only to avoid the plaintiff's claim that the signature of Mani Goundar is not true and the same is forged, the first defendant has marked the xerox copy of the partition deed of the year 1984 as Ex.B1 by producing and comparing the original. The first defendant's attitude of not marking the original partition deed itself would prove the fact that he has not approached the Court with clean hands. Pointing out the death of the fifth defendant that is the mother of the plaintiff and defendants 1 to 4, the learned counsel insisted that all the surviving legal heirs are entitled to equal share in the mother's property as well.

23.Per contra, the learned counsel appearing for the first defendant submitted that the mother has executed a Will with respect to her share in the plaint schedule properties in favour of the first defendant and hence, the other legal heirs are not entitled to claim any right over the same. For which, the learned counsel for the fourth defendant submitted that the claim of the first defendant by the strength of the Will executed by the mother cannot be considered until and unless the Will of the mother is proved in the manner known to law and atleast for the limited purpose of



proving the Will, the matter has to be remanded back to the learned Trial Court.

24.The learned counsel appearing for the first defendant further contended that item No.8 of the plaint schedule properties is the self acquired property of the Mani Goundar and hence, Mani Goundar is entitled to make any arrangement with respect to the said property, by executing any document with respect to item No.8. Finding out the fact that the plaintiff has neither in her pleading nor in her evidence denied the right of her father to execute any document with respect to item No.8, the learned counsel insisted that the plaintiff has disputed only the signature of Mani Goundar in Ex.B1 partition deed and has not disputed the execution of the same. However, since the plaintiff has diligently failed to prove her contention that the aforesaid signature has not been made by her father in accordance with law, her argument is not sustainable.

25.In view of the aforesaid submissions made by either parties, the points for consideration which arise in these Appeal Suits are as follows:-

“1)Whether the learned Trial Court erred by holding that



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the suit is not bad for non-joinder of purchasers of suit 7th item of A scheduled property, co-sharer of plaint B schedule property, namely Arumuga Goundar and Canara bank ?

2)Whether the learned Trial Court erred by finding that the defendants 1 to 5 have not taken ouster plea ?

3)Whether the learned Trial Court erred by finding that one-sixth share of the third defendant who had executed a release deed marked as Ex.B50 in favour of the first defendant, will devolve upon all the co-sharers and not to the first defendant alone ?

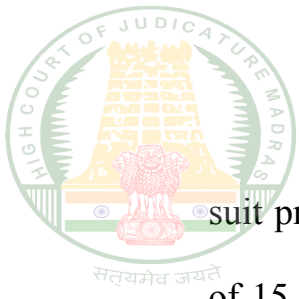
4)Whether the learned Trial Court erred by holding that B schedule property had already been partitioned between Arumuga Goundar and Mani Goundar ?

5)Whether the learned Trial Court erred in not granting share in total extent of item 8 of the plaint schedule property to the plaintiff on the ground that the settlement deed dated 17.02.1993 executed by Mani Goundar is final, despite the same not actually being proved before the learned Trial Court ?

6)Whether the judgment and decree dated 24.09.2013 in O.S.No.123 of 2007 on the file of the learned VI Additional District Judge, Madurai is liable to be interfered with ?

7)To what reliefs, the parties are entitled to ?”

26.The suit for partition has been filed by one Bala Nagammal, the daughter of one Mani Goundar for partition of her one-sixth share in the



A.S.(MD)Nos.6 of 2014 and 102 of 2015

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suit properties by metes and bounds. Plaint A schedule property consists of 15 items, plaint B schedule properties consist of two items and plaint C schedule property consists of two items. All the items in A and B schedule of the plaint are immovable properties, while the two items of properties in C schedule of the plaint in item No.1 are the fixed deposits and savings bank deposits in Canara Bank, Town Hall Road Branch, Madurai-625001. As far as item No.2 of the C schedule property is concerned, the same is with respect to the plaintiff's share in the compensation amount deposited in the Court in L.A.O.P.No.32 of 2001. The A schedule properties, originally belongs to the plaintiff's father Mani Goundar by the strength of a partition deed dated 31.03.1976, which has been marked as Exs.A1 and Ex.B89. In the aforesaid partition deed dated 31.03.1976, A schedule property was allotted to Mani Goundar, B schedule property and C schedule properties were allotted to his brother's Mari Goundar and Arumugam Goundar respectively. The properties scheduled as A schedule in the aforesaid partition deed dated 31.03.1976 comprise the A schedule properties that is the suit properties in the suit. As far as B schedule property is concerned, the same belonged to Mari Goundar by the strength of Ex.A1 partition deed dated 31.03.1976.



A.S.(MD)Nos.6 of 2014 and 102 of 2015

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27.It is the contention of the plaintiff that after the demise of Mari Goundar, B Schedule property has been orally divided between his surviving brothers namely Mani Goundar and Arumugam Goundar equally between themselves. The plaintiff claims that the aforesaid partition between Mani Goundar and Arumugam Goundar with respect to B schedule suit property was effected by means of an oral partition. The learned Trial Court proceeded to observe that the factum of oral partition as contended by the plaintiff with respect to the suit B schedule property effected between Mani Goundar and Arumugam Goundar is not disputed by the defendants 1 to 5. That apart the learned Trial Court observed that as far as the suit A schedule property is concerned, it is unquestionably the properties which belonged to Mani Goundar by the strength of Ex.A1 partition deed. As far as C Schedule properties are concerned, it is with respect to bank deposits. However, item No.2 is with respect to the compensation which has been deposited in the Court with respect to properties in Survey No.11-2, which was acquired by the housing board, which details of the properties do not reflect in the plaint. However, the Canara bank has acknowledged the deposits by its reply to the plaintiff's notice dated 23.07.2007 which is marked as Ex.A6. On that basis, the learned Trial Court proceeded to confirm that all the plaint A, B and C schedule properties are available for the partition between the plaintiff

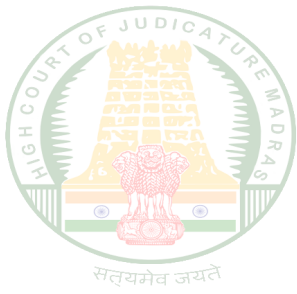


A.S.(MD)Nos.6 of 2014 and 102 of 2015

and defendants 1 to 5.

