



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Delivered On : 02.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No.1025 of 2012

1.Kandasamy Gounder (Died)
2.Kolandaivel

... Appellants

(2nd Appellant and sole Respondent are the LRs of the deceased 1st Appellant viz., Kandasamy as per memo dated 18.11.2021 in CSR No.33885 vide Court order dated 22.12.2021 made in A.S.No.1025 of 2012 by AANJ)

Versus

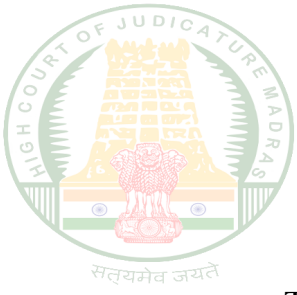
Selvam

... Respondent

PRAYER: First Appeal filed under Section 96 of Civil Procedure Code to set aside the judgment and decree dated 26.07.2012 passed in O.S.No.28 of 2011 on the file of the learned Principal District Judge, Namakkal.

For Appellants : Ms.Mitransha, B.S.
for Mr.V.Raghavachari

For Respondent : Mr.P.Mani



JUDGMENT

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This Appeal Suit had been filed to set aside the judgment and decree dated 26.07.2012 passed in O.S.No.28 of 2011 on the file of the learned Principal District Judge, Namakkal.

2. The Respondent herein is the Plaintiff who had laid the suit for partition and separate possession of 1/3rd share in the suit properties, for declaration that the partition deed dated 07.07.2010 entered between the Defendant as null and void and for permanent injunction.

3. For the sake of convenience, the parties are referred to as per their litigative status in the trial Court.

4. The brief facts, which are necessary for the disposal of this Appeal Suit, are as follows:-

2.1. The suit properties are joint family ancestral properties belonging to the Plaintiff and the Defendants. That all are in joint possession and enjoyment of the same without any division by metes and bounds and



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that the Plaintiff is entitled to 1/3rd share in the suit properties. That despite demands by the Plaintiff, that Defendants have not effected partition of the suit properties. That on 30.06.2010 when the Plaintiff requested the Defendants to effect partition. However, behind the back of the Plaintiff, the Defendants entered into a partition deed between them on 07.07.2010. The said partition deed is not acted upon and is not binding on the Plaintiff. Therefore, she caused legal notice sent to the Defendants on 20.08.2010. To which the Defendants sent a reply with false allegations on 25.08.2010.

2.2. Per contra, the Defendants filed their written statement contenting that the Plaintiff is not entitled to any relief in the suit. That on 24.04.1981 itself a joined registered partition took place between one Palani Gounder (brother of first Defendant) on the one hand by adopting “A” schedule property and between the first and second Defendants on the other hand by allotting “B” schedule property. That since the date of the partition the Defendants have been in possession and enjoyment of the “B” schedule properties. As the Plaintiff was given in marriage in or about the year 1971, the Plaintiff is not entitled to any relief in the suit and the suit is liable to be



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dismissed with costs. That further the husband of the Plaintiff was one of the attestors in the said partition deed dated 24.04.1981. The fact of the said partition was even not mentioned in the partition deed dated 07.07.2010 and that the suit properties are the absolute and separate properties of the Defendants. The Court fee paid is not proper as the Plaintiff was never in possession and enjoyment of the suit property.

2.3. Issues were framed and the case went on trial. Two witnesses were examined on the Plaintiff's side as P.W-1 and P.W-2 and three documents were marked as Ex.A-1 to Ex.A-3. On the side of Defendants two witnesses were examined as D.W-1 and D.W-2 and four documents were marked as Ex.B-1 to Ex.B-4. Ex.A-1 is the partition deed dated 07.07.2010. Ex.A-2 is the legal notice dated 20.08.2010. Ex.A-3 is the reply notice dated 25.08.2010. Ex.B-1 is the partition deed date 24.04.1981. Ex.B-2 is the sale deed dated 13.02.1925. Ex.B-3 is the sale deed dated 12.08.1938 and Ex.B-4 is the sale deed dated 22.08.1946. Ex.B-2, Ex.B-3 and Ex.B-4 are in the name of Mari Gounder. The trial Court based on the oral and documentary evidences, decreed the suit granting 1/3rd share to the Plaintiff in the suit



properties.

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2.4. Aggrieved by the judgment and decree dated 26.07.2012 passed in O.S.No.28 of 2011 by the learned Principal District Judge, Namakkal, the Defendants had preferred this Appeal Suit.

