



A.S.No.93 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:21.02.2025

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Appeal Suit No.93 of 2022

CMP.No.3309 of 2022

1.Rajambal (died)
W.o Late Manicka Udayar

2.Kanagarathinam
S/o Late Manicka Udayar

3.Rajendran
S/o Late Manicka Udayar

4.Sagunthala
D/o Late Manicka Udayar
1 to 4 residing at
Kenavalliyarkaadu (a) Chettikaadu,
R.Puddhupalayam, Rasipuram Taluk,
Namakkal.

..Appellant/Defendants

(A1 died, memo dated 10.02.2025
(A1 died (A2 to A4 who were already)
on record are recorded as LR's of deceased
A1 vide Order of Court dated 14.02.2025
made in A.S.No.93 of 2022)

/versus/



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Dhanakkodi
W/o late Kuzhandhaisamy,
Periyakaadu, Rasipuram Taluk,
Namakkal District.

.. Respondent/Plaintiff

Appeal Suit has been filed under Section 96 of C.P.C., praying to set aside the judgment and decree dated 04.10.2021 made in O.S.No.160 of 2016 on the file of the Additional District Court, Namakkal.

For Appellants :Mr.A.E.Ravichandran

For Defendant :Mr.I.Abrar Mohammed Abdullah
assisted by
Mr.S.Saravana Kumar

JUDGMENT

Aggrieved over the judgment and decree of the trial Court made in O.S.No.160 of 2016 dated 04.10.2021, granting Preliminary Decree in favour of the plaintiff for 6/25 share, the present Appeal Suit came to be filed.



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2. The parties are arrayed according to their ranking in the trial Court.

3. It is the case of the plaintiff is as follows:-

One Manicka Udayar had two wives. The plaintiff was born through the first wife. After the death of the first wife, the first defendant married the said Manicka Udayar. The defendants 2 to 4 born to the first defendant. According to the plaintiff, the suit properties is a separate family property and the same has been allotted to Manicka Udayar in a partition deed dated 23.09.1960 (Ex.A1). The said property is in joint possession and enjoyment of the plaintiff and the defendants. The plaintiff's father died intestate on 11.10.1960(Ex.B2). Therefore, the plaintiff is entitled to 1/5th share and the defendants are making an attempt to sell the property, while evading the allotment of the plaintiff's share. Hence, the suit has been filed.

4. The contention of the defendants 3 and 4 in the written statement is that the property belongs to the joint family. The joint family property was



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partitioned on 23.09.1960(Ex.A1) and in the said partition, 'C' schedule property was allotted to Manicka Udayar. Further, it is denied the allegation that the property is in joint possession. It is the contention of the defendants that, the property is ancestral property and allotted to the plaintiff's father in the partition deed dated 23.09.1960. The defendants 2 and 3, who are the brothers, are co-parceners and they are entitled to 1/3rd share each along with their father. As the father died on 11.10.1961, his 1/3 share will be distributed among all the legal heirs with the plaintiff being entitled to 1/15th share at that time. Thereafter, in order to meet out the family debts, construction costs, during the marriage of the plaintiff on 21.07.1969, a portion of the property including the plaintiff's share was sold to discharge the legal debt of the family. It is also the contention of the defendants that during the plaintiff's marriage in the year 1976, the plaintiff has received the amount and released her right to the 1/15 share of the property orally.

5. In the light of the above pleadings, the following Issues were framed by the trial Court for consideration:-



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(1) Whether the plaintiff is entitled to in the Preliminary Decree 1/5 share?

(2) Whether the properties is a separate property of Manicka Udayar?

(3) Whether the property is the joint family property as stated by the defendants 1 to 4?

(4) Whether plaintiff is entitled to 1/5 share?

(5) Is it true that the plaintiff and the defendants 1,4 each are entitled to 1/15 share and defendants 2 and 3 each are entitled to 6/15 share?

(6) Is it true that the plaintiff relinquished her right orally in favour of the defendants?

(7) Whether Partition deed dated 01.11.2002 is valid and true?

6. On the side of the plaintiff, PW-1 was examined and Ex.A1 and A2 were marked. On the side of the defendants, DW-1 to DW-3 were examined and Exs.B1 to B3 were marked.