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28.The plaintiff, the defendants 2, 3 and 4 are the daughters of Mani Goundar. Each of them have been married and they are living separately in their respective houses with their family. As far as the third defendant is concerned, she had separated from her husband and is residing at Door No.51, Netaji Road, a house property belonging to Mani Goundar. Though the plaintiff during her examination in chief at the first instance deposed that she was not in possession of the suit properties and she did not receive any income from the suit properties. Later, at the time of cross-examination, she deposed that she received a part of the rental amounts during a brief period of time. The third defendant was examined as P.W.5 and she in her proof affidavit had submitted that she is residing at Door No.51, Netaji Road. That apart, the proof affidavit filed by the first defendant was also marked as Ex.B48, in which it has been shown that Mani Goundar is survived by the plaintiff and defendants 1 to 5. On the basis of the aforesaid proof affidavit, the learned Trial Court proceeded to conclude that had the plaintiff and defendants 1 to 5 not been in joint possession, the first defendant would not have admitted that the plaintiff and defendants 1 to 5 are the legal heirs of the deceased Mani Goundar.



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29.The learned Trial Court also observed that the first defendant failed to plead the ouster of plaintiff and defendant's 2 to 4 possession over the suit properties for a period of 12 years since they were residing with their respective families after marriage. Since ouster of possession by the plaintiff and defendants 2 to 4 was not specifically pleaded and claimed by the defendants 1 and 5, the question of considering the factum of ouster of the plaintiff and defendant's 2 to 4 right over the suit properties will not arise. The learned Trial Court further observed that since the deposits scheduled in C schedule property remains without withdrawal, the learned Trial Court confirmed that the same has been maintained as a joint family property.

30.In addition to that, the learned Trial Court observed that the third defendant is continuing to remain in possession in the house property wherein she is residing despite executing a release deed in favor of the first defendant and the same itself would be a conclusive proof for the fact that she along with the other legal heirs of Mani Goundar is continuously in possession of the same. On that basis, the learned Trial Court rejected the defendant's 1 and 5 contention that the plaintiff is not in possession of the plaint schedule properties.



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31.As far as the question of valuation of suit property is concerned, the learned Trial Court observed that the suit for partition was filed as early as 2007 itself. Though the plaintiff had admitted at the time of cross-examination in the year 2012 that the value of the suit property per square feet is Rs.5,000/- and per cent is Rs.3,00,000/-, the defendants cannot claim that the suit is not properly valued, for the reason that the suit for partition was originally set ex parte and thereafter, the defendants have approached this Court and on the basis of the order passed by the this Court, the ex parte decree which has been passed as against the defendants 1 and 5 were set aside and thereafter, trial was commenced. Making an observation on the same, the learned Trial Court concluded that even if the value of suit property has raised in due course of time after 2007, the same will not cause any loss either to the government or to the Court, since the Court fee is a permanent one. On the aforesaid basis, the learned Trial Court proceeded to conclude that both the plaintiff and defendants 1 to 5 are in possession over the plaint schedule properties.

32.Now, the pertinent question which has to be decided by this Court is as to whether the learned Trial Court is correct in deciding that



A.S.(MD)Nos.6 of 2014 and 102 of 2015

all the 15 items of properties in suit A schedule and all the two items of properties in suit B schedule and two items of property in suit C schedule are open for partition among the plaintiff and defendants 1 to 5.

33.The second pertinent question which has to be decided is that whether the learned Trial Court is correct in holding that the plaintiff has duly proved that she is in joint possession and enjoyment of the suit properties despite the partition deed dated 12.11.1984 which was executed between the first defendant, fifth defendant and Mani Goundar and marked before the learned Trial Court as Ex.B1.

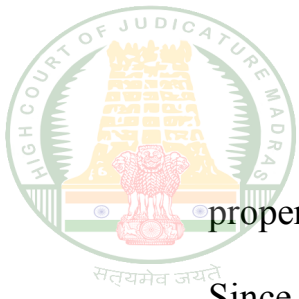
34.The undisputed facts in the suit are as follows:-

Items 1 to 15 of plaint A schedule property originally belonged to the father of the plaintiff and defendants 1 to 4 by the strength of partition deed dated 31.03.1976 marked as Ex.A1. Items 1 and 2 of the suit B schedule property originally belonged to one Mari Goundar, that is the brother of Mani Goundar, by the strength of partition deed dated 31.03.1996, that is Ex.A1. Ex.A1 partition deed was executed between Mari Goundar, Mani Goundar and Arumugam Goundar, that is the sons of L.Veerapa Goundar. Originally the suit A schedule properties and more belong to one L.Veerapa Goundar and after his death, his first wife



A.S.(MD)Nos.6 of 2014 and 102 of 2015

namely Valliyammal had filed a suit for partition of the properties belonging to L.Veerapa Goundar against his second wife Kullammal and sons in O.S.No.2 of 1957 on the file of the learned Subordinate Judge, at Madurai. The aforesaid suit was decreed in the year 1967, in which Kullammal and her sons namely Mari Goundar, Mani Goundar and Arumugam Goundar were together allotted with 7/12th share in the properties belonging to L.Veerapa Goundar. Thereafter from 1967 to 1973, till the date of death of Kullammal on 19.08.1973, the aforesaid properties were jointly enjoyed by Kullammal, Mari Goundar, Mani Goundar and Arumugam Goundar. On 25.05.1974, an oral partition was effected between Mari Goundar, Mani Goundar and Arumugam Goundar and in terms of the same, Ex.A1 partition deed bearing document No.779 of 1976 dated 31.03.1976 came to be executed between Mari Goundar, Mani Goundar and Arumugam Goundar, in which A scheduled properties in the aforesaid deed were allotted to Mani Goundar. These undisputed facts could be clearly traced from the recitals of the partition deed marked as Ex.A1. The plaintiff, second defendant, third defendant and fourth defendant are the daughters of the aforesaid Mani Goundar. The first defendant is the son and the fifth defendant is his wife. The A scheduled properties in Ex.A1 partition deed is scheduled as suit A schedule properties as well. The suit B schedule properties are the



A.S.(MD)Nos.6 of 2014 and 102 of 2015

properties allotted to one Mari Goundar in the Ex.A1 partition deed.