3. Ms. Mitraneshaa, B.S., learned Counsel representing Mr.V.Raghavachari, learned Counsel for Appellants submitted her arguments. As per her submissions, the Appellants herein are the Defendants in O.S.No.28 of 2011 on the file of the learned Principal District Judge, Namakkal. The Plaintiff in O.S.No.28 of 2011 is the daughter of first Defendant – Kandasamy Gounder and sister of second Defendant - Kolandaivel. The paternal grandfather of the Plaintiff – Mari Gounder had two sons – Palani Gounder and Kandasamy Gounder. The partition of the joint family property was effected in the year 1981 through a registered partition deed dated 24.04.1981. The joint family property of Mari Gounder was partitioned between his sons – Palani Gounder and Kandasamy Gounder and son of Kandasamy Gounder. 'A' schedule property was allotted to Palani



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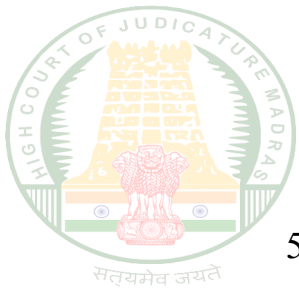
Gounder and 'B' schedule property was allotted to Kandasamy Gounder and his son Kolandaivel. The Plaintiff was married in or about the year 1971 and the Plaintiff's husband Murugesan was an attesting witness to the partition deed between the sons of Mari Gounder viz., Kandasamy Gounder and Palani Gounder. The Plaintiff is aware of those developments. The said partition deed was a registered partition deed.

4. From the date of partition, the family properties are the separate properties of Kandasamy Gounder. Therefore, the Plaintiff cannot seek the relief of declaration that the partition deed executed between the Defendants 1 and 2 – father and son as not binding on the Plaintiff. Without challenging the 1981 partition deed, the Plaintiff cannot challenge the partition deed between the Defendants 1 and 2 of the year 2010. From 1981, the suit property was treated as separate property of Kandasamy Gounder and the claim of the Plaintiff that it is to be treated as joint family property cannot be accepted as per the provisions of Hindu Succession Act. The Defendants 1 and 2 had clearly in their written statement denied the claim of the Plaintiff. In the evidence, the Plaintiff had admitted in her cross-examination that her



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husband had signed as a witness to the partition deed between the sons of Mari Gounder viz., Palani Gounder and Kandasamy Gounder. Therefore, the claim of the Plaintiff seeking partition of the property, which is in possession of the Defendants, as though it is a joint family property is misconceived and the suit for partition by the married daughter who was married prior to 1981 is not maintainable. Therefore, the proposition of law that the daughter is also entitled to claim partition and equal share as equal to the son as per Hindu Succession Act as amended in 2005 will not hold good to the contention of the Plaintiff. The learned Principal District Judge, Namakkal, had ignored those proposition of law as laid down by the Hon'ble Supreme Court and had decreed the suit granting 1/3rd share in the joint family property which is actually the separate property of Kolandaivel Gounder. Therefore, this Appeal is to be allowed and the preliminary decree passed by the learned Principal District Judge, Namakkal in O.S.No.28 of 2011 allotting 1/3rd share to the Plaintiff is found unreasonable and unacceptable in the eyes of law. Therefore, the Appeal is to be allowed and O.S.No.28 of 2011 is to be dismissed.



5. In support of her contention, the learned Counsel for the

Appellants relied on the following rulings:-

5.1. In the case of ***Chinna Palanisamy Gounder -vs- Latha and others*** reported in ***(2017) 1 Mad LJ 759*** wherein this Court had held as follows:

