

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :09.10.2025

Pronounced on :28.10.2025

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

Appeal Suit No.59 of 2021
and
C.M.P.Nos.28490 & 28492 of 2024

Angammal (died)

1.Palaniammal,
W/o Palanisamy,
Residing at No.367/17C-1,
Annur Village,Annur Taluk,
Coimbatore.

2.Rangammal
W/o Palanisamy,
Residing at Kanjapalli Village,
Annur Taluk,Coimbatore.

3.Padmavathy,
W/o Ponnusamy,
Residing at Kunnathurampalayam,
Annur Taluk, Coimbatore.

4.Kousalya
W/o Nataraj,
Residing at Kunnathurampalayam,
Annur Taluk, Coimbatore.



WEB COPY

5. Vanithamani,
W/o Velusamy,
Residing at Kanjapalli Village,
Annur Taluk, Coimbatore.

6. Rajendran
S/o Muthusamy,
Residing at Uthupalayam, Kanjapalli Village,
Annur Taluk, Coimbatore.

7. Ramathal
W/o Ramasamy
Residing at Uthupalayam, Kanjapalli Village,
Annur Taluk, Coimbatore.

8. Santhamani,
W/o Subramani
Residing at No.12, Thenvadal Street,
Kunathoorampalayam Post, Annur Taluk,
Coimbatore.

9. Thulasiammal
W/o Karuppusamy
Residing at No.41/16, Avinashi Road,
Annur Taluk, Coimbatore.

10. Divya, Next Friend/Guardia/Aunt Santhamani,
Aged at 17 yrs, residing at No.12, Thenvadal Street,
Kunathooramapalyam, Kunnathooramapalayam Post,
Annur Taluk, Coimbatore District.

11. Swathi, Next Friend Guardian/Aunt Santhamani,
Aged at 17 years, residing at No.12, Thenvadal Street,
Kunathooramapalyam, Kunnathooramapalayam Post,
Annur Taluk, Coimbatore District.



WEB COPY

12.R.Devaraj,
S/o Ramasamy.
Residing at Door No.118, Nehru Colony,
Mahalingapuram Pollachi Taluk,
Coimbatore District.

..Appellants/Plaintiffs

/versus/

1.M.Selvaraj,
S/o Maramoopan,
Residing at No.15/33,
Kunnathooramapalayam Post,
Annur, Coimbatore District.

2.M.Devaraj,
S/o Maramoopan,
Residing at No.15/33,
Kunnathooramapalayam Post,
Annur, Coimbatore District.

3.Kannammal,
S/o Maramoopan,
Residing at No.15/33,
Kunnathooramapalayam Post,
Annur, Coimbatore District.

Boopathy(died)

4.Thangamani
W/o Poonusamy
Residing at No.98, Ganesh Lay out,
8th Street, Ganapathy, Coimbatore.

5.B.Saranya
W/o Bhoopathy
Residing at No.98, Ganesh Lay out,
8th Street, Ganapathy, Coimbatore.



WEB COPY

6.Minor B.Arunesh
Rep.by his mother and natural
Guardian B.Saranya
Residing at No.98, Ganesh Lay out,
8th Street, ganapathy, Coimbatore.

..Respondents/Defendants

Appeal Suit has been filed under Section 96 of C.P.C., and Order 41, Rule 1 of C.P.C., to set aside the judgment and decree passed in O.S.No.611 of 2011, dated 17.12.2020 on the file of the IV Additional District and Sessions Judge, Coimbatore.

For Appellants :Mr. P.Sidharthan

For Respondents :Mr.P.Saravana Sowmiyan

JUDGMENT

Dr.G.Jayachandran, J.

This Appeal Suit is directed against the dismissal of the partition suit in O.S.No.611 of 2011 on the file of the IV Additional District and Sessions Court, Coimbatore.

2. The plaint was initially laid by 7 plaintiffs joined together against 5 defendants. Pending suit, others were impleaded as plaintiffs or defendants. The amended plaint, written statement and additional written statement form part of the pleadings.



