



A.S.No.510 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 17.09.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.No.510 of 2011
and M.P.No.1 of 2011

A.Mohanraj

... Appellant

vs.

1.Athiyannan

2.Sengoda Gounder

3.Thangammal

4.Kandayee (Died)

... Respondents

(R1 and R3 recorded as LR's of the deceased R4. Memo recorded. As per memo dated 06.03.2020 made in A.S.No.510/2011)

PRAYER: This First Appeal filed under Section 96 of the Code of Civil Procedure, to set aside the Decree and Judgment made in O.S.No.66 of 2008 by a decree and judgment dated 05.04.2010 by the Additional District Judge/F.T.C.No.2, Salem.

For Appellant : Mr.G.Pugazhenth

For R3 : Mr.P.Jagadeesan

For R1 and R2 : No Appearance

For R4 : Died



A.S.No.510 of 2011

JUDGMENT

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This First Appeal has been filed to set aside the decree and judgment made in O.S.No.66 of 2008, dated 05.04.2010 on the file of the Additional District Judge/F.T.C.No.2, Salem.

2. The 2nd defendant in a suit for partition is the appellant. The respondents 3 and 4/plaintiffs filed a suit for partition seeking 2/3rd share in the suit property. The Trial Court granted preliminary decree for partition as prayed for. Aggrieved by the same, the 2nd defendant has filed this appeal.

3. According to the plaintiffs/respondents 3 and 4, the suit property were originally purchased by father of the 1st plaintiff and 1st defendant, husband of the 2nd plaintiff and paternal grandfather of the 2nd defendant namely Periyasamy Gounder under a registered Sale Deed dated 12.04.1972. The 2nd defendant is the son of the 1st defendant. The above mentioned Periyasamy Gounder died intestate on 09.06.1990. Hence, as the Class-I Heirs of Periyasamy Gounder, 1st plaintiff-his daughter, 2nd plaintiff-his wife and 1st defendant-his son were entitled to 1/3rd share each. The defendants 1 and 2 entered into a registered Partition Deed in respect of the



suit property excluding the plaintiffs, who are all the legitimate sharers.

After acquiring knowledge about the Partition Deed between the defendants 1 and 2, the plaintiffs issued a Legal Notice on 27.02.2008 demanding their share in the suit property. Since there was no reply, the plaintiffs were constrained to file a suit for partition of 2/3rd share in O.S.No.66 of 2008 on the file of the Additional District Judge/F.T.C.No.2, Salem.

4. The appellant/2nd defendant resisted the suit by filing a written statement contending that the suit property was not self acquired property of Periyasamy Gounder. According to the appellant/2nd defendant, the suit property was purchased by Periyasamy Gounder by utilising the sale proceeds of ancestral properties and hence, the suit property assumed the character of joint family properties. It was also contended by the 2nd defendant that there was a partition among the family members on 20.11.1991, whereunder, the 2nd plaintiff and 1st defendant agreed that the properties described in the 'B' schedule to the Partition Deed shall be allotted to the 2nd defendant. It was further contended that the 1st plaintiff's marriage was celebrated in a grand manner by presenting jewels and other articles. It was further pleaded that the plaintiffs have not been in joint



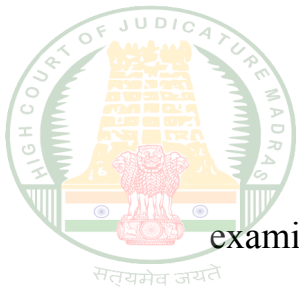
possession and enjoyment of the suit property and they were ousted by open, peaceful and continuous possession of the properties by the 2nd defendant. On these pleadings, the 2nd defendant sought for dismissal of the suit.