“24. As per the provisions of [Hindu Succession Act, 1956](#), considering the devolution of interest under [Section 8](#) of the Hindu Succession Act, 1956, amongst the Class-I heirs, the properties derived by the first Defendant from his father could only be treated as his separate properties and not as the joint family properties of the first Defendant and his children viz. the Plaintiff 2 and 3. With reference to the above position of law, there are ample authorities and in this connection, a useful reference may be made to the decisions reported in AIR 1979 MADRAS 1 ([The Additional Commissioner of Income-tax, Madras-I V. P.L.Karuppan Chettiar](#)), 1993 Supp (1) Supreme Court Cases 580 ([Commissioner of Income Tax V. P.L.Karuppan Chettiar](#)), (1986) 3 Supreme Court Cases 567 ([Commissioner of Wealth Tax, Kanpur and Others V. Chander Sen And Others](#)), (2008) 3 Supreme Court Cases 87 ([Bhanwar Singh V. Puran And Others](#)) and the latest decision (2016) 4 Supreme Court Cases 68 ([Uttam V. Saubhag Singh and Others](#)). A perusal of the above said decisions would go to show that when the son inherits the property, as per [Section 8](#) of the Hindu Succession Act, 1956, he does not take it as Kartha of his own undivided family, but take it in his individual capacity. Therefore, it could be seen that as per the authoritative pronouncements of the Apex Court and our High Court, the suit properties derived by the first Defendant under Ex.A6 could only be treated as the separate properties of the first Defendant and not the joint family properties of the first Defendant and the plaintiffs 2 and 3 as claimed by the plaintiffs. It could be seen that in toto, on a conjoint reading of [Sections 4,8,19 and 30](#) of the Hindu Succession Act, 1956, if the self acquired property or joint family property, once they get devolved in accordance with [Section 8](#) of Hindu Succession Act, 1956, on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons, who have succeeded to it as they hold the property as tenants in common and not as joint tenants.

25. In the light of the above decisions, when it is found that as per law, the



properties derived by the first Defendant under Ex.A6 are his separate properties, the Courts below have erred in findings fault on the part of the Defendant in describing the suit properties as his own properties in the sale transaction Ex.B1. Therefore, it could be seen that the first Defendant has rightly described the suit properties as his own properties in Ex.B1 sale deed. So, when it could be seen that the suit properties are the separate properties of the first Defendant and when there is no impediment on his part to alienate the same and when as found earlier, the first Defendant is not shown to have been indulging in illegal/immoral activities or excluded the plaintiffs and discarded their interest and welfare, it could be seen that the first Defendant is not required to seek sanction from the court to convey his separate properties in favour of the second Defendant. Further, it could be seen that when it is found that the suit properties are the separate properties of the first Defendant, the claim of 2/3 share by the plaintiffs 2 & 3 on the footing that the suit properties are the joint family properties of the first Defendant and the plaintiffs 2 & 3 is completely ruled out. Therefore, it could also be seen that the plaintiffs 2 & 3 and in particular, the second Plaintiff is not entitled to claim any share in the properties as the suit properties are the separate properties of the first Defendant.”

5.2. In the case of **Balakrishnan and others -vs- Selvi and others** reported in **(2017) 4 LW 681** wherein this Court has held as under:

“23. ... It is for the Plaintiff either to implead those parties or ought to have deleted the portion of the suit property owned by them. When the Plaintiff has failed to carry out necessary amendment to the pleadings, the lower appellate Court is wrong in holding that the Plaintiff was not given opportunity by the trial Court to implead the necessary parties. At the least the lower appellate Court should have considered this and deleted the portion of land held by the third parties. Without applying his mind, he has passed a blanket order of partition as if the properties are ancestors properties of the first Defendant and the Plaintiff is entitled for 1/6th share in all the property. The lower appellate Court has also erred in holding that after the amendment to the [Hindu Succession Act, 1956](#) inserting Section 29-A, the [Section 16\(3\)](#) of the Hindu Marriage Act, 1955 has become irrelevant and the Plaintiff is entitled to seek share in the ancestral property of her father even during his life time. This legal error of the lower appellate Court is bound to be annulled for the following reasons:
(a) [Section 16\(3\)](#) of the Hindu Marriage Act, 1955, while conferring the status to the child born through the void marriage also incapacitate such



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children from claiming right to the property of any person other than the parent.

(b) When there is a specific restriction to claim right over the property other than the parents, by virtue of [Section 29-A](#) of the Hindu Succession Act, 1956 an illegitimate child cannot seek right over the properties as a co-parcener. The matter, what is now referred to the Larger Bench of the Hon'ble Supreme Court, is to determine whether an illegitimate child can seek right in the self acquired property of the parent alone or the joint family property also?

(c) The order of reference to reconsider the decision of the Hon'ble Supreme Court rendered in [Jinia Keotin and others v. Kumar Sitaram Manjhi and others](#) reported in (2003)1 SCC 730. Till any decision is rendered contra to these judgments by Larger Bench, verdict of the Hon'ble Supreme Court in these judgments alone holds the failed.

(d) Further, it is also to be pointed out that at the time of filing of the suit, the first Defendant was alive. So, whatever right the illegitimate child can claim only be the property of the parent and nothing more. When father is alive, the question of inheritance does not arise.”