Since the said Mari Goundar died intestate in the year 1979 as a bachelor, on his death, his interest devolved on his two surviving brothers namely Mani Goundar and Arumugam Goundar as per Hindu Succession Act.

35.The facts in issue in the suit are as follows:-

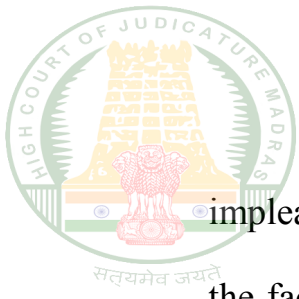
On 12.11.1984, the said Mani Goundar along with the first defendant and his wife that is the fifth defendant had executed another partition deed bearing document No.6323 of 1984 which is marked as Ex.B1 with respect to item No.7 of the suit A schedule property. Thereafter, the said Mani Goundar executed sale deeds which have been marked as Exs.B5, 6, 7, 8, 9, 10 and 11 with respect to item No.7 of suit A schedule properties. Similarly, the fifth defendant has executed Exs.B24 to B35, sale deeds to various persons with respect to item No.7 of the suit schedule properties. The first defendant has also executed sale deeds marked as Exs.B36 to B47 to various persons with respect to item No.7 of the suit A schedule properties. However, without challenging the validity of the aforesaid sale deeds executed by Mani Goundar, the first defendant and the fifth defendant respectively, the plaintiff and the defendants 2 and 4 by filing memo before the learned Trial Court have



A.S.(MD)Nos.6 of 2014 and 102 of 2015

given up their right of share in those properties, which has already been alienated before the filing of the suit. But they have limited their claim to the remaining 17 cents land left out after alienating the other portion in item No.7 of the suit A schedule property. But the first and fifth defendants together claim that the plaintiff and the defendants 2 to 4 are not entitled to claim any share with respect to item No.7 of suit A schedule property in view of the Ex.B1 partition deed dated 12.11.1984.

36.The said Mani Goundar had executed 3 settlement deeds bearing document Nos.671 of 1993, 672 of 1993 and 673 of 1993 dated 17.09.1993 which were marked as Exs.A13, A14 and A15 respectively in favor of defendants 6 to 9, who are the sons and daughters of the first defendant respectively, with respect to item No.8 of the suit A schedule properties. The plaintiff has categorically denied that the said Mani Goundar never ever executed at any point of time any partition deed or settlement deed in favor of anyone and he had never signed in the alleged deeds. The defendants claim that the suit is bad for non-joinder of necessary parties since the plaintiff has failed to implead the vendees of Exs.B6 to B11, B24 to B35 and B36 to B47 sale deeds who have purchased several portions of item No.7 of the suit A schedule property. It is also insisted by the defendants that the plaintiffs ought to have



impleaded the Canara bank as well as the housing board with respect to the facts involved in deciding the amounts scheduled as suit C schedule property.

37.The learned Trial Court, considering the release deed executed by the third defendant in favor of the first defendant which has been marked as Ex.B50, observed that, had the partition deed marked as Ex.B1 dated 12.11.1984 been executed in real terms, then the same would have been mentioned in Ex.B50 release deed. Since the same is not mentioned, the learned Trial Court concluded that even assuming Ex.B1 partition deed had been executed, the same has been executed excluding the daughters of the said Mani Goundar who were surviving at the time of execution of the same. That apart the recitals of the said partition deed would reveal that the daughters of Mani Goundar has not been excluded by giving any amount equivalent to their respective shares in the item No.7 of the suit schedule properties. Since the same has been executed excluding the daughters who are entitled to a rightful share in the said property the learned Trial Court concluded that that the said partition deed which would not bind the plaintiff and the second and fourth defendants. However, the said conclusion would reflect that the learned Trial Court had conceded to the fact that the partition deed



A.S.(MD)Nos.6 of 2014 and 102 of 2015

marked as Ex.B1 has been executed by Mani Goundar, the first defendant and the fifth defendant respectively. Though the said Mani Goundar acquired title over item Nos.1 to 15 of the suit schedule property by the strength of Ex.A1 partition deed, the contention of the plaintiff is that all those properties are the joint family properties of the plaintiff and the defendants 1 to 5, since the said Mani Goundar died intestate on 27.01.2007. However, the facts in dispute would reveal that the said Mani Goundar during his lifetime has executed Ex.B1 partition deed dated 12.11.1984 along with the first and fifth defendants respectively.

38.Hence, the point for consideration is that, as to whether the said Mani Goundar is entitled to execute a partition deed with respect to item No.7 of the suit A schedule property during his lifetime along with the first defendant and the fifth defendant ?

39.The suit A and B schedule properties originally belonged to one Veerappa Goundar who was survived by his first wife Valliyammaal and her sons namely Periasamy Goundar and Mahalinga Goundar and his second wife namely Kullammaal and her sons namely Mani Goundar, Mari Goundar and Arumuga Goundar. The date of death of the said



A.S.(MD)Nos.6 of 2014 and 102 of 2015

L.Veerappa Goundar is not revealed either in the pleadings of the plaintiff and the defendants or any documents marked by either parties.