3. The facts consolidated from the pleadings:

The suit schedule property and other properties were jointly purchased by Anga Moopan and his brother Perichi Moopan on 17.06.1935. They both were in possession and enjoyment of their respective shares separately. Later, Perichi Moopan sold his $\frac{1}{2}$ share in the property to one Boli Reddy on 10.01.1955. Anga Moopan was enjoying his $\frac{1}{2}$ share, which is the subject matter of the dispute in the suit. Anga Moopan had two wives. Mara Moopan and Angammal are the children born to his first wife. Palaniammal, Rangammal and Nanjammal are the children born to his second wife. Mara Moopan the only son of Anga Moopan died on 31.12.2005. The suit for partition laid by the 3 daughters of Anga Moopan and the 4 children of as his deceased daughter Nanjammal as plaintiffs against the decendants of Mara Moopan.

4. The plaintiffs case is, Anga Moopan died intestate on 10.04.1960 and thereafter, the suit property was jointly enjoyed by them along with the defendants. The succession opened on 10.04.1960, when Anga Moopan died. All the five children of Anga Moopan, both male and



WEB COPY

female heirs, are entitled for 1/5th share each. However, when the plaintiffs sought for division of the property, by metes and bound and to allot 1/5th share each, the defendants kept postponing the same on one pretext or other.

5. Whereas, the defendants in the written statement contented that it is true that the suit property along with other properties were purchased jointly by Anga Moopan and his brother Perichi Moopan on 17.06.1935 under Ex.A-1. It is also equally true that the brothers were enjoying their share of property separately and exclusively. Perichi Moopan sold his share of property in the year 1955. However, even before that, Anga Moopan died in the year 1939, not in the year 1960 as pleaded by the plaintiffs. On the death of Anga Moopan, the property devolved on his only son Mara Moopan and he was in absolute possession and enjoyment of the property till his life time. The patta for the property transferred in the name of Mara Moopan mentioning the sub-division No: S.F.538/A1L. On the death of Mara Moopan on 31.12.2005, the property devolved on the defendants. At no point of time, the plaintiffs were in joint possession of the suit property with the defendants. Being the absolute owners of the suit property, the plaintiffs had entered into a partition among themselves on 10.08.2011. After knowing that



WEB COPY

defendants have entered into partition, the present suit, without any cause of action filed. Since certain documents pertaining to the suit property could not be procured in time, there was a delay in filing the written statement. Hence, the Court passed an exparte Preliminary Decree in this case earlier. Taking advantage of the exparte Preliminary Decree of partition, the plaintiffs created a sham and nominal deed of sale on 13.12.2012 in favour of one Devaraj (impleaded as 13th plaintiff) even without waiting for a final decree. The said sale of the suit property in favour of the 13th plaintiff will not bind on the defendants.

6. Based on the pleadings, the following Issues were framed:

1. Whether the right of the plaintiffs is lost by ouster?
2. Whether the plaintiffs' got any share in the suit properties?
3. Whether the plaintiffs are entitled for the relief of partition as prayed for?
4. Whether the plaintiffs are in joint possession?
5. Whether the plaintiffs are entitled for the relief of Permanent Injunction as prayed for?
6. To what other relief?



WEB COPY

7. On behalf of the plaintiffs, the 5th plaintiff Tmt.Kousalya was examined as PW-1 and through whom, Ex.A1 to Ex.A8 documents were marked and one Assistant of Sub Registrar Officer namely, Thiru.Gopinathan was examined as PW-2 and through whom, Ex.X1 and Ex.X2 documents were marked and one Assistant of Annur Sub Registrar Office namely, Thiru. Chandran, was examined as PW-3 and through whom, Ex.X7 to Ex.X11 documents were marked and on the side of the defendants, the 1st defendant was examined as DW-1 and through whom, Ex.B1 to Ex.B8 documents were marked and the Deputy Tahsildar of Annur namely, Thiru.Manikandan was examined as DW-2 and through whom, Ex.X3 to Ex.X6 documents were marked.