5.3. In the case of ***K.P.Subburaj -vs- V.Prabhakar and others*** reported in (2019) 3 LW 121 wherein this Court has held as under:

“Family And Personal Laws - Hindu Law - Family Property, Succession and Inheritance - Joint Family Property/HUF Property vis-a-vis Self-acquired Property/Individual Income - Presumption/Burden of proof - Alienation of Property/Legal necessity - Whether first item of suit properties, was a self-acquired property or it is an ancestral property - Single Judge directed defendants 1 and 2 therein to deliver vacant possession of suit property Property in question acquired by father and mother of first defendant and grandparents of plaintiff will not be presumed to be joint family properties - Held, in absence of evidence, case of first defendant has to be accepted that first item No. 1 of suit properties was purchased out of income of his father and mother - Plaintiff has miserably failed to prove that proceeds of ancestral properties were used for



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purchase of item No. 1 of suit properties - Suit first item of properties is self-acquired property of first defendant Question of considering inheritance of ancestral properties does not arise in this case - Judgment and decree passed by single judge confirmed - Original Side Appeals dismissed Hindu Succession Act, 1956, S. 8 Constitution of India, Art. 226."

5.4. In the case of ***Arshnoor Singh -vs- Harpal Kaur and others*** reported in ***(2020) 14 SCC 436*** wherein this Court has held as under:

"A. Family and Personal Laws – Hindu Law – Coparcenary property – Mitakshara Law – Male ancestor inherits property from his paternal ancestors three degrees above him as coparceners, the moment he is born – Even if property partitioned amongst sons, property inherited by them would remain coparcenary property qua their male descendants up to three degrees below them – Where succession opened prior to date of commencement of Hindu Succession Act, parties to whom Mitakshara Law applied would continue to be governed by the same – Hindu Succession Act, 1956, S.4."

6. In the case of ***Chinna Palanisamy Gounder -vs- Latha and others*** reported in ***(2017) 1 Mad LJ 759*** it is reiterated that the son inherits the property in the partition, he does not take it as Kartha of the family but as his separate property. The learned Counsel appearing for the Appellants also invited the attention of this Court to Sections 4, 8, 19 and 30 of the Hindu Succession Act, 1956. Under Section 8 of the Hindu Succession Act, the

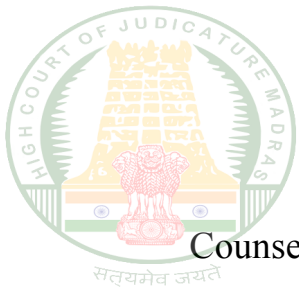


property ceases to be joint family property.

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7. Relying on the above rulings, the learned Counsel for the Appellants submitted that the contention of the learned Counsel for the Plaintiff before the trial Court cannot be accepted. The judgment of the learned Principal District Judge in O.S.No.28 of 2017 dated 26.07.2012 is against the reported decisions of the Hon'ble Supreme Court and therefore, it is perverse and the same is to be set aside.

8. Thiru. P. Mani, learned Counsel appearing for the Respondent submitted his arguments. As per the submissions of the learned Counsel for the sole Respondent 'B' schedule property that is allotted to Kandasamy Gounder and the second Defendant was enjoyed as joint family property only as in the partition deed dated 24.04.1981 between the sons of Mari Gounder, the second Defendant who is the grandson of Mari Gounder was also added as a co-sharer. When the Plaintiff issued lawyers notice seeking partition, the Defendants 1 and 2 had created another partition deed dated 07.07.2010 amongst themselves thereby defeating the claim of the Plaintiff. The learned



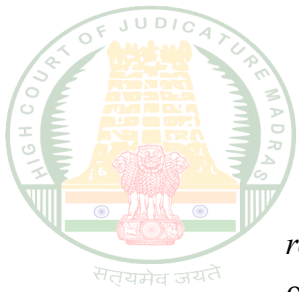
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Counsel for the sole Respondent/Plaintiff in the trial Court had invited the attention of this Court to the recitals in Ex.A-1. It clearly states that it was joint family property between Defendants 1 and 2 in O.S.No.28 of 2017. On proper appreciation of evidence and based on the documents Ex.A-1 to Ex.A-3 and Ex.B-1 to Ex.B-4, the learned Principal District Judge, Namakkal, had granted preliminary decree. Therefore, the appeal lacks merit and is to be dismissed.