However, the recitals of Ex.A1 partition deed dated 31.03.1976 would reveal that a suit in O.S.No.2 of 1957 was filed by the first wife of Veerappa Goundar namely Valliyammaal for partition of the properties of L.Veerappa Goundar who died intestate, in which in the year 1967 the partition suit was decreed and the second wife Kullammaal and her sons Mani Goundar, Mari Goundar and Arumuga Goundar were together allotted with 7/12th share of the properties belonging to Veerappa Goundar. Hindu Succession Act, 1956 came into force on 17.06.1956.

40.Thus, in the present case, it is undisputed that the said L.Veerappa Goundar had died leaving behind his two wives and five sons covered by Class 1 heirs of the schedule. Therefore, the properties had devolved upon them when succession had opened up on the death of the said Veerappa Goundar. It has also been found that no partition had taken place among the surviving legal heirs of the said Veerappa Goundar on the date of his death. The plaintiff and defendants 1 to 4 are the grandchildren of one of the sons, that is, Class 1 legal heir of the said Veerappa Goundar. The date of death of the said Veerappa Goundar is significant for proper adjudication of the instant case. It is needless to



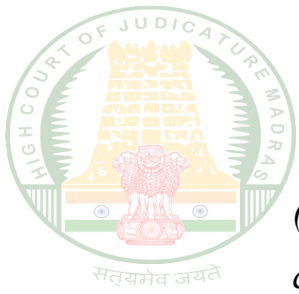
A.S.(MD)Nos.6 of 2014 and 102 of 2015

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state that the parties to the suit in hand are Hindus. Hence, had the said Veerappa Goundar deceased before the Hindu Succession Act came into force that is before 17.06.1956, then the interest in the co-parcenary property would devolve by survivorship upon the surviving members of the co-parcenary and not in accordance with the provisions of the Hindu Succession Act that is by succession. On the other hand, if the said Veerappa Goundar had died after 17.06.1956, in that case, since two widows were amongst the female relatives specified in Class 1 of the schedule to the Hindu Succession Act and Veerappa Goundar died leaving behind two widows and sons, the proviso to Section 6 comes into play and the normal Rule of co-parcenary is excluded. The Veerappa Goundar's interest in the coparcenary property in that case would therefore devolve, according to the Proviso to Section 6, by intestate succession under the Hindu Succession Act and not by survivorship.

41. Section 4 of the Hindu Succession Act, 1956 overrides the Hindu Law in force immediately before the commencement of the said Act, insofar as it refers to any matter for which provision is made by the Act. Section 4 reads as follows:-

“4. Overriding effect of Act.--Save as otherwise expressly provided in this Act,-



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A.S.(MD)Nos.6 of 2014 and 102 of 2015

(a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.”

42. Section 6 of Hindu Succession Act prior to its amendment in 2005 reads as follows:-

“6. Devolution of interest in coparcenary property.--

When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.--For the purposes of this section, the interest



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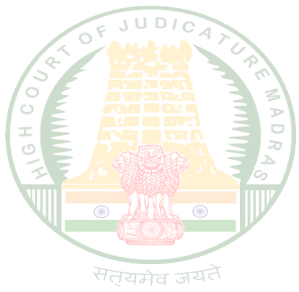
A.S.(MD)Nos.6 of 2014 and 102 of 2015

of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.--Nothing contained in the proviso to this section shall be construed as enabling a person who had separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.”

43.Since the legal heirs of the said Veerappa Goundar had filed a suit for partition in O.S.No.2 of 1957 and the same was decreed as early as in the year 1967 by the learned Subordinate Judge, at Madurai, the amendment to Section 6 made in 2005 would not govern the rights of the parties especially the legal heirs of the said Veerappa Goundar that is Mani Goundar, Mari Goundar, Arumuga Goundar and their mother Kullammal. This becomes clear from a reading of the Proviso (I to Section 6 of the amended provision), which states as follows:-

“Provided that nothing contained in this Subsection shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th Day of December 2004. The explanation to this Section also states



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A.S.(MD)Nos.6 of 2014 and 102 of 2015

thus:

Explanation:- for the purposes of this Section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a Court.”

44.From a reading of the aforesaid provision, it becomes clear that a partition having been effected by execution of a registered partition deed or by a Court decree of the year 1967, which is prior to 09.09.2005, which is the date of commencement of the Amending Act, would not be affected.

45.The next important Section from my point of view is Section 8, which reads as follows:-

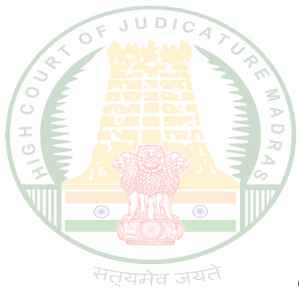
“8. General rules of succession in the case of males.--

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter--

(a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule;

(b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and



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A.S.(MD)Nos.6 of 2014 and 102 of 2015

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

THE SCHEDULE

Class I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a predeceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a predeceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son, son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre deceased daughter of a pre-deceased son.”

46. Some importance are Sections 19 and 30 of the said Act which read as follows:-

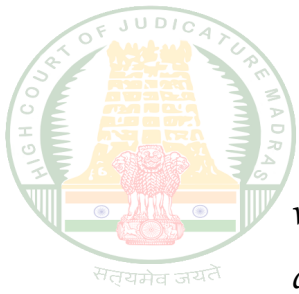
“19. Mode of succession of two or more heirs.-

If two or more heirs succeed together to the property of an intestate, they shall take the property,-

(a) save as otherwise expressly provided in this Act, per capita and not per stirpes; and

(b) as tenants-in-common and not as joint tenants.

30. Testamentary succession.--*Any Hindu may dispose of by will or other testamentary disposition any property,*



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which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.--The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, Illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act, or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.

47.The Hon'ble Apex Court in the case of ***Uttam versus Saubhag Singh and others*** has dealt with the case of partition reported in ***AIR 2016 SC 1169***, the relevant portion of which, is extracted as follows:-

“20. ... The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarized as follows:

(i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).

(ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding



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anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.

(iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self-acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.”

48.The law laid by the Hon'ble Judges in **Uttam Singh** case would be applicable to the parties to this suit if the date of death of L.Veerappa Goundar is after 17.06.1956.



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49. In yet another case of *Arshnoor Singh versus Harpal Jaur and others* reported in **2019 5 CTC 110**, the Hon'ble Apex Court has dealt with the suit for partition with respect to the case of succession, which opened in the year 1951 prior to the commencement of Hindu Succession Act, 1956 and the relevant portion of the same is extracted as follows:-

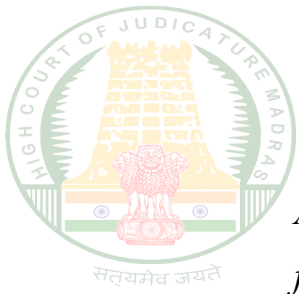
“7 . With respect to the first issue, it is the admitted position that Inder Singh had inherited the entire suit property from his father Lal Singh upon his death. As per the Mutation Entry dated 16.01.1956 produced by Respondent No. 1, Lal Singh's death took place in 1951. Therefore, the succession in this case opened in 1951 prior to the commencement of the Hindu Succession Act, 1956 when Inder Singh succeeded to his father Lal's Singh's property in accordance with the old Hindu Mitakshara law.

7.1. Mulla in his commentary on Hindu Law (22nd Edition) has stated the position with respect to succession under Mitakshara law as follows:

Page 129

A son, a grandson whose father is dead, and a great-grandson whose father and grandfather are both dead, succeed simultaneously as single heir to the separate or self-acquired property of the deceased with rights of survivorship.

Page 327



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A.S.(MD)Nos.6 of 2014 and 102 of 2015

All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth.

A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons, and son's son's sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property.”

50. Thus, it is clear from the above judgments that when the Hindu Succession Act, 1956 was not in force, the old Hindu Mithakshara Law was governing the field. Under the Mithakshara Law, whenever a male ancestor inherits any property from any of his parental ancestors up to three degrees above him, then his legal heirs up to three degrees below him, will get an equal right as coparcenars in that property. This position was altered after the coming into force of Section 8 of the Hindu Succession Act, 1956. After this Provision came into force, where the son inherits property belonging to the father or grandfather, he does not take it as a coparcenar and he inherits the property in his individual



A.S.(MD)Nos.6 of 2014 and 102 of 2015

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capacity. Under such circumstances, in the instant case, it is pertinent to bring on record the date of death of the said L.Veerapa Goundar from whom Mani Goundar, Mari Goundar and Arumuga Goundar had inherited the suit properties and more. Had the said Veerapa Goundar died before 17.06.1956, then the Mani Goundar and his legal heirs up to three degrees below him will get an equal right as coparcenars in suit A schedule properties. On the other hand, had the said L.Veerapa Goundar died after 17.06.1956, it is clear that Mani Goundar had inherited the property belonging to his father Veerapa Goundar not as a coparcenar but in his individual capacity. In that case, Mani Goundar is fully entitled to enjoy, manage and dispose of the suit A schedule property in his individual capacity according to his own whims and fancies. However, without tracing the genealogy of the plaintiff and the defendants 1 to 5 and without framing any issue as to the date of death of the father of Mani Goundar that is the grandfather of the plaintiff and defendants 1 to 4 namely L. Veerapa Goundar, the learned Trial Court proceeded to conclude that Ex.B1 partition deed dated 12.11.1984 executed by Mani Goundar will not bind the defendants 2 to 4 and the plaintiff.

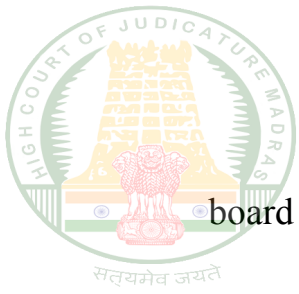
51.That apart, it is significant to indicate that the observation of the learned Trial Court that the third defendant in her release deed



A.S.(MD)Nos.6 of 2014 and 102 of 2015

marked as Ex.B50 executed in favor of the first defendant has not specifically mentioned about the execution of Ex.B1 partition deed dated 12.11.1984. However, a careful reading of Ex.B50 would reveal that the third defendant has categorically stated that her father Mani Goundar died intestate with respect to the A scheduled properties scheduled in Ex.A1 partition deed except a few properties inter alia the other properties of the said deed.

52.I have no hesitation to hold that the said recital would obviously include the properties in Ex.B1 partition deed dated 12.11.1984. As far as the claim of the defendants that the suit is bad for non-joinder of necessary parties, the learned Trial Court has proceeded to conclude that, the suit is not bad for non-joinder of necessary parties, in view of the fact that the plaintiff had given up her claim over those properties which had been sold by the first defendant, fifth defendant and her father Mani Goundar with respect to item No.7 of suit A scheduled properties. That apart, as far as the deposits scheduled as suit C scheduled property, any decree passed by the Court would bind upon the same. In view of the same, the learned Trial Court concluded that, the suit is not bad for non joinder of necessary parties for not impleading the vendees of the aforesaid sale deed, Canara bank as well as the housing



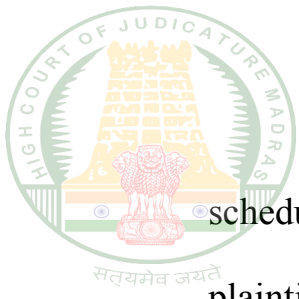
A.S.(MD)Nos.6 of 2014 and 102 of 2015

board as defendants in the original suit.

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53.I am of the considered view that there is no infirmity in the said finding of the learned Trial Court. The learned Trial Court having concluded that the Ex.B1 Partition Deed dated 12.11.1984 will not bind the plaintiff, second and fourth defendants, interestingly the learned Trial Court proceeded to conclude that the settlement deeds executed by the father of the plaintiff namely Mani Goundar in favour of the defendants 6 to 9 dated 17.02.1993 marked as Exs.A13, A14 and A15 with respect to item No.8 of the suit A schedule property has come into force and the plaintiff and the second and fourth defendants have no right over the said property.