8. PW-1 [Kousalya] the grand daughter of Anga Moopan is a party witness. She was examined, on behalf of the plaintiffs. In the cross examination, she had admitted that, she is not aware of the exact date of the death of Anga Moopan. Approximately, it was around 1960. In support of the contention that Anga Moopan died in the year 1960, a Death Certificate was relied and marked as Ex.A-3. This certificate found to be registered not



WEB COPY

soon after the death of Anga Moopan but pursuant to the order passed by the Judicial Magistrate Court on an application filed by Palaniammal under Section 13 (3) of the Registration of Birth and Death Act , 1969. The Court below declined to accept Ex.A-3 as a proof for the date of death of Anga Moopan on taking note of the fact that the application to register the death of Anga Moopan was filed before the Judicial Magistrate and obtained it after filing the suit.

9. Apart from the fact that the Death Certificate [Ex.A-3] was subsequent to the suit, the Court below also took note of the fact that PW-1 admits that only after the death of Anga Moopan, his son Mara Moopan started enjoying the property. It is also admitted by PW-1 that Perichi Moopan mortgaged his share of property to Mara Moopan in the year 1948 and redeemed it later. Thereafter, Perichi Moopan sold it to Boli Reddy on 10.01.1955 under Ex.A-2. Therefore, the Trial Court had drawn inference from these facts that in the year 1948, Anga Moopan could not have been alive. That is why, Mara Moopan, who was in enjoyment of the suit property got the adjacent land for mortgage from Perichi Moopan. Further, if Anga Moopan was alive on 10.01.1955, when Periachi Moopan sold his ½



WEB COPY

share, the signature of Anga Moopan the holder of the remaining $\frac{1}{2}$ share would have been obtained to record acquiesce to the transaction. Hence, by holding that the death of Anga Moopan was prior to 1956, the Court below concluded that the property of Angamooopan has devolved on his only son Mara Moopan and he is the absolute owner of the property. The plaintiffs who are female descendants of Anga Moopan, has been ousted long before right of inheritance to female accrued under Hindu Succession Act, 1956. As a result of the above finding, the suit was dismissed.

10. Being aggrieved by the dismissal judgment, the present appeal is filed by the plaintiffs on the following grounds:-

The Trial Court has grossly erred in coming to the conclusion that the suit property is not available for partition as the appellants have no interest in the same. The Trial Court erred in holding that Anga Moopan died in the year 1939, in spite of the fact that the appellants had marked the death certificate of the said Anga Moopan issued by the competent authority as Ex.A3. The Trial Court ought to have believed the well documentary evidence of the appellants in Ex.A3, which points that the said Anga Moopan died on 10.04.1964 and the said documents remains unchallenged



WEB COPY

by the respondents till date. The Trial Court erred in holding that Ex.A3 is obtained subsequent to the filing of the suit and Ex.A3 is issued after due enquiry and direction by the competent Court. The Trial Judge ought to held that Ex.A3 is a genuine and vital document as there is no other documents to prove the death of the Anga Moopan even according to the respondents.

11. It is further stated that the Trial Court ought to have held that as per the Hindu Succession Act, 1956, the appellants who are female members are entitled to share father's property equally along with Mara Moopan. Applying the same principle, the suit ought to have been decreed by the Trial Court. The learned Judge, having accepted the relationship of all the parties and the schedule property as self acquired property of Anga Moopan, ought to have held that the appellants and the respondents are entitled to the partition of the suit schedule property as the said Anga Moopan died intestate. The Trial Court erred in holding that the appellants had not established the possession of the schedule property without knowing the legal principle which says that the possession of one co-owner is behalf of other co-owners. Applying this principle, the appellants are in joint possession with the respondents, particularly, when the place of ouster has



WEB COPY

not been established by the respondents by way of any legal and cogent evidence. The lower Court miserably failed on his part to frame the issues as to whether the sale deed by the appellants 1 to 12 in favour of the appellants No.13 is true and valid sale and the 13th appellant being the bonafide purchaser. The Trial Court ought to have held that the sale executed by the appellants 1 to 12 in favour of the appellant No.13 is genuine sale, as on the date of sale the suit was decreed and no other suit was pending on the date of execution.

