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A.S.No.106 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.04.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.106 of 2025 and
C.M.P.No.2241 of 2025

1. Gunasekaran
2. Jeeva

... Petitioners / Appellants

-VS-

Deepa

... Respondent / Respondent

Prayer: Appeal Suit is filed under Order XLI Rule 5 r/w Section 151 of CPC to set aside the judgment and decree dated 29.11.2024 passed in O.S.No.121 of 2022 on the file of the Principal District Judge, Namakkal by allowing this First Appeal.

For Appellants : Mr.R.Nalliyappan
For Respondent : Mr.K.K.Senthilvelan
Senior Counsel
For Mr.J.Thomas Saran Singh

J U D G M E N T

Challenging the judgment and decree of the Trial Court, granting preliminary decree in favour of the plaintiff, the present appeal came to be filed by the defendants.

2. The parties are arrayed as per their own ranking before the Trial Court.



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3. The case of the plaintiff is that the 1st defendant is the father and the 2nd defendant is the brother of the plaintiff. According to the plaintiff, the suit property is an ancestral property and there was a partition in respect of the ancestral property and 'C' schedule property was allotted to the 1st defendant. It is averred that the 1st defendant had purchased the 3rd item of suit property from one Perumayammal out of the income derived from the property allotted to him in the partition and 4th item of suit property was acquired by exchanging the joint family property.

4. It is further case of the plaintiff that she is entitled to 1/3rd share in the joint family property. According to her, both the defendants and the plaintiff had sold a portion of properties and the Government acquired 243 sq.mt. including the terrace house in the 1st item of the suit property. For such acquisition, a compensation of Rs.24,02,034/- has been disbursed in favour of the 2nd defendant, ignoring the plaintiff. The plaintiff came to know that there was an unlawful Settlement Deed executed by the 1st defendant in favour of the 2nd defendant and therefore, the said Settlement



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Deed is not binding on the plaintiff. Hence, the plaintiff filed a suit for declaration, partition and direction to the 2nd defendant to pay the share of the compensation amount.

5. In the written statement, it is the contention of the defendants that the plaintiff has no right, title, possession and enjoyment in the suit property and in order to avoid future complications, the plaintiff was added as a party to the sale deeds dated 28.04.1997, 28.04.1997, 22.06.2011 and 14.11.2011. at the instance of the purchasers. It is further contended that the 1st defendant has executed a Gift Deed dated 10.07.2020 in favour of the 2nd defendant in respect of his self acquired properties. Based on the said gift deed, the 2nd defendant is in possession and enjoyment of the suit property and patta has also been changed in the name of the 2nd defendant. It is also stated in the written statement that the marriage of the plaintiff was performed in the year 2008 and a sum of Rs.80,000/- was incurred towards her marriage expenses. 30 sovereigns of gold jewels were adorned besides a cash of Rs.25,000/- to the plaintiff at the time of her marriage. In addition, another sum of Rs.20,000/- was given to the plaintiff for her first delivery



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and in the year 2011, Rs.20,000/- was given to the plaintiff to buy new clothes to her family for the house warming function of the 2nd defendant.

According to the defendants, the plaintiff, after receipt of the above said monies, had orally relinquished her share in the suit property. Further, the 1st defendant is a patient suffering from Paralysis attack in the year 1997.

6. The Trial Court, based on the above pleadings framed the following issues:

i) Whether the Settlement Deed dated 10.07.2020 executed by 1st defendant in favour of 2nd defendant including the 1/3rd share of the plaintiff over 1 to 3 item of suit property under Doc.No.2692/2020 on the file of Sub-Registrar, Rasipuram is to be declared as Null and Void as prayed for?

ii) Whether it is true that the plaintiff had orally relinquished her share over the suit property?

iii) Whether the preliminary decree of partition to divide the suit properties into 3 equal shares by metes and bounds and to allot one such share in favour of the plaintiff as prayed for?

iv) Whether the 2nd defendant is liable to pay the plaintiff a sum of Rs.8,00,678/- being her 1/3rd share in the compensation amount obtained from the Government along with interest from 10.12.2021 to till date of filing suit and subsequent interest till realization as prayed for?

v) To what other relief the plaintiff is entitled to?