5. The Trial Court based on the pleadings of the respective parties, framed the following issues for consideration:-

- 1) Whether the plaintiffs are entitled to obtain 2/3 shares in the suit property as prayed for?*
- 2) Whether the plaintiffs are entitled to obtain permanent injunction as prayed for?*
- 3) Whether D3 is not the necessary party to the suit?*
- 4) Whether Periyasamy Gounder purchased the suit property from out of the income of the ancestral property?*
- 5) Whether the registered partition deed dated 12-12-91 is true and enforceable?*
- 6) Whether there is no cause of action for filing the suit?*
- 7) To what relief, if any the plaintiffs are entitled to?"*

6. Before the Trial Court, the plaintiffs 1 and 2 were examined as PW.1 and PW.2. On their behalf, 7 documents were marked as Exs.A1 to A7. The 2nd defendant was examined as DW.1 and 3 other witnesses were

4/12



examined on their side as DW.2 to DW.4 and 8 documents were marked on the side of the defendants as Exs.B1 to B8.

7. Based on the evidence available on record, the Trial Court came to the conclusion that the suit property was the self acquired property of Periyasamy Gounder and hence, the plaintiffs were entitled to 2/3rd share. A Preliminary Decree for partition had been granted accordingly. The Trial Court also granted decree for permanent injunction restraining the 2nd defendant from alienating the share of the plaintiffs in the suit property. Aggrieved by the said judgment and decree, the 2nd defendant has come by way of this appeal.

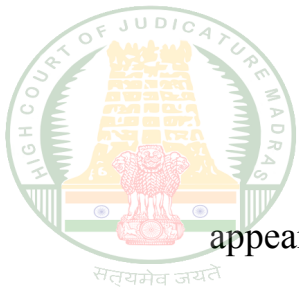
8. The learned counsel appearing for the appellant would submit that the brother of Periyasamy Gounder, who was arrayed as 3rd defendant in the suit had been examined as DW.2 and he clearly deposed that Periyasamy Gounder was allotted with 10 acres of ancestral properties and by selling said properties, he had purchased the suit property. Therefore, according to him, the suit property was purchased out of sale proceeds of ancestral properties and hence, the Trial Court committed a serious error in coming to



the conclusion that the suit property was self acquired property. The learned counsel for the appellant further submitted that pending first appeal, the 2nd plaintiff in the suit namely Kandayee, mother of 1st plaintiff and 1st defendant died intestate on 21.10.2016. The 1st respondent/1st defendant and 3rd respondent/1st plaintiff were recorded as legal representatives of deceased 4th respondent/2nd plaintiff as per the memo filed by the learned counsel for the appellant dated 06.03.2020.

9. The learned counsel appearing for the appellant further submitted that since the 2nd plaintiff died intestate pending first appeal, even as per the decree passed by the Trial Court, 1/3rd share allotted to her, will go to her Class-I Heirs namely the respondents 1 and 3. In that case, the 3rd respondent/1st plaintiff is entitled to 1/2 share in the suit property and the remaining 1/2 share will go to the father of the appellant namely the 1st respondent. In view of the change of subsequent circumstances, the Preliminary Decree for Partition passed by the Trial Court requires modification.

10. Though the respondents 1 and 2 were served and their names



appeared in the cause-list, there is no representation for them.

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11. The learned counsel appearing for the 3rd respondent/1st plaintiff would submit that the appellant failed to lead any evidence to suggest that the Periyasamy Gounder was allotted 10 acres of ancestral properties and out of sale proceeds, he purchased the present suit property. Therefore, the Trial Court was justified in coming to the conclusion that the suit property was self acquired property of Periyasamy Gounder. He further submitted that the 2nd plaintiff in the suit namely Kandayee died intestate pending first appeal.

12. In the light of the pleadings of the parties and submissions made by the learned counsel appearing for the appellant and 3rd respondent, the following points are taken up for consideration in this appeal:-

- (i) Whether the suit properties are self-acquired properties of Periyasamy Gounder?
- (ii) Whether the Preliminary Decree for Partition passed by the Trial Court requires modification in view of death of 2nd plaintiff?