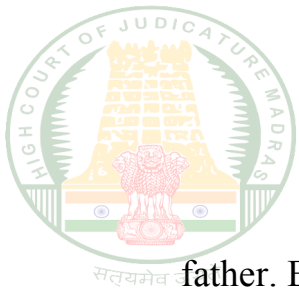
12. Pending Appeal, the appellants have filed application C.M.P.No.28490 of 2014 under Order 41 Rule 27 of CPC to receive the petition annexed list of documents as additional evidence. Those documents are :-

- 1.Xerox copy of the Election ID of the 1st appellant in the year 1997
- 2.Xerox copy of the Election ID of the 2nd appellant
- 3.Xerox copy of the Order made in C.M.P.No.2408 of 2011 dated 22.07.2011.
- 4.Xerox copy of the Non-availability Certificate issued by Tahsildar dated 07.01.2021.



13. The learned counsel appearing for the appellants submitted that among the co-shares possession need not be physical even constructive possession is permissible, unless ouster is specifically pleaded and proved. In this case, the plaintiffs have produced Ex.A-4 the chitta for the suit property to show the joint possession, which has been ignored by the Trial Court to consider. The Trial Court also miserably failed to give enough credence to the judicial order regarding the date of death of Anga Moopan. The reason to disbelieve a judicial pronouncement recording the death of Anga Moopan as 10.04.1960 is legally not sustainable. Particularly, when no contra evidence has been produced by the respondents that the death certificate issued pursuant to the order of the Court cannot be rejected.

14. Relying on the judgement of the Honble Supreme Court rendered in *Arunachala Gounder (dead) by LRs –vs- Ponnusamy and others reported in [2022 INSC 74]*, the learned counsel for the appellants submitted that the suit property being the self acquired property of Anga Moopan, on the death of Anga Moopan, his son Mara Moopan and 4 daughters are entitled to get equal share in the suit property of their deceased

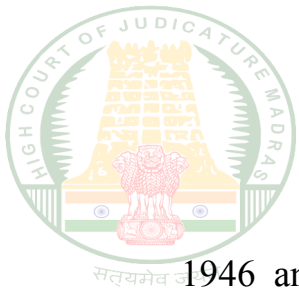


WEB COPY

father. Even if Anga Moopan assumed to have died prior to 1956, the right of the female heirs will not get extinguished. Therefore, Mara Moopan and his descendants alone cannot claim absolute right in the property.

15. Ex.X3 to Ex.X6 are the chitta, patta and adangal for the suit properties. These revenue documents are in the name of Angammal, wife of Mara Moopan. This points out that the suit properties are exclusive property of Mara Moopan. The admission of Perichi Moopan mortgage of his property in the year 1948 to Mara Moopan is only a chance statement and not an admission that Anga Moopan died prior to 1948. Such an admission cannot be put against the appellants.

16. The learned Counsel for the appellants submitted that, the voter identification card issued by the Election Commission for the second plaintiff Rangammal, D/o Angamoopan show that, she was 49 years as on 01.01.1995. Likewise voter identification card issued by the Election Commission for Palaniammal, D/o Angamoopan shows that she was 41 years as on 01.01.1995. Therefore, these two documents to show, Rangammal and Palaniammal, who are the daughters of Angamoopan, born around the year



WEB COPY

1946 and 1954 respectively. To disprove the case of the defendants that Angamoopan died in the year 1939, the non availability certificate issued by Annur Town Panchayat is obtained. This certificate shows that death of Angamoopan not registered in the year 1939. Further, the age of the two daughters of Angamoopan further will prove that two of his daughters born after 1939. Likewise, the Judicial Magistrate, Avinasi in C.M.P.No:2408 of 2011 filed by Palaniammal only after being satisfied that the non availability certificate issued by the Sub-Register proves the death of Angamoopan. S/o Karupamoopan was not registered by the Annur Sub-Register declared the date of Angamoopan death is 10.01.1964 and same to be registered in the record of death. It is to be noted that before directing to record the death, paper publication calling for objection was made, but no one including the defendants objected. Therefore, the Trial Court ought not to have declined to reject Ex.A-3 solely on the ground that it was obtained after filing the suit.

