



S.A.(MD)No.192 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.07.2024

PRONOUNCED ON:19.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.192 of 2020

and

C.M.P.(MD)No.2688 of 2020

1.Dhulaseedharan Nair

2.Padmavathy

: Appellants/Appellants/
Defendants 3 and 4

Vs.

Sabarimuthu(died)

Alexander(died)

1.John

2.Alferd Raj

3.Lawrance

4.Daisylet

5.Delpinmary

6.Stella

7.Muthuammal

: Respondents 1 to7 /
Respondents 1 to 9 /Plaintiffs 1 to 9

Sabariyanandan(died)

8.Thankabai(died)

: 8th Respondent/11th Respondent/
2nd Defendant



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(Memo dated 21.04.2022 filed on 25.04.2022 in USR No.12377 is recorded to the effect that R.8 died and R.16 and R.17 who are already on record are recorded as LR's of the deceased R.8, vide order dated 01.02.2024)

9.Civil Baby
10.Cletus
11.Baiju
12.Biju
13.Shyju
14.Mary Suja
15.Geetha Mary
16.Jijin Vijila
17.Jockins

: Respondents 9 to 17 /
Respondents 12 to 20/Third party

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree passed by the Subordinate Court, Kuzhithurai in A.S.No.60 of 2013, dated 08.08.2019 modifying the judgment and decree passed in O.S.No.835 of 1989, on the file of I Additional District Munsif, Kuzhithurai, dated 28.01.2005.

For Appellants : Mr.C.K.M.Appaji

For Respondents :Ms.J.Anandhavalli
for R.1 to R.7, R.16 and R.17
:Mr.C.Godwin
for R.9, R.11, and R.12
: No Appearance
for R.10, R.13 to R.15
: R.8 died – memo recorded



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JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.60 of 2013, dated 08.08.2019, on the file of the Subordinate Court, Kuzhithurai, reversing the judgment and decree made in O.S.No.835 of 1989, dated 28.01.2005, on the file of I Additional District Munsif Court, Kuzhuthurai.

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

3. It is not in dispute that the suit “A” schedule properties originally belonged to a Nair Tarward by name Vazhivilakom house, that the said Tarward had three main branches namely (i) Chembakakutty Pilla Bhagavathy Pillai's branch having 7/25 shares, (ii) Bhagavathy Pilla Narayani Pillai's branch having 10/25 shares and (iii) Parvathy Pilla Bhagavathy Pilla's branch having 8/25 shares.



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4. The case of the plaintiffs is that Parvathy Bhagavathy Pilla and others have filed a suit for partition in O.S.No.207 of 1960, on the file of the District Munsif Court, Kuzhithurai and obtained a decree, that in pursuance of the said judgment and decree, “A” schedule property was measured and partition was effected on land and final decree was passed on 28.10.1964, that as per the final decree, 8/25 share of Parvathy Pilla Bhagavaty Pilla's branch was allotted to the plaintiffs 1 to 9 in O.S.No. 207 of 1960 and 10/25 share of Bhagavathy Pilla Narayani Pilla's branch was allotted to the defendants 20 and 26 in the said suit, that 7/25 share of Chempakakutty Pilla Bhagavathy Pilla's branch was shown as unallotted plots, as the said branch had remained exparte in the said suit and as such, their shares could not be declared and that the unallotted plots for the said branch are shown as “B” schedule property in the present suit which admeasures 44.620 cents, as per the final decree in O.S.No.207 of 1960.

5. It is the further case of the plaintiffs that there were 13 members in the branch of Chempakakutty Pilla Bhagavathy Pilla, that Bhagavathy Pilla Chempakakutty Pilla - 11th defendant and others have executed a sale deed in favour of the first plaintiff in respect of 5/25 shares out of



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7/25 shares, that the first plaintiff has then executed a sale deed in favour of the second plaintiff in respect of 11 cents, out of the property purchased by him and as such, the plaintiffs 1 and 2 are together entitled to 31 ½ cents in “B” schedule property, that the remaining share of 2/25 out of “B” schedule property belongs to the defendants in the present suit, that no partition was effected by metes and bounds in respect of “B” schedule property and they are in possession and enjoyment according to their convenience, that though the plaintiffs have demanded the defendants to settle the matter out of Court several times and lastly on 15.09.1989 for which the defendants were not amenable and that therefore, the plaintiffs were constrained to file the above suit for partition.