9. In support of his contention, the learned Counsel for the Respondent relied on the following rulings:

9.1. In the case of ***Binod Bihari Lal and others -vs- Rameshwar Prasad Sinha and others*** reported in ***AIR 1978 SC 1201*** wherein the Hon'ble Supreme Court has held as under:

“Mr., Prasad submitted that in absence of a specific pleading to that effect in the plaint, the two items of properties could not be held to be joint on the theory of blending. We do not accept this argument as sound in this case. Having appreciated the entire facts and circumstances of the case we think that the pleading that the properties were the joint family properties was sufficient to enable the Court to look into the evidence of blending which was merely a historical aspect of the question as to how the properties had become joint family properties. The High Court has rightly held that the house at Sadisopore had become a joint family property because of blending in support of which there was ample evidence. We need not repeat what has been stated in the judgment of the High Court in this



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regard.”

9.2. In the case of ***Goli Eswariah -vs- Commissioner of Gift Tax*** reported in ***1970 AIR 1722*** wherein the Hon'ble Supreme Court has held as under:

“To pronounce on the question of law presented for our decision, we must first examine what is the true scope of the doctrine of throwing into the 'common stock' or 'common hotchpot. It must-be remembered that a Hindu family is not a creature of a contract. As observed by this Court in [Mallesappa Bandeppa Desai and Ors. v. Desai Mallappa and Ors.](#)(1) that the doctrine of throwing into common stock inevitably postulates that the owner of a separate property is a coparcener, who has an interest in the coparcenary property and desires to blend hi-, separate property with the coparcenary property. The existence of a coparcenary is absolutely necessary before a coparcener can throw into the common stock 'his self acquired properties The separate property of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by him into the common stock with the intention' of abandoning his separate claim therein. The separate property of a Hindu ceases to be a separate property and acquires the characteristic of a joint family or ancestral property not by any physical mixing with his joint family or 'his ancestral property but by his, own volition and intention by his waiving and surrendering his separate rights in it as separate property.”

9.3. In the case of ***T.V.Angamuthu and another -vs- The State Government of Tamil Nadu rep. by the District Collector of Salem and others*** reported in ***(2001) 3 MLJ 278*** wherein this Court has held as under:

“The very fact that the other members of the family have given the release deed and later effected the partition among themselves, would clearly establish that it was treated as joint family property by all the members of



the family. Now, only for the purpose of the suit it appears that the plaintiffs have taken a plea that the properties are the separate properties and as such, the 3rd Defendant had no right and under the circumstance, Defendants 1 and 2 are not entitled either to attach or bring the same for sale. The recitals under Ex.A-10 about these properties are joint family properties would only falsify the case of the plaintiffs. Even though there is no material to apply the doctrine of blending, it is crystal clear that the parties have treated the properties as joint family properties. Once a self-acquired property is thrown into the common hotchpot and becomes joint family property, it is necessarily followed by all the incident of coparcenary property. Simply because the family was not possessed of any other property, it cannot be concluded that these are the separate property of the particular individual. If that be so, what was the necessity to execute any release deed or effect partition among the members of the family. Under the circumstances only, in view of Exs.A-8 and A-9 only, the Courts below came to the conclusion that the properties are joint family properties.”

9.4. In the case of **K.K.Palanisamy Gounder and others -vs-**

Amirthammal reported in (2003) 2 CTC 1 wherein a Division Bench of this

Court has held as under:

“6. Though the Defendants have not established that Kandalkal was a benamidar of the father of Kandasami Gounder, nor they established that the properties were purchased in the name of Kandalkal from and out of the funds of joint family properties, we are of the view that the recitals in the deed of partition should be given due weight and the fact that the parties have acted according to the deed of partition from the year 1936 shows that the three brothers have treated the properties as joint family properties and effected a partition among themselves. Once we hold that the deed makes no distinction between the properties of joint family members and the properties of Kandalkal, the necessary consequence is that all the properties covered in the deed of partition should be taken to be joint family properties and the Plaintiff would be entitled to a share only on the basis that the properties are joint family properties. Further, the employment of the expression in the deed, namely, @gpJuhu;\$pj tifapy; ghj;jpag;gl;L ehkd; mDgtpj;J tUfpw@ shows that the properties were obtained from ancestral sources and they also



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enjoyed them as joint family properties. The recitals show the unequivocal intention of the three brothers of having treated the properties obtained from their mother as joint family properties. Learned Single Judge was of the view that there was no independent evidence let in by the Defendants that the properties in question are joint family properties. A careful reading of the document shows that when there are intrinsic evidence in the document itself to show that the properties in question are joint family properties, the case pleaded by the Defendants cannot be rejected on the score that they failed to lead independent evidence on that aspect of the matter.”