17. Hence, he submitted that the claim of the appellants that Angamoopan died on 10.04.1960 is well found through the documents sought to be taken as additional evidence. These documents are vital and essential to decide the subject matter. Therefore, it has to be admitted in



evidence for just conclusion.

18. Per contra, the learned Counsel for the respondents/defendants claimed that, the suit for partition filed without cause of action been rightly dismissed. The plaintiffs having failed to prove that Angamoopan was alive when the Hindu Succession Act, 1956 came into force or after the restricted right of inheritance to Hindu female became absolute, they cannot sustain the suit claiming share in the property left by Angamoopan. After the demise of Angamoopan, his only son Maramoopan become the owner of the property and enjoying it in exclusion of others. The sub division of the property, Ex.B-4 the patta in the name of Maramoopan, Ex.B-5 the Encumbrance certificate and the mortgage deed Ex.B-6 dated 09.01.1948 executed by Perichimoopan in favour of Maramoopan are evidence to show, the suit property devolved on Maramoopan after the demise of Angamoopan in the year 1939. Therefore, the property which was under the exclusive possession and enjoyment of Maramoopan till his death, cannot be sought for division by the plaintiffs who were knowingly ousted and not in joint enjoyment of the property.



19. The point for determination is whether, the Court below erred in deciding the suit for partition solely based on the disputed date of death of Angamoopan and whether the suit schedule property, which came in possession of Maramoopan, on the death of his father Angamoopan, is beyond the reach of the other legal heirs of Angamoopan to claim partition on the ground of ouster ?

20. The suit property admittedly a portion of the property purchased by Angamoopan along with his brother Perichimoopan. Ex.A-1 sale deed dated 17.06.1935 vouchsafe this fact. Perichimoopan had sold his share in the property to Boli Reddy on 10.01.1955 a fact proved through Ex.A-2. Prior to the sale of his share, Perichimoopan had mortgaged his share of property to Maramoopan, S/o Angamoopan on 09.01.1948. The copy of the said morrgage deed is marked as Ex B-6. The death of Maramoopan on 31.12.2005 at the age of 85 years is proved through the death certificate Ex.B-1.



WEB COPY

21. Ex.A-4 patta No:878 for S.No:538 A1L issued jointly in the name of Maramoopan and plaintiffs 1 to 7. This is a computer printed patta copy downloaded on 06.03.2014 and initialled by the Thasildar. Ex.B-4 is the patta issued exclusively in the name of Maramoopan for the very same property. This computer patta copy issued on 31.10.2012 by the Deputy Thasildar. One Mr. Manikandan serving as Deputy Thasildar at Annur Taluk office summoned and examined as DW-2. Through him Ex.X3 to Ex.X6 marked. He had deposed that based on the exparte decree, one Devaraj (13th plaintiff) in the year 2017 sought for inclusion of his name in the patta for S.No:538 A 1L and his name was included. Prior to that period, the revenue records reveals that the suit properties were in possession of Maramoopan since fasali 1387 (i.e. 1977 -1978). The adangal extract for the fasali 1379 to 1426 marked as Ex.X3, indicates that from fasali 1379 to fasali 1383 the adangal in the name of Angammal. From 1384 to 1386 in the name of Karuppathal and thereafter from fasali 1387 in the name of Maramoopan. The village register marked as Ex.X4 show only the name of Maramoopan exclusiviely for land in S.No:538 A 1L. The patta copy with Field Map Sketch marked as Ex.X5 again only in the exclusive name of Maramoopan.



WEB COPY

Ex.X6, is the patta transfer proceedings dated 18.04.2017 by the Zonal Deputy Thasildar, Annur Taluk. This proceedings indicates that on the request of Devaraj for inclusion of the names of the plaintiffs in patta No: 878, for S.No:538 A/1L, in view of the exparte decree passed in O.S.No.611 of 2011, their names were included. DW-2 the Deputy Thasildar of Annur Taluk in his cross examination had reiterated that, the name of Maramoopan is shown in the adangal from 1975. The inclusion of the plaintiffs name in patta and adangal were subsequent.

