

S.A.No.1154 of 2010

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2025

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.1154 of 2010

and

M.P.No.1 of 2010

- 1.Balakrishnan (died)
- 2.Arunachalam
- 3.Rajasekaran
- 4.Kamala
- 5.Rajam

...

Appellants

(Appellants 2 to 5 are the LR's of the deceased
1st appellant viz., Balakrishnan as per
memo dated 03.09.2019 (SR 25790)
vide Court order dated 23.12.2021
made in S.A.No.1154 of 2010 and
M.P.No.1 of 2010).

/Vs/

Suganthi

...

Respondent

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 12.10.2009 in A.S.No.54/2009 on the file of the Principal District Court, Villupuram confirming the judgment and the decree dated 13.08.2008 in O.S.No.125/05 on the file of the Additional District Munsif's Court, Villupuram.

For Appellants : Ms.Nilaphor
for Mr. T.Sezhian

For Respondent : Mr.A.P.Neelamegavannan



S.A.No.1154 of 2010

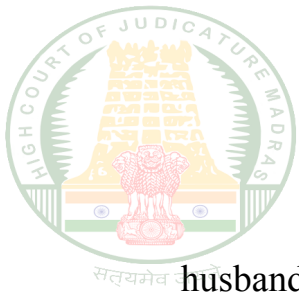
WEB COPY

J U D G M E N T

The defendants and plaintiff are the appellants and the respondent respectively.

2.For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3.It is the case of the plaintiff that, she is the wife of late Ragunathan. The first and fifth defendants are the parents of late Ragunathan. The other defendants 2 to 4 are late Regunathan's brothers and sisters. According to the plaintiff, she married Ragunathan as per the Hindu Rites and Customs. While so, he died on 16.02.2004, and that during his lifetime, he has taken LIC policy for a sum of Rs.25,000/-. It is the further submission of the plaintiff that the suit schedule “A” item of the property is the joint family property of late Ragunathan. As such the plaintiff being his class I legal heir is entitled to have 1/5th share in the “A” schedule property, and 1/2 share in “B and C” schedule properties. The plaintiff further submits that she has been in joint possession of the suit properties and that, after the demise of her



S.A.No.1154 of 2010

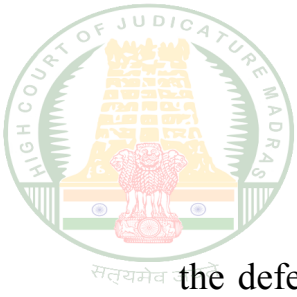
WEB COPY

husband Regunathan, the defendants are denying her share. Hence, she comes up with the instant suit.

4.The said suit was resisted by all the defendants, by contending that the suit schedule “A” property was the self acquired property of the first and fifth defendants, and that LIC amount and other compensation paid by the TamilNadu Kattumana Thozhilarkal Nala Variyam, Chennai, have been shared among the sharers. As such, the plaintiff is not entitled for a partition. Hence, prays to dismiss the suit.

5.Before the Trial Court, the plaintiff relied on as many as 21 documents qua Exs.A1 to A21, and the defendants, relied on 11 documents, which were marked as Exs.B1 to B11. On behalf of the plaintiff and the defendants, three witnesses each were examined.

6.The Trial Court, after having considered the oral and documentary evidence, had arrived at a conclusion that the plaintiff is entitled for a share of 1/10 share in “A” Schedule property alone, and dismissed the suit in respect of “B & C” schedule properties. Aggrieved over the said judgment,



S.A.No.1154 of 2010

WEB COPY

the defendants preferred an appeal in A.S.No.54 of 2009, whereas, the first appellate Court concurred with the judgment of the trial Court and dismissed the first appeal. Not satisfying with the above judgment of the first appellate Court, the defendants preferred the instant second appeal.

7.On admission of the Second Appeal, on 20.10.2010, this Court formulated the following substantial questions of law:-

“1.Whether in law the courts below are right in failing to see that there were no joint family nucleus adequate to purchase other properties and that the respondent had failed to prove the existence of a joint family?

2.Whether in law the courts below were right in overlooking that the suit had to be valued under Section 37 (1) of the T.N.Court Fees and Suits Valuation Act is there was no joint possession?”

8.I heard Ms.Nilaphor for Mr. T.Sezhian, learned counsel for the appellants and Mr.A.P.Neelamegavannan, learned counsel for the respondent.



S.A.No.1154 of 2010

WEB COPY

9.The learned counsel appearing for the appellants/defendants would vehemently contend that the respondent/plaintiff having categorically admitted that the suit item 1 to 3 stand in the name of the first defendant, and item 4 and 5 stand in the name of the fifth defendant, may entitle share only in the joint family property qua item 6 & 7 of the suit property. It is also the contention of the learned counsel for the defendants that, the suit has not been valued properly. It is also the specific contention of the defendants that when there are no proof as to the ancestral nucleus, the properties stand in the name of the first and fifth defendants cannot be construed as joint family properties. Thus contended that the findings of the trial Court as well as the first appellate Court in decreeing the suit is erroneous. Hence, the learned counsel for the defendants prayed to interfere with the judgment of both the Courts below.

10.Per contra, the learned counsel for the respondent/plaintiff would contend that the suit properties were purchased through the ancestral nucleus and that, the plaintiff had established the existence of the ancestral nucleus of Rs.63,666/- and that there are abundant evidence that the purchase made



S.A.No.1154 of 2010

WEB COPY

in Exs.B1 to B3 in the name of the first defendant, and Ex.B9 in the name of the fifth defendant are through the ancestral nucleus. Therefore, though the properties stand in the name of the first and fifth defendants, must be construed as a joint family properties, and this was rightly appreciated by both Courts below. Hence, he prayed to dismiss the appeal.