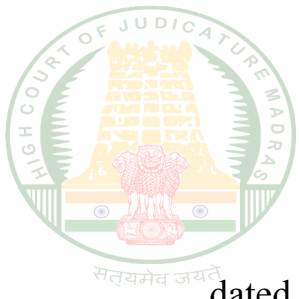


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7. Based on the oral and documentary evidence and materials placed on record, the trial Court though concluded that the property is not a separate property of Manicka Udayar and it is only the ancestral joint family properties, granted decree in favour of the plaintiff. Challenging the judgment and decree, the present Appeal Suit came to be filed.

8. The learned counsel appearing for the appellant submitted that the trial Court having accepted that the property is not a separate property of Manicka Udayar ought not to have granted decree as claimed by the plaintiff. In fact, Ex.A1 the partition entered between the Manicka Udayar and his brother and father makes it clear that it is a joint family property. Therefore, at the relevant point of time, the defendants 2 and 3 were co-parceners along with his father. The said Manicka Udayar died on 11.10.1961. Therefore, Manicka Udayar $1/3^{\text{rd}}$ share devolved to all the legal heirs equally as per Section 8 of the Hindu Succession Act, for the simple reason that as far as the remaining properties is concerned, the registered partition deed has already been entered between the defendants under Ex.B1

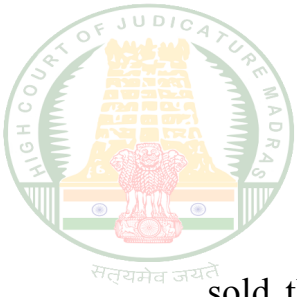


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dated 01.11.2002. Therefore, his contention is that once the partition has already been effected and registered before 20th December 2004, the very The Hindu Succession (Amendment) Act, 2005 (39 of 2005) will not apply to the plaintiff. The trial Court has not considered this legal position. Further, his contention is that as far as the 1/3 share of the father is concerned, an extent of 2.93 acres was sold under Ex.A2 to all the legal heirs to discharge the family debt and other debts. Therefore, his argument that the trial Court granted Preliminary Decree by dividing the properties into 6/20 shares to the plaintiff, is not valid in the eye of law.

9. Whereas, the learned counsel appearing for the defendants submitted that there is absolutely no evidence to show that the properties are the joint family properties. It is the specific pleadings of the plaintiff that the properties are the separate properties of the family. According to him, even in Ex.A1-partition deed, there are no recitals found to the effect that the properties are the ancestral or the joint family properties. Whereas, Ex.A2 document clearly shows that all the legal heirs joined together and



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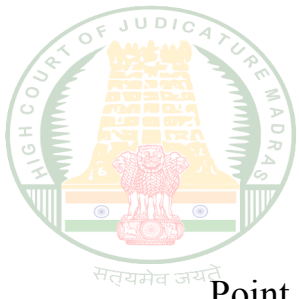
sold the property. Since the defendants have not established the ancestral nature of the property, therefore, it has to be held that the property is the separate property of their father and the plaintiff is entitled to an equal share along with the other legal heirs. It is the further contention that Ex.B1 dated 01.11.2002 is not binding on the plaintiff, as she has not been made as a party. Therefore, he submitted that the trial Court has rightly granted the decree.

10. In the light of the above submission, the following Points arise for consideration in this appeal:-

(i) Whether the suit properties are the separate property of Manicka Udayar or it belongs to the joint family and derives from the ancestral property?

(ii) Whether the plaintiff is entitled to share under Act 39/2005 in view of the partition deed already registered on 01.11.2002?

(iii) What other are reliefs the parties are entitled to?



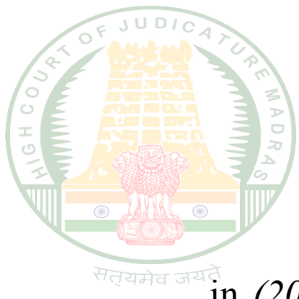
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Point I

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11. It is the specific pleading of the plaintiff that the suit property belongs to separate family property of the Manickam Udayar. According to the plaintiff, the suit property was purchased by the Manickam Udayar's father, however the fact remains that to substantiate the stand that the property has been purchased individually by the father of the Manickam Udayar, no documents whatsoever was filed. Whereas, it is the specific stand of the defendants that the property is ancestral joint family property which has been fallen into the share of Manickam Udayar under Ex.A1. On perusal of Ex.A1/Partition Deed, it would indicate that the partition is effected between Manickam Udayar, his brother and his father. The suit property and other properties which are already dealt was allotted to Manicka Udayar as C Schedule property.

