



A.S.No.351 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 12.09.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.No.351 of 2015

R.Thirumoorthy

... Appellant

vs.

1.K.Poovathal

2.T.Shanthi

3.T.Sangeetha

4.T.Renuka Devi

5.R.Angamuthu

... Respondents

PRAYER: First Appeal is filed under Section 96 of the Civil Procedure Code, to set aside the judgment and decree dated 18.02.2014 passed in O.S.No.559 of 2012 on the file of the 1st Additional District Judge, Coimbatore.

For Appellant : Mr.C.Santhosh Kumar

For R1 to R5 : No Appearance

J U D G M E N T

The first defendant in the suit is the appellant. The first respondent/plaintiff filed a suit for partition claiming $\frac{1}{2}$ share in the three



A.S.No.351 of 2015

items of suit properties. The suit was partly decreed by the trial Court in respect of item Nos.1 and 2 by granting 1/4th share in favour of the first respondent. The suit was dismissed in respect of item No.3. Aggrieved by the judgment and decree passed by the trial Court, the first defendant has come before this Court by way of first appeal.

2. Heard the learned counsel appearing for the appellant. Though notice was served on the respondents and their names appeared in the cause list, there is no representation for the respondents.

3. According to the first respondent/plaintiff, the item Nos.2 and 3 are ancestral properties allotted to her father Ramasamy Gounder in the family partition. The 3rd item of the suit property was purchased by appellant herein in his name out of income from item Nos.1 and 2. Therefore, according to the first respondent, the item 3 of the suit property had taken the character of the ancestral property. It was further claimed that the above said Ramasamy Gounder @ Ramanna Gounder, who was the father of the first appellant had died intestate 1970. Subsequently, the mother of the appellant/first respondent also died in the year 2006, therefore,

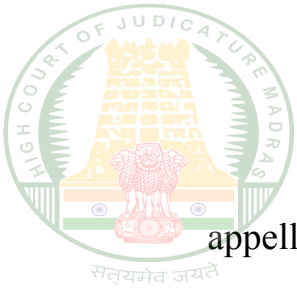


A.S.No.351 of 2015

the first respondent claimed $\frac{1}{2}$ share in the subject properties and laid the suit for partition.

4. The suit was resisted by the appellant/first defendant mainly on the ground that after the death of father of parties, there was a mediation between the parties in the year 1972, whereunder, the first respondent relinquished item Nos.1 and 2 in the suit property in his favour and the appellant had undertaken the responsibility of performing the marriage of first respondent. It is also stated by the appellant that 66 sovereigns of jewels were presented by the appellant at the time of marriage and in view of the oral relinquishment by the first respondent in the year 1972 before the mediator, the appellant had been enjoying the suit item Nos.1 and 2 exclusively. It was also stated by the appellant that he was engaged in cotton business and out of the income from the said business purchased item No.3 of the suit property in his own name. Therefore, according to him, item No.3 is the separate property not available for the suit partition.

5. Before the trial Court, the first respondent was examined as PW.1 and twenty eight documents were marked as Exs.A1 to A28. The



A.S.No.351 of 2015

appellant herein was examined as PW.1 and one Kuttiappa Gounder maternal uncle of appellant and first respondent was examined as DW.2. No documents were marked on behalf of the first appellant.

6. The trial Court based on the evidence available on record came to the conclusion that the appellant failed to prove the plea of ouster and held that the first respondent was entitled to partition in respect of item Nos.1 and 2. The trial Court held that as per the law that prevailed at that point of time, the father of the parties were entitled to $\frac{1}{2}$ share and after his death, the first respondent and mother of the parties were entitled to $\frac{1}{6}^{\text{th}}$ share each. After death of mother her share devolved on the appellant/first respondent equally. On the said reasoning, the trial Court granted decree for $\frac{1}{4}^{\text{th}}$ share in favour of the first respondent. As far as item No.3 of the suit property is concerned, the trial Court came to the conclusion that it was the separate property of the appellant and dismissed the suit.

7. Aggrieved by the decree passed by the trial Court granting $\frac{1}{4}^{\text{th}}$ share in respect of item Nos.1 and 2, the first defendant in the suit namely the appellant has filed this appeal.



8. The learned counsel appearing for the appellant vehemently

contended that the mediation by the appellant was proved by examination of one of the mediator namely DW.2 and his evidence was not at all considered by the trial Court. Therefore, according to him, the findings of the trial Court with regard to the plea of ouster raised by the appellant is liable to be set aside.

9. Based on the pleadings of the parties and arguments of the learned counsel appearing for the appellant, the following points are arising for consideration:

- (i) Whether the appellant established the plea of ouster raised by him?;
- (ii) Whether the appeal is deserved to be allowed or not?

10. As mentioned earlier, in order to prove the oral relinquishment pleaded by the appellant, he examined one Kuttiappa Gounder as DW.2. The said witness is the maternal uncle of the parties. A close scrutiny of evidence of DW.2 would show that in his proof affidavit, he mentioned that the appellant and the first respondent were his brother's



children. However, in the cross examination, he deposed that the father of the appellant and first respondent was his sister's husband. Therefore, there is a discrepancy in the evidence of DW.2, with regard to the relationship.

11. During the cross examination of DW.2, he deposed that the marriage of the first respondent was solemnized in the year 1962 or 1972, therefore, the evidence of DW.2 is not certain with regard to the date of performing of the marriage of the first respondent. It is the specific case of the appellant that his father died in the year 1970 and thereafter he performed the marriage of first respondent in the year 1972. Therefore, the year of marriage of the first respondent assumes significance in this case. However, DW.2, was not certain about the year of marriage. When a specific question was put to DW.2 that the marriage of first respondent was performed during the Tamil month of Vaikasi in the year 1972, he replied he could not recollect. Therefore, the evidence of PW.2 was very shaky and only based on his evidence we cannot come to a conclusion that the first respondent orally relinquished her share in the item Nos.1 and 2. The appellant has not produced any other oral or documentary evidence to corroborate the very shaky evidence of DW.2.



A.S.No.351 of 2015

12. In such circumstances, this Court is not in a position to accept the plea of ouster oral relinquishment. For the reasons best known to him, the appellant has not examined any neighbours of the suit properties to establish the alleged plea of ouster. Therefore, I do not find any error in the findings reached by the trial Court with regard to the plea of ouster raised by the appellant. Accordingly point No.1 is answered against the appellant.

13. In view of the answer to the point No.1, as a necessary consequence, the point No.2 is also answered against the appellant.

14. In nutshell, the first appeal stands dismissed by confirming the judgment and decree passed by the trial Court. No costs.

12.09.2025

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

The 1st Additional District Judge,
Coimbatore.

S.SOUNTHAR, J.

7/8



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A.S.No.351 of 2015

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A.S.No.351 of 2015

12.09.2025