11. I have given my anxious consideration to either side submissions.

12. Admittedly, the plaintiff did not challenge the dismissal of the suit as against the B & C schedule properties. Now, the issue revolves around only against the “A” schedule property. A schedule consists of seven items. Out of the above seven items, items 1 to 5 are the self acquired properties, and 6 & 7 are ancestral in character. But the plaintiff urge that all the above seven item are ancestral in character.

13. The learned counsel for the plaintiff would invite the attention of this Court in respect of partition deed dated 15.04.1920 Ex.A18. According to Ex.A18, the first defendant's grandfather Pavaadai Pillai had purchased certain properties in Murugoor village. The said properties were



S.A.No.1154 of 2010

WEB COPY

subsequently partitioned between Pavaadai Pillai's sons, namely, Gopal Pillai, Mayavan and Thangavelu vide partition deed Ex.A16 dated 15.03.1948. Among them, Mr.Gopal Pillai is the father of the first defendant. According to Ex.A16 partition deed, “A” schedule property was allotted to the first defendant's father Mr.Gopal Pillai. After the demise of Gopal Pillai, the said ancestral property was sold by the first defendant, and his brothers under documents Exs.A19, A20, & A21.

14.While perusing the above sale deeds, it has been categorically mentioned that the property was sold for himself and on behalf of the minors, which includes the deceased Ragunathan. From the above sale consideration, the 1st defendant received a sum of Rs.63,666/- and the above sale were made between 01.07.1985 and 14.02.1986. During the relevant times qua between 01.07.1985 to 14.02.1986, item 1 to 3 of A schedule was purchased by the first defendant under Exs.B1 to B3, on 15.07.1985, 08.11.1985 and 24.03.1986 respectively. Similarly, under Ex.B9, a purchase was made in favour of the fifth defendant on 22.05.1986. The properties referred to in Exs.B1, B2, B3 & B9 are the items 1 to 5 of the plaint schedule properties.

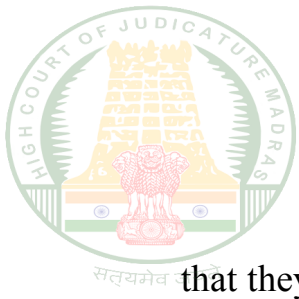


S.A.No.1154 of 2010

WEB COPY

15.The learned counsel for the defendants would invite the attention of this Court that the total share of the sale consideration received by the first defendant on his behalf and on behalf of his minor son was Rs.63,666/-. Whereas during the relevant period under Ex.B1 to B2, B3 and B9, item 1 to 5 were purchased for a value of sum of Rs.61,500/- in the name of the first and fifth defendants. This would amply demonstrate the use of ancestral nucleus for the purchase. Only based on the above concrete evidence, the trial Court and the first appellate Court have rightly arrived at the conclusion that the entire suit schedule “A” items are the ancestral properties.

16.At this juncture, it is the relevant to refer **2013 SAR (Civil) page 499 reported in (V.K.Surendra Vs. V.K.Thimmaiah & others)**, wherein, the Hon'ble Supreme Court has categorically held that, if any property purchased through the ancestral nucleus, such property would also carry the ancestral character. As such the plaintiff being the widow of the predeceased son of the first defendant qua Late Ragunathan, becomes entitled to have partition according to Section 6 & 8 of the Hindu Succession Act. Both the Courts below have also found through the admission of the first and fifth defendants



S.A.No.1154 of 2010

WEB COPY

that they did not have any independent source of income. In such view of the matter, I do not find any ground to interfere with the findings rendered by the both Courts below.

17. At this juncture, the learned counsel for the defendants would vehemently contend the suit also has not been valued properly. In this connection, it is the submission of the learned counsel for the defendants that having the plaintiff admits her stay away from the suit property, she ought to have valued the suit under Section 37(1) of TNCF Act. In this regard, while considering the Court Fees Act to value the suit under Section 37(2), what is essential is constructive possession, and it is the settled principle of law that possession goes with title. As already stated, I am of the firm view that the plaintiff being the widow of the predeceased son of the first defendant, she has got 1/10th right over the “A” schedule properties. It is in this background, the plaintiff is in joint and constructive possession of the suit property. Accordingly, I do not find any infirmity in valuing the suit under section 37(2) of TNCF Act. In view of the above detailed discussion, I do not find any substantial question of law arises in this matter. Hence, there are no ground to interfere with the findings of both Courts below.



S.A.No.1154 of 2010

WEB COPY

18.In conclusion, the Judgement and Decree dated 12.10.2009 passed in A.S.No.54 of 2009 on the file of the Principal District Court, Villupuram confirming the Judgment and Decree dated 13.08.2008 passed in O.S.No.125 of 2005 on the file of the Additional District Munsif's Court, Villupuram, are confirmed and resultantly, the second appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes/No

07.01.2025

Speaking Order : Yes/No

NCC : Yes/ No

To

- 1.The Principal District Court, Villupuram.
- 2.The Additional District Munsif's Court, Villupuram.



WEB COPY



S.A.No.1154 of 2010

C.KUMARAPPAN,J

sms

S.A.No.1154 of 2010
and
M.P.No.1 of 2010

07.01.2025