6. The defence of the second defendant is that the property was outstanding on mortgage executed by the members of the Vazhivilakam house in favour of Sabarimuthu and under him, the second defendant and others had been in possession and enjoyment, that one Chandrakaladaran Nair was one of the members of 7/25 shares of Vazhivilakam house and on his death, his wife Devahiamma for herself and on behalf of her minor children executed a sale deed in favour of one Padmavathi Amma



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Senankutty Nair on 16.02.1977 in respect of their share, that the said Padmavathi executed a sale deed in favour of the second defendant on 24.09.1987 in respect of a specific area of 8 cents and since then the second defendant has been in possession and enjoyment of the said property, that the second defendant has no objection for effecting partition of plaint "B" schedule property and in the event of partition, a specific plot purchased and enjoyed by the second defendant may be allotted to her separately.

7. The defendants 3 to 5 have filed written statement taking a stand that already a suit in O.S.No.2 of 1953 was filed before the District Munsif Court, Kuzhithurai in respect of 7/25 shares of Chempakakutty Pillai Parvathi Pillai's branch, that Chempakakutty Pillai Parvathi Pillai and her two sons namely Chandrakalakaran Nair and Thulasidharan Nair were jointly declared entitled to 3/13 of 7/25 shares, that Chempakakutty Pillai Narayani Pillai, Chempakakutty Pillai Kamalamma Pillai, Kamalamma Pillai Saraswathi Amma and Gopala Pillai were entitled to 1/13 share each, that the balance 6/13 of 7/25 share was purchased by one Ambrose, father of the plaintiffs and the right vested with the children of the first plaintiff and the second plaintiff, that the sale deeds



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related to all the plaintiffs in the plaint are void and they cannot claim any relief on the basis of the sale deeds, that the decree in O.S.No.207 of 1960 is not binding on the shares of 7/25 in “B” schedule property and that the plaintiffs are not entitled to any share and as such, the suit is liable to be dismissed.

8. The learned trial Judge, upon perusing the pleadings has framed the following issues:

- “ (1) Whether the plaintiffs are entitled for partition as prayed?
(2) What other reliefs?”

9. Pending suit, the first plaintiff had died and his legal representatives were impleaded as plaintiffs 3 to 9. During trial, the plaintiffs have examined the second plaintiff as P.W.1 and exhibited 21 documents as Exs.A.1 to A.21. The first defendant had remained exparte. During cross-examination of P.W.1, 6 documents came to be exhibited as Exs.B.1 to B.6 by the second defendant's side. The defendants 3 and 4 have examined the fourth defendant as D.W.1 and exhibited 4 documents as Exs.B.7 to B.10. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the



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arguments of both sides, has passed the judgment and decree, dated 28.01.2005, declaring that the legal heirs of the first plaintiff are entitled to 19.888 cents, the second plaintiff is entitled to 11 cents and the defendants 2 to 4 are entitled to 3.432 cents, 3.432 cents and 6.864 cents respectively.

10. Aggrieved by the said judgment and decree, the first defendant has preferred an appeal in A.S.No.59 of 2013 and the defendants 3 and 4 have preferred another appeal in A.S.No.60 of 2013 and the same were pending on the file of the Subordinate Court, Kuzhithurai. Pending appeals, the sole appellant in A.S.No.59 of 2013 had died and his legal representatives came to be impleaded as the appellants 2 to 8. Pending appeal, the second respondent/second defendant in A.S.No.60 of 2013 had also died and his legal representatives came to be impleaded as respondents 19 and 20. The learned Subordinate Judge, Kuzhithurai, upon considering the materials available on record and on hearing the arguments of both sides, has passed a common judgment and separate decrees dated 08.08.2019, by allowing both appeals and modified the judgment and decree of the trial Court and declared that the plaintiffs 1 and 2 are jointly entitled to 8/13 shares, that the defendants 1 and 2 are



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entitled to 1/13 shares each and the third defendant is entitled to 3/13 shares. Challenging the common judgment and decree passed in A.S.No. 60 of 2013, the defendants 3 and 4 have preferred the present second appeal.

11. At the time of admission, the following Substantial Questions of Law came to be formulated:

(i) Whether the Courts below travelled beyond the scope of Exhibits A.1 and A.2 sale deeds in which 6 out of 13 members of the Nair Tarvad Family and had sold their properties in favour of the father of the 1st plaintiff and allocated excess share in favour of the plaintiffs?

(ii) Whether the members of the Hindu Joint Family can convey excess portion of the land affecting the right of other coparceners in the property?

(iii) When the vendor, the purchaser and the description of the properties in Exhibits B.3 and B. 8 sale deeds are different, is it proper for the Lower Appellate Court to deny the right of share of the 4th defendant in the property on mere assumption that



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the 4th defendant Padmavathy and the vendor in Exhibit B.3 Padmavathy Amma are one and same and by virtue of Exhibit B.3 only the 2nd defendant is entitled for share in the property?