9.5. In the case of **Commissioner of Income Tax -vs- Sita Bhateja**

reported in **1973 91 ITR 193 Kar** wherein the Karnataka High Court has held as under:

“7. A coparcener as a member of the coparcenary has an interest in the property owned by the coparcenary and he can also have his own separate property. The following are generally recognised as coparcenary property :

(i) ancestral property; (ii) property allotted at a partition; (iii) property jointly acquired by coparcners; (iv) property acquired with the aid of coparcenary property; (v) separate property of coparcners thrown into family hotchpot and treated as coparcenary property; and (vi) separate property of a coparcner belnede with coparcenary property.

8. It is unnecessary to deal with all the modes in which coparcenary property can be acquired for purposes of this case. We are concerned only with one mode by which the separate property of a coparcner can acquire the character of coparcner property. It can happen when the separate property of a coparcener is voluntarily thrown by him the joint stock or common hotchpot of the family with the intention of abandoning all separate claims.

9. What are the consequences of a separate property of a coparcener being impressed with the character of coparcenary property ? After the property becomes coparcenary property-



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(i) *the ownership of the property will vest in the whole body of coparceners;*

(ii) *if the coparcener is a manger of the joint family, such property will continue to be under his managment and he can still alienate it for purposes of legal necessity or benefit of the family;*

(iii) *if the coparcener is the father, the interest of his sons in that property can be sold in order to dicharge his debts which are not "avyavaharika" in nature;*

(iv) *the undivided interest of the coparcner in the coparcenary property including the property in question can be borught to sale by his creditor :*

(v) *the property along with other coparcenary property would become subject to devolution by survivorship; and*

(vi) *the coparcener can still claim a share in the property along with other coparcernaer by enforcing a partition.*

13. ... *In Mallesappa Bandappa Desai v. Desai Mallappa Alias mallesappa , the Supreme court held that where a member of the joint Hindu family blended his self-acquired property with property of joint family, either by bringing his self-acquired proerty into a joint family account or by bringing joint family property into his separate account, the effect was that all the property so blended became joint family property."*

10. Further the learned Counsel appearing for the Respondent submitted that pending appeal, the father died. Therefore, the Respondent is entitled to a share in the father's property. Therefore, this appeal lacks merits and is to be dismissed.

11. As per the evidence of the Plaintiff Selvam, she was married in



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the year 1973. As on the date of filing of the suit, her husband died, her son and daughters were aged 32 years and above. Both of them were married and had children.

12. As per the reported ruling of the Hon'ble Supreme Court in the case of *Vineetha Sharma -vs- Rakesh Sharma and others* reported in *(2020) 9 Supreme Court Cases 1*, irrespective of the date of the birth of the women co-parcener, when the property had not been partitioned as on 2005, the date of notification of the Hindu Succession (Amendment) Act 2005, the women co-parcener is entitled to claim partition. Here, in this case, the Plaintiff Selvam claim partition. The father and son as Defendants 1 and 2 entered into partition only just before filing of the suit. Therefore, the partition between the father and son is hit by the ratio laid down by the Hon'ble Supreme Court in *Vineetha Sharma -vs- Rakesh Sharma and others* reported in *(2020) 9 Supreme Court Cases 1*.

13. Accepting the contention of the learned Counsel for the Appellant that the property was the self-acquired property of Defendant-1. It



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is the contention of the learned Counsel for the Plaintiff that only when she demanded partition, the father had executed Partition Deed, whereby the properties were partitioned between father and the son wherein only Rs.1,00,000/- was allotted as Schedule A property for the father/Defendant-1 and immovable properties allotted to the son which are item 1 to 11 totalling Rs.40,00,000/-. Therefore as per the ruling of the Hon'ble Supreme Court in the case of *Vineetha Sharma -vs- Rakesh Sharma and others* reported in *(2020) 9 Supreme Court Cases 1*, when the partition takes place, subsequent to 2005, irrespective of the fact whether the co-parcener, father was alive on the date of partition, the contention of the Appellant before this Court cannot be accepted in the light of the reported decision.