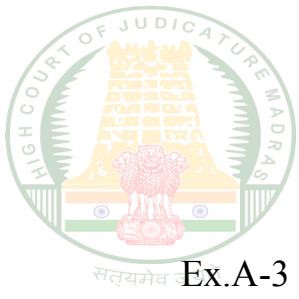
22. The above documents which are the revenue records like Adangal extract, chitta, patta and patta transfer order in respect of the suit property goes to show that, the plaintiffs were not in joint possession and enjoyment of the suit property at least after 1977 (fasali 1387). The inclusion of their names were subsequent to the suit and pursuant to the exparte decree which later came to be set aside and dismissed. Hence, Ex A-4 , Ex X 3 to Ex X-6 are not in favour of the plaintiffs to show their joint possession of the suit property, but it proves the contrary.



WEB COPY

23. Both the parties and the court below were conscious of the fact that the, devolution of an hindu male died intestate is based on the date of his death. If he had died only after, Hindu Succession Act, 1956, came into force the devolution will be as per the provisions of the said act, or else the provision of the previous act will prevail. Since, the expression 'devolution' has to be given only prospective effect.

24. Therefore, the date of Angamoopan death gains significance in this case. The plaintiffs, who had pleaded that Angamoopan died on 10.04.1960 had relied on Ex.A-3. This is the death certificate issued by Annur Town Panchayat on 16.03.2012. In this certificate, it is stated that Angamoopan died on 10.04.1960. From the evidence of PW-1 and PW-2, particularly PW-2 the Assistant working in Annur Sub-Registrar Office, which has issued the death certificate Ex.A-4, it is clearly proved that the Sub-Registrar had entered the death of Angamoopan only pursuant to the direction of the Judicial Magistrate and not based on any independent enquiry about the date of death of Angamoopan conducted by the revenue officials. Further as pointed out by the learned Judge, the death certificate



WEB COPY

Ex.A-3 is dated 16.03.2012. The suit O.S.No.611 of 2012 filed on 30.09.2011. Thus, it is obvious, the death certificate obtained after institution of the suit for the purpose to show as if Angamooan died after the Hindu Succession Act 1956 came into force. Since the trial Court has declined to entertain the death certificate obtained based on the Court order dated 22.07.2011 in C.M.P.No.2408 of 2011, the appellants had filed the application under Order 41, Rule 27 of CPC to receive additional documents.

25. This Court has already described the nature of documents sought to be introduced as additional evidence. One of the document is the order of the learned Judicial Magistrate directing the Thasildar Coimbatore North Taluk to record the date of death of Angamooan as 10.04.1960. This petition is filed by Palaniammal (2nd plaintiff) under Section 13(3) of the Registration of Birth and Death Act, 1969 (in short “RBD Act”). The sole defendant is the Thasildar, Coimbatore North Taluk. He had remained exparte and the order is an exparte order. It is pertinent to note that the death certificate Ex A-3 is issued by Annur, Town Panchayat which is not a party to the proceedings. It is the specific case of the plaintiffs that before filing the suit they were repeatedly requesting the defendants for division but they



WEB COPY

had no intention to given their share. The panchayat by elders failed. While so, based on a exparte direction without impleading the Respondents herein, the plaintiffs harping on the death certificate which is apparently an invalid document want to get a share in the property in which they have no legal right.

26. It may not be out of contest to record that the validity of death or birth certificates issued by Local Bodies, pursuant to the direction given by Judicial Magistrates under Section 13(3) of RBD Act tested by a Division Bench of this Court in ***P.Duraisamy –vs- State represented by the Secretary to Government Department of Home (Prison) Fort St. George, Chennai 600 009 and others reported in [2017 SCC Online Mad 1361]***. The Division Bench after making an extensive research collecting details about applications and orders passed by Judicial Magistrates under the provisions of Registration of Birth and Death Act, 1969, held that the expression ‘Magistrate’ used in Section 13(3) of the Act does not indicate Judicial Magistrate and it denotes only the ‘Executive Magistrate. Hence, Judicial Magistrate in the State are restrained to pass orders under Section 13 (3) of RDB Act any order passed after 25.01.2017 declared as non–est.