12. The contention of the learned counsel for the appellant relying on the judgment of the Hon'ble Supreme Court in the case of *Bhagwat Sharan (Dead through legal representatives) vs. Purushottam and others* reported



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in (2020) 6 SCC 387 to the effect that the burden lies on the person who alleges existence of HUF; to prove the same, proof is required not only with respect to jointness of family but also with respect to the fact that property concerned belongs to joint Hindu Family, unless there is material on record to show that the property is the nucleus of joint Hindu family or that it was purchased through funds coming out of nucleus.

13. Absolutely, there is no doubt with regard to the above proposition of law, however, the fact remains that the plaintiff herself has pleaded that the property is separate family property and pleadings itself indicate that the property was a joint family property. Further, when the plaintiff traces source as a self acquired property by way of purchase, she ought to have proved the said fact, whereas, no materials whatsoever was filed by her to substantiate her contention that the suit property was originally purchased by her grandfather. Be that as it may, the very recitals in Ex.A1 clearly indicate that the property was a joint family property belonging to the family. Therefore, they intended to partition of the same. If really, the

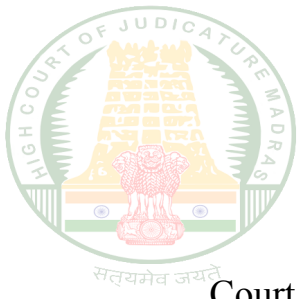


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grandfather of the plaintiff has purchased the property as contended by the plaintiff, he would have recited in the document that he has purchased the property, thereafter, he blended those property into a joint family hotchpotch. Whereas, the document is very silent about the purchase made by him, on the other hand, the recitals in more than one place indicate that the property is a joint family property. Therefore, it has to be held that the contention of the plaintiff has no legs to stand. In fact, the Trial Court has also concluded that the property is an ancestral property and not a separate property, however, has granted preliminary decree on the basis of act Act 39 of 2005 which amended Section 6 of Hindu Succession Act.

14. In the entire evidence of PW1, the plaintiff is not in a position to substantiate her stand that the property is the self acquired property of her grandfather. Therefore, when the kartha of the family in the document of the year 1960 had recited to the effect that property was a joint family property, it has to be held that family had sufficient nucleus. Such view of the matter, it has to be held that the property is ancestral property as held by the Trial



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Court. Accordingly, this point is answered.

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Point II

15. At the relevant point of time, plaintiff's father and defendants 2 and 3 alone were family members, they are coparcener. The father of the plaintiff had 1/3rd share in the property and defendants 2 and 3 as a coparceners had the remaining 2/3rd shares. It is relevant to note that the defendants 2 and 3 have entered into a registered partition deed dated 01.11.2002 under Ex.B1. Therefore, as on 01.11.2002, whatever ancestral property was available were partitioned between the defendants 2 and 3. It is also relevant to note that though in Ex.B1, father's share was also included, but the fact remains that larger extent of property which had ancestral character fell into the shares of the defendants 2 and 3 at the relevant point of time was already partitioned. The plaintiff's father died on 11.10.1961 which has been admitted by all of them, therefore, the notional partition presumed on the date of his death. Therefore, at the relevant point of time, the plaintiff and other legal heirs are legally entitled to equal shares



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from the 1/3rd share owned by the plaintiff's father as a coparcener.

Thereafter, it appears that to discharge the family debt, an extent of 2.92 acres were sold by the legal heirs of the Manickam Udayar, Ex.A2/Sale deed has been entered into, wherein, all the legal heirs joined as a parties including wife of Manikam Udayar. The very fact that all the legal heirs are made as parties while selling the properties to an extent of 2.92 acres indicates that the parties, in fact, in order to discharge the family debt has intended for sale of the share of the Manickam Udayar at the relevant point of time.