12. As already pointed out, the dispute is only with respect to 7/25 shares belonging to Chempakakutty Pilla Bhagavathy Pilla's branch. In the plaint, the plaintiffs, by alleging that they have purchased 9/13 shares out of 7/25 shares belonging to Chempakakutty Bhavathy Pilla branch, have filed the suit claiming 31 ½ cents representing 9/13 shares of “B” schedule property. According to the plaintiffs, the remaining 4/13 share of “B” schedule property belongs to the defendants. The learned trial Judge has allotted shares in the following proportion:

- the plaintiffs 1 and 2 were jointly entitled to 30.888 cents, which is equal to 9/13 shares;
- the second defendant was entitled to 3.432 cents, which is equal to 1/13 shares;
- the third defendant was entitled to 3.432 cents, which is equal to 1/13 shares;
- the fourth defendant was entitled to 6.864 cents, which is equal to 2/13 shares:



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- the first defendant was not entitled to any share.

13. The first appellate Court has modified the allotment made by the trial Court and allotted in the following proportion:

- the plaintiffs 1 and 2 were jointly entitled to 8/13 shares;
- the first defendant was entitled to 1/13 shares;
- the second defendant was entitled to 1/13 shares;
- the third defendant was entitled to 3/13 shares;
- 4th defendant was not entitled to any share.

14. Considering the above, it is clearly evident that the trial Court has allotted 3/13 shares to the defendants 3 and 4, who are husband and wife and whereas the first appellate Court has allotted 3/13 shares only to the third defendant and not allotted any share to the fourth defendant.

15. The learned Counsel for the defendants 3 and 4 would submit that even in the written statement, they have taken a stand that the plaintiffs are not entitled to get any share in the properties, that even under Exs.A.1 and A.2 sale deeds, they have allegedly purchased shares from six sharers and they cannot claim 9/13 shares, that the trial



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Court by granting 9/13 shares and the first appellate Court by granting 8/13 shares to the plaintiff and by granting lesser shares to the defendants 3 and 4 have committed grave error and that the first appellate Court has not granted any share to the fourth defendant by giving a finding erroneously that the fourth defendant and the other Padmavathy Ammal alleged in the other sale deeds are one and the same.

16. The learned Counsel for the plaintiffs would contend that the defendants 3 and 4 in the written statement have taken a stand that the plaintiffs are not entitled to any share in “B” schedule property, but the first appellate Court as well as the trial Court have held that they are entitled to get 6/13 shares as per Exs.A.1 and A.2 (Tamil translation copy of Ex.A.1) sale deeds. It is evident from Exs.A.1 and A.2 sale deeds that the first plaintiff has purchased 31.500 cents on 27.08.1956 in “B” schedule property and no doubt, which comes to 9/13 shares. It is further evident from Ex.A.8 and A.9 (Tamil translation copy of Ex.A.8) partition deed that the first plaintiff has entered into a partition with other co-sharers in respect of “B” schedule property.



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17. As rightly observed by the learned appellate Judge, under Exs.A.8 and A.9 partition deed, there was reference to the persons entitled for 13 shares in Chembakakutty Pilla Bhagavathy Pilla's branch based on the purchase from the original sharers. In Exs.A.8 and A.9, it has been stated that Parvathi Pillai, Narayani Pillai, Thulasidharan Nair, Chandrakaladharan Nair and Gopala Pillai are all entitled to 1/13 share each and as such, the first plaintiff is entitled to remaining 8/13 shares. It has been further stated in Exs.A.8 and A.9 that shares of Paravathi Pillai and Narayani Pillai were devolved on Thulasidharan Nair and as such Thulasidharan Nair is entitled to 3/13 shares.

18. It is not in dispute that the first plaintiff, out of 31 ½ cents purchased under Ex.A.1, sold 11 cents in favour of the second plaintiff vide sale deed dated 30.11.1988. The fourth defendant in his chief examination evidence itself would specifically say that the plaintiffs are entitled to 6/13 shares, that she is entitled to 2/3 shares and also 2 ½ cents separately. But in cross-examination, she would admit that she has not derived rights in the suit property except under Ex.B.8, that she has not produced any prior title deeds, that she is not having any other documents except produced by her, that Thulasidharan Nair was entitled



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to 1/13 shares, that Narayani Pillai had 9 siblings and he was entitled to 1/13 share and that the said Narayani Pillai had died without marriage and that in case if Narayani Pillai had died without any document, then his brothers and sisters will get that share. The learned first appellate Judge, considering the sale deed under ExA.1/A.2 and the partition deed under Ex.A.8/A.9 and the evidence of fourth defendant, has rightly decided that the plaintiffs are entitled to 8/13 shares.