14. When the document is titled as Partition Deed, it shows that the father, the Defendant-1 had succeeded to the property in the family partition. In the family of Maari Gounder, it was treated as his separate property after the partition. Therefore after his life time, automatically it devolves on his son and daughter. During the lifetime of the father, the daughter demanded partition. Instead of granting her share in the property, the father and the son

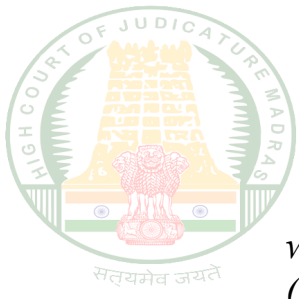


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had executed Partition Deed whereby Rs.1,00,000/- alone was allotted to the share of the father immovable property worth Rs.40,00,000/- was allotted to the son as schedule B property. Therefore the very same partition is hit by judgment of the Hon'ble Supreme Court. In the light of the above, the submission of the learned Counsel for the Appellant that the judgment of the learned Principal District Judge, Namakkal in O.S.No.28 of 2011 dated 26.07.2012 is found bad in law, is perverse cannot be accepted in the light of the judgment in the case of ***Vineetha Sharma -vs- Rakesh Sharma and others*** reported in ***(2020) 9 Supreme Court Cases 1*** and extracted as follows:

“A. Family and Personal Laws – Hindu Succession Act, 1956 – S.6 [as substituted by the Hindu Succession (Amendment) Act, 2005 w.e.f. 9-9-2005] – Daughter's right in coparcenary property under substituted S.6 of the HS Act, 1986 – Daughter before date of enforcement of the 2005 Amendment Act – Held, has same rights as daughter born on or after the amendment – Non-requirement of coparcener father to be alive on date of coming into force of the said amendment, explained

-Held, if daughter is alive on date of enforcement of Amendment Act, 2005 i.e. 9-9-2005, she becomes a coparcener with effect from date of Amendment Act (i.e 9-9-2005) irrespective of whether she was born before the said amendment – Provisions in substituted S.6 of the HS Act confer status of coparcener on daughter born before or after the amendment in the same manner as son with same rights and liabilities – Rights under substituted S.6 can be claimed by daughter born prior to the amendment with effect from date of amendment (9-9-2005)



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with saving of past transactions as provided in proviso to S.6 (1) r/w S.6(5) of the HS Act.”

15. The submission of the learned Counsel for the Respondent in this Appeal that even though the property was separate property of Kandasamy Gounder, he had executed partition between him and his son Kolandaivel. Therefore it gives a presumption that it was treated as joint family property by the father of the Plaintiff and the Defendant-2.

16. Even if the submission of the learned Counsel for the Defendant is accepted, after the death of Kandasamy Gounder, the properties in the share of Kandasamy Gounder is to be partitioned between the son and the daughter in the light of the fact that immovable properties were allotted to the son, the Defendant-2 by the Defendant-1, the properties under schedule-B had to be divided between the daughter and the son, as he had prior to his death treated his separate property as Joint family property between him and his son.

Point for determination:



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Whether the judgment and decree dated 26.07.2012 passed in O.S.No.28 of 2011 on the file of the learned Principal District Judge, Namakkal is to be set aside as perverse?

17. Heard Ms. Mitraneshaa, B.S., learned Counsel representing Mr.V.Raghavachari, learned Counsel for Appellants and Mr. P. Mani, learned Counsel for the Respondent. Perused the evidence of the Plaintiff as P.W-2 and P.W-2, the documents marked as Ex.A-1 to Ex.A-1 to Ex.A-3 and the evidence of the Defendants as D.W-1 and D.W-2 and the documents marked as Ex.B-1 to Ex.B-4 and also the judgment and decree dated 26.07.2012 passed in O.S.No.28 of 2011 by the learned Principal District Judge, Namakkal.

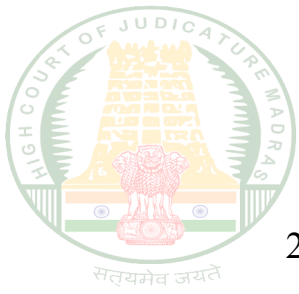
18. The dispute between the parties is whether the suit properties are the separate properties of Mari Gounder or joint family properties of Mari Gounder. According to the Plaintiff the suit properties are joint family ancestral properties. Therefore, after the amendment of Hindu Succession Act in the year 2005 she is entitled to a share as a co-parcener. Whereas



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according to the Defendants, the suit properties are separate properties of Kandasamy Gounder and that therefore, the Plaintiff is not entitled to a share in the said properties during the lifetime of Kandasamy Gounder.