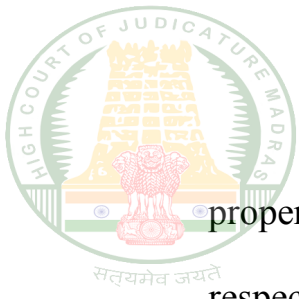
54.However, as per the law laid down by the Hon'ble Judges of the Hon'ble Supreme Court in the case of *Arshnoor Singh versus Harpal Jaur and others* reported in **2019 5 CTC 110**, had the succession in the instant case had opened prior to the commencement of Hindu Succession Act, 1956 by the death of the father of Mani Goundar namely Veerappa Goundar before the commencement of the Hindu Succession Act, in that case, the said Mani Goundar could inherit the said property from his father only in the capacity of co-parcener with respect to the suit A



A.S.(MD)Nos.6 of 2014 and 102 of 2015

schedule properties and in that case, his legal heirs including the plaintiff, defendants 1 to 4 and the fifth defendant will get an equal right as co-parceners in suit A schedule properties. In that scenario, the settlement deeds executed by the father of the plaintiff namely Mani Goundar, which is marked as Exs.A13, A14 and A15 would become Non-est in the eye of law. Since the plaintiff and defendants 2 and 4 have given up their claim of share with respect to the properties which has been sold by Mani Goundar, the first defendant and fifth defendant respectively with respect to item No.7 of the suit A schedule property, this Court is not inclined to go into the legality of the aforesaid sale deeds.

55.The learned Trial Court did not go into the details of Ex.A1 partition deed dated 31.03.1976 which was effected between Mani Goundar, Mari Goundar and Arumugam Goundar with respect to the 7/12th share allotted to all the three namely, Mani Goundar, Mari Goundar and Arumugam Goundar along with their mother Kullammal in O.A.S.No.2 of 1957 which was decreed in the year 1967. It is only after the death of their mother Kullammal on 19.08.1973, the said partition deed marked as Ex.A1 came to be executed on 31.3.1976. The aforesaid properties in the said partition deed, is inclusive of the separate



A.S.(MD)Nos.6 of 2014 and 102 of 2015

property acquired by the said Kullammal by succession. Hence, the respective share of Mani Goundar, Mari Goundar and Arumugam Goundar with respect to their share in their mother's absolute property in the 7/12th share as decreed in O.S.No.2 of 1957 has to be ascertained. The respective portion of the suit properties scheduled as A schedule on which the said Mani Goundar has absolute title and possession could not be identified. For the said purpose, the judgment and decree in O.S.No.2 of 1957 is important to be produced before this Court. However, the same has not been marked by either parties to this case. In the absence of the said judgment and decree in O.S.No.2 of 1957 on the file of the learned Subordinate Judge, at Madurai and by not bringing into record the date of death of the grandfather of the plaintiff and defendants 1 to 4, namely L.Veerapa Goundar, the learned Trial Court proceeded to conclude that, the plaintiffs and defendants 1 to 4 are entitled to equal share with respect to the remaining 17 cents in item No.7 of suit A schedule property and the remaining 14 cents in item No.8 of the plaintiff A schedule property. In addition to that, recording the fact that the third defendant had executed a release deed with respect to her share in Ex.B50 on 10.02.2012, in favor of the first defendant as far as her share with respect to the suit properties are concerned, the learned Trial Court relying upon the judgment of this Court reported in **2004 CTC 710** held



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that though the third defendant had released her one-sixth share in favor of the first defendant, the same would not come into effect and her share would be released in favor of the entire co-parcenary joint family property.

56.The Hon'ble Full Bench of this Court in ***Board of Revenue versus V.M.Murugesu Mudaliar of Gudiyatham*** reported in ***AIR 1955 Madras 641*** has dealt with the release of interest in favor of co-owner and the relevant portion of the same is extracted as follows:-

“6. In such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owners. Each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is not therefore necessary for one of the co-owners to convey his interest to the other co-owner. It is sufficient if he releases his interest. The result of such release would be the enlargement of the share of the other co-owner. There can be no release by one person in favour of another, who is not already entitled to the property as a co-owner.”

57.In yet another case, the Hon'ble Full Bench in the case of ***Chief Controlling Revenue Authority, Referring Officer versus Rustoen Nusserwanji Patel*** reported in ***AIR 1968 Madras 159 (FB)*** has dealt



with the case of release of interest by co-owners and the relevant portion of the same is extracted as follows:-

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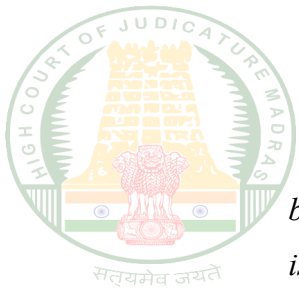
“11. On the contrary, we may emphasise that the essential ingredients of release are here present. There is already a legal right in the property vested in the release, and the release operates to enlarge that right into an absolute title for the entire property, as far as the parties are concerned.”

58.This Court in yet another case in ***V.S.Somasundaram versus The Chief Controlling Authority and others*** reported in ***2003 (2) Law Weekly 253***, this Court has dealt with the case of release deed and the relevant portion of the same is extracted as follows:-

“5.In BOARD OF REVENUE v. MURUGESA MANU/TN/0260/1955, the Full Bench had to consider a document termed as release deed executed between two co-owners. They were not coparceners. Rajamannar, Chief Justice held as follows:- "In such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owners. Each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is not, therefore, necessary for one of the co-owners to convey his interest to the other co-owner. It is sufficient if he releases his interest. The result of such release would be enlargement of the share of the other co-owner. There can be no release by one person in favour of another, who is not already entitled to the property as a co-owner.”