19. As already pointed out, the first defendant had remained exparte in the trial Court and the trial Court, without considering the first defendant's entitlement for share, has decided that he is not entitled to any share. Admittedly the first defendant is the son of one Kurisumuthu Nadar, who has been shown as one of the sharers in Ex.A.8/A.9 partition deed. It is evident from Ex.A.8/A.9 partition deed that Gopala Pillai who was entitled to 1/13 share in “B” schedule property, sold his share to Kurusumuthu Nadar – father of the first defendant in 1953 itself and the same was very much referred in Ex.A.8/A.9 partition deed.

20. It was the specific contention of the first defendant before the first appellate Court that his name was wrongly mentioned as



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Sabarianandam in the plaint instead of Sabariyaradimai and no suit summons came to be served on him. The first defendant before the first appellate Court has filed an application for reception of additional documents to show that there was a partition between Kurusumuthu Nadar and his family members and in that partition, 1/13 share of “B” schedule property purchased by Kurusumuthu Nadar was allotted to the share of the first defendant. The learned first appellate Judge, considering the fact that the suit was filed in the year 1989 and the remanding the suit for the purpose of additional evidence would cause prejudice to all the parties, by rejecting the additional evidence, but by relying on the recitals in Ex.A.8/A.9, has rightly decided that the first defendant is entitled to get 1/13 share in the “B” schedule property.

21. It is not in dispute that Chandrakaladaran Nair is one of the 13 sharers belonging to Chembakakutty Pillai Parvathi Pillai branch and as such, he was entitled to 1/13 share and after his death, his wife Devaki Ammal for herself and on behalf of her minor children had executed a sale deed in favour of one Parvathy Ammal, vide sale deed date 16.02.1977 under Exs.B.1 and B.2(Tamil translation copy of Ex.B.1). More importantly, Ex.B.1/B.2 sale deed was referred in Ex.A.8/A.9



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partition deed. It is also not in dispute that the said Parvathy Ammal along with her husband and another had sold the said property to the second defendant, vide sale deed dated 24.09.1987 under Ex.B.3, subsequent to Ex.A.8/A.9 partition deed. Considering the above, the trial Court as well as the first appellate Court have rightly allotted 1/13 share to the second defendant.

22. As already pointed out, the first appellate Court has granted 3/13 shares to the third defendant on the basis that the shares of Parvathy Pillai and Narayani Pillai were devolved on Thulasidharan Nair – third defendant herein and as such, he was entitled to 3/13 shares. But as rightly observed by the learned trial Judge, the third defendant is also one of the 13 sharers in Chembakakutty Pilla Bhagavathy Pilla and on that basis, he was entitled to 1/3rd share and as such, the finding of the trial Court cannot be found fault with.

23. Now turning to the fourth defendant's entitlement, as already pointed out, the first appellate Court has come to a finding that the fourth defendant is not entitled to any share. Admittedly the fourth defendant Padmavathiamma and the purchaser Padmavathiamma under Ex.B.1/B.2,



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who is also seller under Ex.B.3 are different persons, as the husbands of both Padmavathiamma were shown as different persons. As rightly contended by the learned Counsel for the defendants 3 and 4, there is absolutely no evidence to show that both Padmavathiamma are one and the same persons and the appellate Court, by taking note of the sale made by Padmavathiamma under Ex.B.3 has come to a decision that since the fourth defendant has already sold her share to the second defendant, she has no right in the property. But as rightly observed by the learned trial Judge, since the fourth defendant has purchased 2/13 shares from Gopala Pillai and the same was not disputed by other parties, she was entitled to get 2/13 shares. The fourth defendant has also claimed 12 ½ shares in addition to 2/13 shares through mortgage. As rightly observed by both the Courts below, the fourth defendant has not produced any iota of evidence to show her mortgage right over the suit property.

24. From the above discussion, this Court holds that the plaintiffs are jointly entitled to get 8/13 shares; the defendants 1 to 3 are entitled to get 1/13 shares each, the fourth defendant is entitled to get 2/13 shares and consequently, the judgment and decrees of both the Courts below are



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liable to be modified accordingly. Considering the other facts and circumstances, the parties are directed to bear their own costs.

25. In the result, the Second Appeal is partly allowed modifying the shares and the plaintiffs are jointly entitled to get 8/13 shares; the defendants 1 to 3 are entitled to get 1/13 shares each and the fourth defendant is entitled to get 2/13 shares in the suit property. Consequently, the connected Miscellaneous Petition is closed. The parties are directed to bear their own costs.

19.10.2024

NCC : Yes:No
Index : Yes : No
Internet : Yes : No

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To

1. The Subordinate Court, Kuzhithurai.
2. I Additional District Munsif, Kuzhithurai.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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