27. We are of the opinion that the observation of the Division Bench in Para 44, which is extraction of the order passed by a District and Session Judge in Assam, while considering the language used in Section 13(3) of the Registration of Births and Deaths Act, 1969, is worth recording, hence extracted below: -

“50. During the course of our research, we stumbled upon an order dated 14.03.2016 passed by one Mr. S.K.Sharma, District and Sessions Judge, Dibrugarh, Assam, in a reading of which fascinated us not only for the correct interpretation of the legal provisions, but also, for the felicity of expression. In the said order, Mr. S.K. Sharma says thus:

“The word “Magistrate” referred to in Section 13(3) of the Registration of Births and Deaths Act, 1969 does not refer to a Judicial Magistrate. A Judicial Magistrate is not required to take up the inquiry/verification of correctness of the date of birth or death, for delayed registration, as mentioned in the above referred provisions. Section 3(3) of the Code of Criminal Procedure (hereinafter referred as the Code) provides “Unless the context otherwise requires, any reference in any enactment passed before the commencement of this Code to a Magistrate of the First Class shall be construed as a reference to a Judicial Magistrate of the First Class.” The preceding words “Unless the context otherwise requires” is to be given due weightage in



WEB COPY



interpreting the meaning of “Judicial Magistrate of the First Class”. Section 3(4) & (b) of the Code have very amply elaborated the nature of function to be exercised by both the Judicial Magistrate and the Executive Magistrate.”

28. Therefore, the death certificate issued, without following the due process, but on the direction of the Judicial Magistrate without jurisdiction has no legal sanctity. The right of the appellants/plaintiffs cannot be determined on Ex.A-3 or the documents, which are sought to be introduced at the appellate stage.

29. This Court also examined the Hindu Law on inheritance of a female heir in respect of the property left by her father intestate. How it will differ if the death is prior to 1956 and if the death is after 1956, when the property is a self acquired property.

30. According to Section 3(2) of the Hindu Women Rights in Property Act, 1937, where a Hindu died leaving at the time of his death an interest in the joint family property, his widow shall have in the property the same interest as he himself had. Of course, this right is subject to Sub-



WEB COPY

Section (3) which states that the widow not to become the absolute owner, but she will have a limited interest known as a Hindu Woman's Estate. In so far as daughter is concern, before 1956, she had no absolute or limited right of inheritance in the property of her father. As observed by the High Court of Bombay in ***Radhabai Balasaaheb Shirke, through her LR's –vs- Keshav Ramachandra Jadhav*** reported in ***(2024 LiveLaw Bombay 584)***, Under Hindu customs, daughters were sent to her in-laws house after marriage. Hence, she was not considered as part of the family prior to 1937. At the same time, to protect widow (daughter-in-law) on the death of her husband, limited right was conferred to the widow under the 1937 Act.

31. In the judgment rendered in ***Arunachal Gounder (through LR's) –vs- Ponnusamy and others reported in [2022 INSC 74]*** relied by the Learned Counsel for the appellants, the suit property was purchased in the Court auction on 15.12.1938. The auction purchaser Marappa Gounder died on 15.04.1949 leaving behind his daughter Kupayee Ammal. The issue before the Court was whether on the death of Marappa Gounder, the property shall devolve by survivorship on Ramasamy Gounder the brother of Marappa Gounder or on his sole daughter Kupayee Ammal by succession.



32. The facts of the case cited ,though apparently similar in most of the aspect including the dispute regarding the date of death of Maramoopan Gounder, the vital difference between the case in hand and case cited is that the plaintiff claims share in the property of through her mother Kupayee the only heir of Marappa Gounder. The said Kupayee Ammal died in the year 1967 i.e. after the Hindu Succession Act, 1956 came into force. In the said factual matrix, the Hon'ble Supreme Court reversed the findings of the Courts below that even in case of self acquired property, if the Hindu male died prior to 1956, without any male issue, then the devolution will be by survivorship and not by succession. His daughter (karupayee) will not be entitled to inherit the property by intestate succession.