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Additional Issues – 08.01.2024

i) Whether the suit property is the self acquired property of 1st defendant?

ii) Whether the suit property is the ancestral and joint family property of the plaintiff?

7. On the side of the plaintiff, plaintiff examined herself as P.W.1 and Ex.A1 to Ex.A10 were marked. On the side of the defendants, the 2nd defendant was examined as D.W.1 and Ex.B1 to Ex.B5 were marked.

8. The Trial Court, after appreciation of the material documents and evidence, decreed the suit in favour of the plaintiff. Challenging the judgment and decree of the Trial Court, the present appeal has been filed.

9. Learned counsel for the appellants would mainly submit that though Ex.A1 / partition deed states that the property is a joint family property, in fact, the properties were purchased in the name of the 1st appellant subsequent to the death of the 1st appellant's grandfather and therefore, it is to be construed as a self acquired property and not a joint family property. He would further submit that the 3rd item of property was



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also purchased independently by the 1st defendant and therefore, the plaintiff has no right in the suit property.

10. Per contra, learned Senior Counsel for the respondent would contend that the Trial Court has rightly appreciated the evidence and documents and held that the property is the ancestral property. According to him, the purchase made by the defendants in respect of 3rd item of property was out of joint family nucleus. He would further contend that the judgment and decree of the Trial Court does not warrant any interference.

11. In the light of the above, the points for consideration in this appeal are as follows:

- i) Whether the suit properties are ancestral properties and the plaintiff has any share in the properties?;
- ii) Whether the 3rd item of the property was purchased out of the joint family nucleus? and
- iii) To what other relief the plaintiff is entitled to?

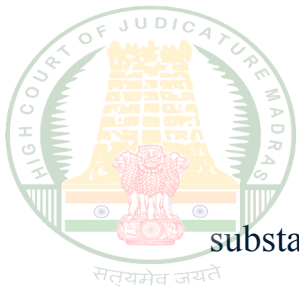
POINTS:



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12. At the first blush, the relationship of the parties is not disputed. It is also not in dispute that there was a partition deed dated 03.02.1983 (Ex.A1) and the 'C' schedule property was allotted to the 1st defendant. The said partition had in fact taken place between the 1st appellant and his father. The recital in Ex.A1 makes it very clear that the property is an ancestral property and 'C' schedule property alone was allotted to the 1st defendant. It further makes it clear that 3rd item of suit property has been purchased from and out of the income derived from the joint family nucleus, viz., 'C' schedule property. Once it is established that the suit property is an ancestral property, by virtue of amendment by way of Act 39 of 2005 (Hindu Succession (Amendment) Act, 2005), which grants daughters the equal rights to property, including coparcenary rights as that of sons, the plaintiff is entitled to share along with father and brother in the joint family properties. In Ex.A3 to Ex.A6 / sale deeds dated 28.04.1997, 28.04.1997, 22.06.2011 and 14.11.2011, plaintiff also was party and joint family properties were sole, which are admittedly joint family properties and therefore, it cannot be said by the defendant that those properties are self acquired properties, as there is no material whatsoever produced to



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substantiate his claim.

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13. Further, the evidence of D.W.1 clearly shows that he admitted the character of the property and though he denied that those properties have been purchased out of the income derived from the joint family nucleus, there is no evidence to show that he had independent income apart from agriculture. The evidence of D.W.1 clearly indicates that he has been predominantly doing agricultural work in the property allotted under Ex.A1 and there is no document adduced to show that he has been doing some other business other than paddy work. The next contention raised by the defendants is that the plaintiff has orally relinquished her right in the suit property. As far as the oral release or oral relinquishment of the immovable property is concerned, such contention cannot be considered valid in the eye of law in the absence of materials placed on record to show that the plaintiff has relinquished her share in the property.

14. In such view of the matter, finding no merits in the appeal, the instant Appeal Suit is dismissed. The judgment and decree of the Trial Court is hereby confirmed. No costs. Consequently, connected



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Miscellaneous Petition is closed.

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Index: Yes / No
Internet: Yes / No
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To:

1. The Principal District Judge,
Namakkal.
2. The Section Officer,
V.R.Section,
High Court,
Madras.

N.SATHISH KUMAR,J.,
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