16. It is relevant to note that the after the said sale deed dated 21.07.1969, there was no issue in the family, including the remaining portion of the Manickam Udayar share were in enjoyment and possession by the defendants 2 and 3, though, they partitioned their coparcenary property but also partitioned remaining property of their father on 01.11.2002.



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17. The plaintiff has married in the year 1969 and she in fact, admitted in her cross examination that she was aware of the partition deed dated 01.11.2002, the fact remains that though the ancestral property partitioned by the coparcener at the relevant point of time and in the partition deed, they also included the father share. Therefore, this Court is of the view that as far as the share of their father partition under Ex.A2 will not bind the plaintiff.

18. It is the contention of the learned counsel for the appellant that once the property has been partitioned before 20.12.2004, plaintiff is not entitled to any share in the property. It is relevant to note that such a contention in view of this Court cannot hold water for the simple reason that in the very written statement filed by the defendants, they have clearly admitted that the plaintiff has a share in their father's share. In fact, it is admitted by the defendants in paragraph 8 of the written statement that the plaintiff has 1/15th share. It is also specifically admitted by the defendants that as far as the first and fourth defendant each are entitled to 1/15th shares.

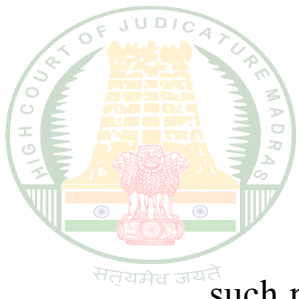


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Therefore, entitlement of the plaintiff from her father's share is clearly admitted in the written statement.

19. The only contention raised by the defendant that even in respect of that 1/15 share, plaintiff has relinquished her right orally, therefore, she has no right in that regard. 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. Further, there was no materials placed on record to show that the plaintiff has relinquished her share in the property, i.e., 1/15 share in the suit property. It is not the case of the defendants that they have excluded the plaintiff from the suit property at any point of time, the plea of ouster has not taken place. Therefore, merely on the basis of partition deed entered into between the defendants 2 and 3 including their father share, it cannot be held that the plaintiff is not entitled to the share. Therefore, this Court is of the view that as far as the ancestral property is concerned, partition is already effected between two coparcener at the relevant point of time much prior to the Act 39 of 2005 came into force and

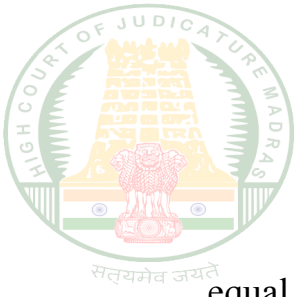


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such partition has also not been challenged and the plaintiff is also aware of that partition. Now, it is too late for the plaintiff to contend that amendment under Section 6 will come to her aid to claim share as coparcener. Therefore, the Trial Court's finding that the plaintiff is entitled to equal share as a coparcener is certainly not valid in the eye of law.

20. As far as the claim of equal share in ancestral property as per Act 39 of 2005 is concerned, coparcener property must be in existence on the date of amendment i.e., 09.09.2005. Whereas, as far as the coparcenary right is concerned, the property is already partitioned, of course, including the father share. Merely including the father share though it may not be binding on the parties, entire partition deed would not be vitiated in respect of coparcenary property. Such view of the matter, the finding of the Trial Court granting equal share to the plaintiff is not valid in the eye of law, plaintiff is at the most entitled to preliminary decree only in respect of 1/15 share in the suit property as admitted in the written statement by the defendants. Accordingly, the judgment of the Trial Court granting preliminary decree for



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equal shares is set aside and the appeal is allowed partly. Now, it is also stated the fourth defendant has already filed written statement stating that she is not claiming any right

21. Accordingly, the suit is partly decreed granting preliminary decree dividing 1/15 share and allot one such share to the plaintiff and remaining 14 shares to the defendants 2 and 3 together. Considering the nature of disputes and relationship of the parties, no costs is ordered. Consequently, connected miscellaneous petition stands closed.

21.02.2025

ari/dhk

Index:yes/no

Speaking order/non speaking order

Netural citation:yes/no

To

The Additional District Court, Namakkal.

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N.SATHISH KUMAR, J.

ari/dhk

A.S.No.93 of 2022
and
C.M.P.No.3309 of 2022

21.02.2025