33. After due deliberation of the Hindu Law and its application, this view was reversed by the Hon'ble Supreme Court as erroneous holding, Kupayee, the only daughter of Maramoopan Gounder will not lose her right in her father's property even if his death was prior to 1956 and the property is his self acquired property. The submission for the appellant that under Mitakshara law right to inheritance depends upon propinquity (i.e) proximity



WEB COPY

of relationship was accepted by the Hon'ble Supreme Court. It is held that the daughter has closer proximity of relationship, she would inherit the property from the father instead of the father's brother's son and daughter. In the case in hand, since Maramoopan a male descend alive and got the property of his father as per Hindu custom prevailing at that point of time.

34. The pronouncements of this Court and Hon'ble Supreme Court had invariably clarified that till 1937, Hindu women had no right in the joint family property. After 1937, in respect of undivided joint family property widows were vested with limited interest of maintenance. After 1956 Act, the female hindu without restriction given absolute right in the property. In case of any vested right or interest conferred on a woman under the Hindu Women's Right to Property Act, 1937, those rights and interest on the advent of the 1956 Act by virtue of Section 14 of the Hindu Succession Act, 1956, blossomed into an absolute right. In the absence of pre-existing right, she will not get any right. After 1956, till 2005, the right of female hindu in respect of the co-parcenary property was subject to Section 6 of the Act.



35. It is also relevant at this juncture to note that the plaintiffs are not claiming any pre-existing right under Section 3 of the Hindu Women Right of Property Act, 1937, which has enlarged into absolute right under Section 8 of the Hindu Succession Act, 1956. Their specific case is that their right to inherit the property accrues under Section 8 of the Hindu Succession Act, 1956, on the date, when Angamoopan died. Such a claim with sustain only if the plaintiff able to prove, Angamoopan died after 17.06.1956.

36. In the case in hand, the property is the self acquired property of Angamoopan. He had one son and one daughter through his first wife. He had 3 daughters through his second wife. These facts are undisputed. Not being a joint family property or coparcenary property, on the death of Angamoopan, the property has to devolve on his son Maramoopan by survivorship. The succession open on the death of Maramoopan, who died intestate on 31.12.2005. Among his legal heirs, division of property has been effected through Ex.B-8, on 10.08.2011.



37. The alleged sale of the in favour of the 13th plaintiff by the other plaintiffs, pending suit, is hit by the principle of *pendent lite*. Even assuming there was some semblance of right for the plaintiffs, the same had got extinguished by ouster. Evidence shows since 1977 Maramoopan enjoying the property excluding other. The plaintiffs who have explicitly lost possession over the properties several years ago, are not entitled to succeed the suit property claiming that there are in joint enjoyment of the suit property as co-sharers. The frail attempt made by the plaintiffs to prove, Angamoopan died in the year 1960, had miserably failed. The additional documents, such as, voter identification cards of 2nd and 3rd plaintiffs as well as the order of the Judicial Magistrate also not indicate that, Angamoopan lived on the date, when the Hindu Succession Act, 1956 came into force. Therefore, there is no purpose in allowing the petition in C.M.P.No.28490 of 2024 to receive additional document. Hence, the same is dismissed.

38. As a result, **this Appeal Suit stands dismissed**. The judgment and decree passed in O.S.No.611 of 2011, dated 17.12.2020 on the file of the IV Additional District and Sessions Judge, Coimbatore stands confirmed.



Consequently, connected C.M.P.No.28492 of 2024 is also closed. No order
as to costs.

WEB COPY

(Dr.G.J.J.) & (M.S.K.J.)
28.10.2025

Index:yes

Internet:yes

Speaking order/non speaking order

Neutral citation:yes/no

ari

To

The IV Additional District and Sessions Judge, Coimbatore.



WEB COPY



Dr.G.JAYACHANDRAN, J.
and
MUMMINENI SUDHEER KUMAR, J.

ari

delivery Judgment made in
Appeal Suit No.59 of 2021
and
C.M.P.Nos. 28490 & 28492 of 2024

28.10.2025