19. Ex.B-2, Ex.B-3 and Ex.B-4 are the sale deeds evidencing the purchase of certain properties by one Mari Gounder, grandfather of Plaintiff. Whether the suit properties form part of the properties mentioned in Ex.B-2, Ex.B-3 and Ex.B-4 or are the only properties mentioned in Ex.B-2, Ex.B-3 and Ex.B-4. According to the Plaintiff's Counsel, the properties mentioned in Ex.B-2, Ex.B-3 and Ex.B-4 comes to only 4 acres. Whereas suit properties measuring an extent of 6 acres. Therefore, it is joint family ancestral properties. As it was joint family ancestral property, the second Defendant was included as a co-parcener in the partition deed dated 24.04.1981. Whereas according to the Defendants after the partition dated 24.04.1981, the properties mentioned in "B" schedule therein and which fell to the share of the Defendants became the absolute and separate properties of the Defendants.



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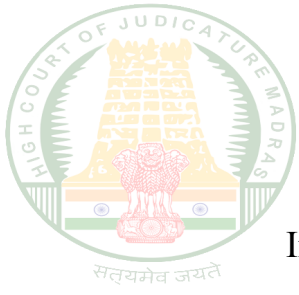
20. As per the partition deed dated 24.04.1981, the properties mentioned in “B” schedule and which fell to the share of the Defendants are the separate properties of the Defendants. Therefore, as per partition deed dated 24.04.1981, what was allotted as share of Kandasamy Gounder and Kolandaivel is to be divided between Kandasamy Gounder and Kolandaivel in two equal shares. Out of this half share of Kandasamy Gounder only is now divided between the Plaintiff and second Defendant Kolandaivel into two equal share. Therefore, the Plaintiff is entitled to 1/4th share of the properties as per partition deed dated 24.04.1981 and the second Defendant is entitled to 3/4th share of the property as per partition deed dated 24.04.1981. However, the partition deed dated 07.07.2010 is not proper and does not hold good as the properties therein have not been partitioned equally. As per the said partition deed, the first Defendant gets only a sum Rs.1,00,000/- (Rupees One Lakh only). Whereas the second Defendant gets all the immovable properties worth about Rs.40,00,000/- (Rupees Forty lakhs). It is found to be in violation of the Hindu Succession Act, amendment Act – 2005 specifically Section 6 of the Hindu Succession Act as amended in 2005 which gives equal rights to daughters as equal to son in the immovable



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properties of Hindu. Also, it is found violative of the ratio laid down by the Hon'ble Supreme Court in *Vineetha Sharma -vs- Rakesh Sharma and others* reported in (2020) 9 Supreme Court Cases 1 as the partition deed dated 07.07.2010 is subsequent to this judgment. Therefore, the said partition deed does not hold good and is struck down as null and void and not binding on the Plaintiff. Pending appeal, the first Defendant, father of Plaintiff and second Defendant died. Therefore, the Plaintiff inherits her share from the share of her father. Accordingly, the daughter/Plaintiff gets 1/4th share in the suit property and son/second Defendant gets 3/4th share in the property.

21. In the light of the above discussion, the point for determination is answered against the Appellants. The judgment and decree dated 26.07.2012 passed in O.S.No.28 of 2011 on the file of the learned Principal District Judge, Namakkal, granting 1/3rd share to the daughter/Plaintiff and 2/3rd to the son/second Defendant is modified as the daughter/Plaintiff is entitled to 1/4th share and the son/second Defendant is entitled to 3/4th share.



In the result, **this Appeal Suit is dismissed.** The judgment and decree

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dated 26.07.2012 passed in O.S.No.28 of 2011 on the file of the learned Principal District Judge, Namakkal, granting 1/3rd share to the daughter/Plaintiff and 2/3rd to the son/second Defendant is modified as the daughter/Plaintiff is entitled to 1/4th share and the son/second Defendant is entitled to 3/4th share. No costs.

02.06.2025

Internet : Yes / No.
Index : Yes / No
Speaking Order/Non-speaking Order
srm/shl



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To

- 1.The Principal District Judge,
Namakkal .
- 2.The Section Officer,
Vernacular Records Section,
Madras High Court.



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SATHI KUMAR SUKUMARA KURUP, J.

srm/shl

Judgment made in
A.S.No.1025 of 2012

02.06.2025