The Full Bench also took note of the situation as to whether the releasor and releasee should be coparceners and observed as follows:-

"We can see no difference in principle, between such a document as



A.S.(MD)Nos.6 of 2014 and 102 of 2015

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between members of a coparcenary and, the document in question, which is a document between co-owners."

6. This judgment was followed by another Full Bench in the CHIEF CONTROLLING REVENUE AUTHORITY v. RUSTORN NUSSERWANJI PATEL I.L.R. 1968 Mad 651.

7. The above two judgments emphasise that one co-owner having absolute rights over an undivided share in the property can release his right in favour of co-owner and if such a document is termed as release, then it should be treated as a release deed. The parties to the document need not be coparceners."

59. Fully fortified by the aforesaid judgments that in principle there is no difference between a release deed executed as between the members of a co-parcenary or a document executed between co-owners, in the instant case, the release deed has been executed by the third defendant in favor of the first defendant with respect to her one-sixth share in the suit A schedule properties on receipt of Rs.8,00,000/- for the said release deed from the first defendant.

60. In view of the same, the learned Trial Court is erred in holding that the share released by the third defendant would enlarge upon the entire joint family property and all the parties to the partition suit that is a plaintiff and defendants 1 to 5 would be equally entitled to the same. Hence, I have no hesitation to observe that the learned Trial Court has



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erred in holding that the plaintiff and defendants 1, 2, 4 and 5 are entitled to one-fifth share each with respect to the suit A schedule properties. As far as plaint B schedule property is concerned, the observation of the learned Trial Court that, the first defendant had, at the time of his cross examination, admitted that plaint B schedule property was allotted to the share of Mari Goundar in Ex.A1 partition deed who died intestate as a bachelor in 1979. Thereafter, the said property devolved on his brother's Mani Goundar and Arumugam Goundar. The factum of oral partition between Mani Goundar and Arumugam Goundar was admitted by the first defendant in his cross examination by deposing that Arumugam Goundar has put up buildings in his portion of B schedule property in Ex.A1 partition deed and has constructed a compound wall separating his portion from that of the suit B schedule property. Recording the same, the learned Trial Court proceeded to conclude that the plaintiff and the defendants 1, 2, 4 and 5 are entitled to one-fifth share in the suit B schedule properties.

61.In view of the judgments extracted supra, I am of the considered view that the release deed executed by the third defendant in favor of the first defendant marked as Ex.B50 would release her one-sixth share in the suit schedule properties only in favor of the first



A.S.(MD)Nos.6 of 2014 and 102 of 2015

defendant and the same will not enlarge the same in favor of the entire joint family property. In view of the same, the learned Trial Court's conclusion that the plaintiff and the defendants 1, 2, 4 and 5 are entitled to one-fifth share each with respect to the plaint A schedule item Nos.1 to 6, 9 to 15 and the remaining area of 17 cents in item No.17 and 14 cents in item No.8 of the suit A schedule property and in B schedule property is erroneous, on the other hand bringing into record that item Nos.4, 5, 6 of the suit A schedule property has been acquired by the housing Board and that the respective shares with respect to item No.7 and item No.8 of suit A schedule property cannot be decided until and unless the date of the death of L.Veerapa Goundar is brought into record and the judgment and decree in O.S.No.2 of 1957 is produced, I have no hesitation to hold that the first defendant is entitled to two-sixth share as far as item Nos.1, 2, 3, 9, 10, 11, 12, 13, 14 and 15 of suit A schedule properties and item Nos.1 and 2 of the plaint B schedule properties and both the items in suit C schedule properties. On the other hand, the plaintiff, the second defendant, fourth defendant and fifth defendant are entitled to one-sixth share in all those properties respectively. As far as the properties in item Nos.7 and 8 of suit A schedule properties are concerned, if the date of death of L.Veerapa Goundar was after 17.06.1956, the first defendant would be entitled to the remaining portion



A.S.(MD)Nos.6 of 2014 and 102 of 2015

of 17 cents land in item No.7 of suit A schedule property by the strength of Ex.B1 partition deed. Similarly, the defendants 6 to 9 would be entitled to 53 cents land by the strength of the settlement deeds marked as Exs.A13, A14 and A15 and as far as the remaining 14 cents in the said item is concerned, the first defendant is entitled to two-sixth share and the plaintiff and the defendants 2, 4 and 5 would be entitled to one-sixth share respectively.

62.Since the plaintiff did not produce the statement of accounts as to the income derived out of the various plaint schedule properties by the first defendant, the learned Trial Court had concluded that the plaintiff could invoke the Provisions of Order 20, Rule 12 of the Code of Civil Procedure for the purpose of seeking accounts from the first defendant with respect to the income from the suit properties from the date of presentation of the plaint till the date of delivery of the possession of the various properties and I do not find any infirmity in the same.

63.In view of the same, setting aside the finding of the learned Trial Court with respect to issue No.1, additional issue No.1 dated 13.07.2010, additional issue No.1 dated 28.04.2011, additional issue No. 2 dated 28.04.2011 and additional issue No.3, 28.04.2011, I hereby



A.S.(MD)Nos.6 of 2014 and 102 of 2015

confirm the findings of the learned Trial Court with respect to the issue Nos.2 and 3 and additional issue No.2 dated 13.07.2010 and additional issue No.3 dated 13.07.2010.

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64.In view of the inadvertence of the learned Trial Court to trace the genealogy of the predecessors in title with respect to the suit A and B schedule properties, the details of L.Veerappa Goundar, his predecessor in title and his successor in title, the respective shares of the plaintiff and defendants 1 to 5 with respect to item Nos.7 and 8 of the suit A schedule properties are not able to be ascertained and finalized by this Court. For the purpose of ascertaining the respective shares of the plaintiff and defendants 1 to 5 with respect to item No.7 and item No.8 of the suit A schedule properties, the learned Trial Court ought to have framed a specific issue as to, whether the father of the plaintiff and the defendants 1 to 4 acquired title and possession over the suit A schedule properties as a co-parcener by the application of the old Mithikshara Hindu law or intestate succession in terms of Hindu succession Act, 1956. For the said purpose, it is necessary to trace the details of the judgment and decree in O.S.No.2 of 1957 on the file of the learned Subordinate Judge, at Madurai and also the date of death of L.Veerappa Goundar, that is, the grandfather of the plaintiff and the defendants 1 to 4.