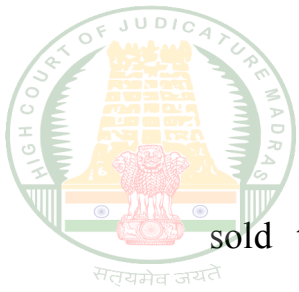


A.S.No.510 of 2011

Discussion on Point No.1:-

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13. Though it was pleaded by the appellant/2nd defendant that the suit property was purchased out of sale proceeds of ancestral properties allotted to the share of Periyasamy Gounder, the appellant/2nd defendant failed to produce any documentary evidence to establish that Periyasamy Gounder had possessed sufficient ancestral nucleus. In support of the said plea that the suit property was purchased out of sale proceeds of ancestral properties, the appellant examined the 3rd defendant in the suit namely Sengoda Gounder as DW.2. In his evidence, he deposed that Periyasamy Gounder was allotted with 10 acres of joint family properties in the Villages called Valasu, Karipatty and Mettupatty. It was further deposed by him that the property in Karipatty was sold and out of sale proceeds Periyasamy Gounder purchased properties in Seshanchavadi Village. Subsequently, he sold away those properties and out of sale proceeds, he purchased the suit property. However, no documentary evidence has been produced before the Court below to suggest that Periyasamy Gounder was allotted with 10 acres of land in the joint family property. Likewise, no documentary evidence had been produced before the Trial Court to prove that Periyasamy Gounder



A.S.No.510 of 2011

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sold the ancestral properties and the sale proceeds were utilised for purchasing the suit property.

14. In the absence of any documentary evidence, based on the oral evidence of DW.2, who is also an interested party, we cannot come to a conclusion that the suit property was purchased out of ancestral nucleus. The Sale Deed stands in the name of Periyasamy Gounder in respect of the suit property was marked as Ex.A1. Therefore, it is clear that the suit property was purchased by Periyasamy Gounder in his name on 12.04.1972. In the absence of any contra evidence, the Trial Court was justified in coming to the conclusion that the suit property is self acquired property of Periyasamy Gounder. The said finding reached by the Trial Court is based on proper appreciation of evidence available on record and hence, it requires no interference by this Court. The first point for consideration is answered accordingly against the appellant. Therefore, this Court holds that the suit property is self acquired property of Periyasamy Gounder.

Discussion on Point No.2:-



A.S.No.510 of 2011

WEB COPY 15. Once this Court has come to the conclusion that the suit property is self acquired property of Periyasamy Gounder, as the surviving legal heirs of Periyasamy Gounder, the plaintiffs 1 and 2 and 1st defendant were entitled to 1/3rd share each in the suit property. Therefore, there is nothing wrong in the preliminary decree for partition passed by the Trial Court. However, pending first appeal, the 2nd plaintiff-mother of 1st plaintiff and 1st defendant died intestate. The said fact is not disputed by the learned counsel appearing for the 3rd respondent. Infact, as per the memo filed before this Court by the appellant dated 06.03.2020, both the 1st plaintiff and 1st defendant who are arrayed as respondents 1 and 3 in this appeal were recorded as legal representatives of deceased 4th respondent/2nd plaintiff.

16. Once it is not disputed that the 2nd plaintiff/4th respondent-Kandayee died intestate, her 1/3rd share will automatically go to her Class-I Heirs namely the respondents 1 and 3. Therefore, the preliminary decree for partition of 1/3rd share each in favour of the plaintiffs passed by the Trial Court requires modification in view of the subsequent death of one of the sharer. Accordingly, this Court declares that the 1st plaintiff and 1st



A.S.No.510 of 2011

defendant are entitled to 1/2 share each in the suit property. The preliminary decree for partition passed by the Trial Court is modified accordingly. The Point No.2 is answered by passing preliminary decree of 1/2 share in favour of the 1st plaintiff.

17. In view of the conclusion reached by this Court in the Point No.2, the preliminary decree for partition passed by the Trial Court is modified by granting 1/2 share in favour of 1st plaintiff and 1st defendant each.

18. In the result, the First Appeal is partly allowed to that extent. No costs. Consequently, the connected miscellaneous petition is closed.

17.09.2025

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm

To

The Additional District Judge/F.T.C.No.2,
Salem.

11/12



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A.S.No.510 of 2011

S.SOUNTHAR, J.

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A.S.No.510 of 2011
and M.P.No.1 of 2011

17.09.2025