A.S.(MD)Nos.6 of 2014 and 102 of 2015

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65. In view of the same, invoking the power under Order 41 Rule 25 of the Code of Civil Procedure Code, I hereby remit the case back to the learned Trial Court to take additional evidence on the issue framed supra and for the purpose of allowing the parties concerned to marking relevant documents for the purpose of proving the date of death of L.Veerappa Goundar and the nature of property acquired by Mani Goundar, Mari Goundar, Arumugam Goundar and Kullammal by the strength of the judgment and decree in O.S.No.2 of 1957. I make it clear that by invoking the power under Order 41 Rule 25 of the Code of Civil Procedure, this Court continues to be in seizure of the matter. The learned Trial Court is directed to reopen the trial of the original suit in O.S.No.123 of 2007, thereby allowing the respective parties to let in evidence as far as additional issue framed by this Court and for the limited purpose of which the case is remitted back to the learned Trial Court. The learned Trial Court after completion of trial with respect to the specific additional issue framed by this Court within a period of 3 months along with the findings of the learned Trial Court with respect to the said additional issue and the additional documents marked and report compliance within a period of 4 months from the date of receipt of copy of this order.



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66.The Hon'ble Apex Court in a non-reportable case of ***Radhamma and others versus H.N. Muthukrishnan and others*** in Civil Appeal No.1792 of 2010 dated 23-1-2019 has dealt with registered Will executed with respect to pair of the testator in the joint family properties and the relevant portion of the same is extracted as follows:-

6. It is true that prior to coming into force of the Hindu Succession Act, no coparcener could dispose of whole or any portion of his undivided coparcenary interest by Will but by virtue of Section 30 of the Act read with explanation, a coparcener derives his right to dispose of his undivided share in Mitakshara joint family property by Will or any testamentary disposition i.e. by virtue of law. The said provision reads thus: “

Testamentary succession

30.(1) Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus.

Explanation: The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act or in any other



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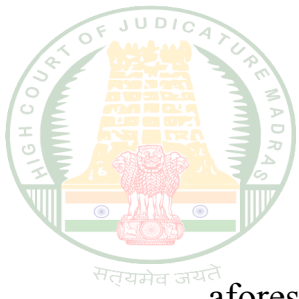
A.S.(MD)Nos.6 of 2014 and 102 of 2015

law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this subsection.

(2) For the removal of doubts it is hereby declared that nothing contained in subsection

(1) shall affect the right to maintenance of any heir specified in the Schedule by reason only of the fact that under a will or other testamentary disposition made by the deceased the heir has been deprived of a share in the property to which he or she would have been entitled under this Act if the deceased had died intestate.”

7. Section 30 of the Act, the extract of which has been referred to above, permits the disposition by way of Will of a male Hindu in a Mitakshara coparcenary property. The significant fact which may be noticed is that while the legislature was aware of the strict rule against alienation by way of gift, it only relaxed the rule in favour of disposition by way of a Will of a male Hindu in a Mitakshara coparcenary property. Therefore, the law insofar as it applies to joint family property governed by the Mitakshara school, prior to the amendment of 2005, when a male Hindu dies after the commencement of the Hindu Succession Act, 1956 leaving at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary.”



A.S.(MD)Nos.6 of 2014 and 102 of 2015

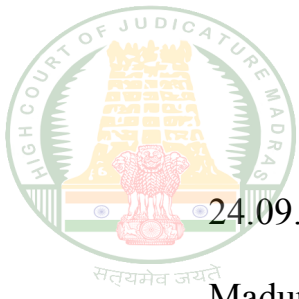
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67.Fully fortified by the proposition of law laid down by the aforesaid judgment by the Hon'ble Apex Court, the same is equally applicable to a female who has interest in a joint family property. I find it necessary that the Ex.B91 could be brought into effect only on proving the genuinity of the same by the first defendant by letting in appropriate evidence in the manner known to law as mandated under Section 68 of the Indian Evidence Act, 1872. For the said purpose, another additional issue is hereby framed as follows:-

“Whether the Will executed by the fifth defendant 06.01.2012 in favor of the first defendant, which has been marked as Ex.B91 is a genuine document ?”

68.The learned Trial Court is directed to afford opportunity to the first defendant to let in evidence for the said limited purpose of proving the genuinity of Ex.B91 and along with the findings with respect to the said Ex.B91 forward the case before this Court for final adjudication by reporting compliance within 4 months from the date of receipt of copy of this order.

69.In the result, the Appeal Suits are partly allowed and the impugned judgment and decree passed in O.S.No.123 of 2007 dated



A.S.(MD)Nos.6 of 2014 and 102 of 2015

24.09.2013 on the file of the learned VI Additional District Judge, Madurai is partly set aside. Consequently, connected miscellaneous petitions are closed. Both the parties are directed to bear their own costs.

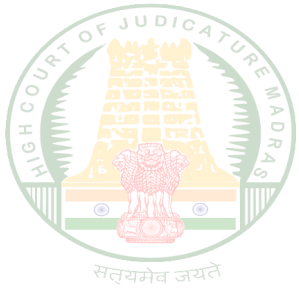
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21.05.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Mrn

Note : (I) Issue order copy on **05.06.2024**.

(II) The Registry is directed to return the original documents and records to the lower Court immediately.



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A.S.(MD)Nos.6 of 2014 and 102 of 2015

L.VICTORIA GOWRI, J.

Mrn

To

- 1.The Additional District Judge, Madurai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
A.S.(MD)Nos.6 of 2014 and 102 of 2015

21.05.2024