



A.S.NO.265 OF 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.265 OF 2018

Thangavel

... Appellant /
Defendant

Vs.

Chinnammal

... Respondent /
Plaintiff

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated November 10, 2017, made in O.S.No.93 of 2016 by the learned II Additional District Judge, Erode.

For Appellant : Mr.P.Saravana Sowmiyan
for M/s.C.Prabakaran

For Respondent : Mr.J.Manikandan for
M/s.R.Marudhachalamurthy

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JUDGMENT

Feeling aggrieved by the Judgment and Decree dated

November 10, 2017 passed in O.S.No.93 of 2016 by the 'II Additional District Court, Erode' ['Trial Court' for brevity], the defendant therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The case of the plaintiff as put forth in the plaint is that the Suit land was purchased by one Arumuga Nadar, who is the father of the plaintiff (daughter) and the defendant (son), on June 21, 1957 vide Sale Deed (Document No.1420/1957). Subsequently, he constructed Suit superstructures in the Suit land. Arumuga Nadar passed away on October 24, 1988 leaving behind his wife - Karuppayammal, the plaintiff and the defendant as his legal heirs / legal representatives. Karuppayammal passed away on September 30, 2003 leaving behind the plaintiff and the defendant as her legal heirs / legal representatives. According to the plaintiff, the Suit Property is the self-acquired property of Arumuga Nadar



and hence, the plaintiff and the defendant are each entitled to half-a-share in the Suit Property.

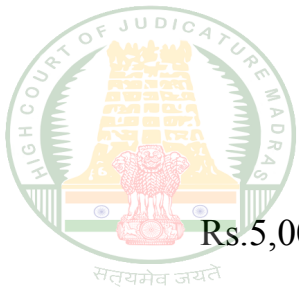
3.1. It is further averred that the plaintiff and the defendant borrowed a sum of Rs.5,00,000/- from one Sakthivel on March 10, 2008 and executed a registered Sale Agreement registered as Document No.1611/2008 (Joint – I, SRO, Erode). On the same day viz., March 10, 2008, they executed a General Power of Attorney in favour of one Palaniappan vide Document No.402/2008 (Joint – I, SRO, Erode) who is the friend of the said Sakthivel as per the demand of the said Sakthivel as security for the said loan. It is further averred that, though the said Gowthaman and Sumathi had no right, interest, or title over the Suit Property, and they were also added as parties to the said Sale Agreement and the General Power of Attorney, only at the compulsion of the said Sakthivel. The plaintiff and the defendant repaid the entire loan amount, along with the accrued interest, to the said Sakthivel in May 2009 itself. However, the said Sakthivel failed to cancel the Sale Agreement. The Sale Agreement cannot be enforced as barred by limitation. The Power of Attorney was cancelled on March 30, 2016 vide Document No.2148/2016 (Joint - I, SRO, Erode).



3.2. After the demise of their parents, the plaintiff and the defendant have been in joint possession and enjoyment of the Suit Property. Accordingly, the plaintiff has filed a Suit seeking partition of the Suit Property into two equal shares and allotment of one such share to the plaintiff.

DEFENDANT'S CASE

4. The defendant filed a written statement stating that Arumuga Nadar and the defendant constituted a Hindu joint family, and that the Suit land was purchased and the Suit superstructure thereon was put up by the joint family. It is further stated that both were enjoying the Suit Property jointly and that the defendant alone has been maintaining the family and managing all the affairs of the joint family. After the demise of Arumuga Nadar and Karuppayammal, the defendant along with his son - Gowthaman and daughter – Sumathi alone has been enjoying the Suit Property. The plaintiff was entitled to only 1/4 share in the Suit Property. The plaintiff insisted the defendant to provide her with money and expressly stated that she would not claim any share in the Suit Property. Accordingly, at the plaintiff's request, the defendant borrowed a sum of



Rs.5,00,000/- from said Sakthivel and paid it to the plaintiff. The defendant alone repaid the entire amount borrowed. After receiving the entire consideration of Rs. 5,00,000/- from the defendant, the plaintiff relinquished her share in the Suit Property in the year 2008 itself. However, she subsequently failed to cooperate with the defendant in cancelling the nominal Sale Agreement executed in favour of Sakthivel for the purpose of loan. The Suit is bad for non-joinder of necessary parties, namely Gowthaman and Sumathi. It is further averred that the plaintiff's marriage took place before 1989 and father died in 1988 and hence, the plaintiff has no right or interest in the Suit Property and the Suit is barred by limitation. Further, the Court Fee paid is incorrect. Accordingly, the defendant prayed for dismissal of the Suit.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues:

- “1. *Is the plaintiff entitled to seek partition of the Suit Property as claimed? If so to what share ?*
2. *Is it true that the plaintiff relinquished her rights over the Suit Property and received Rs.5,00,000/- as claimed by the defendant ?*



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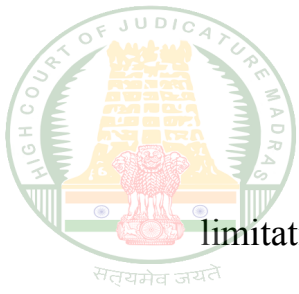


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3. *Is one Sakthivel, not a necessary party to the Suit ?*
4. *Is the Suit barred by limitation as alleged by the defendant ?*
5. *To what other reliefs, the parties are entitled to ? ”*

6. At trial, plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.8 were marked on the side of the plaintiff. On the side of the defendant, defendant was examined as D.W.1 and no document was marked.

7. After a full-fledged trial, the Trial Court concluded that the Suit Property is self-acquired property of Arumuga Nadar. The defendants failed to prove the alleged oral relinquishment as well as that a sum of Rs. 5,00,000/- was paid to the plaintiff in lieu of her share in the Suit Property. The Sale Agreement executed in favour of Sakthivel is barred by limitation and hence, he is not a necessary party to the Suit. Further, the General Power of Attorney was also duly cancelled. The children of the defendant are not necessary parties to the Suit as they are not legal heirs of Arumuga Nadar. The plaintiff and the defendant are co-owners / co-heirs and hence deemed to be in joint possession and enjoyment of the Suit Property. Hence, Court Fee paid is correct and the Suit is not barred by



limitation. After the demise of their parents, the plaintiff and the defendant are entitled to equal shares in the Suit Property. Accordingly, the Trial Court decreed the Suit and granted a Preliminary Decree for partition.

8. Feeling aggrieved, the defendant has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of CPC.

ARGUMENTS

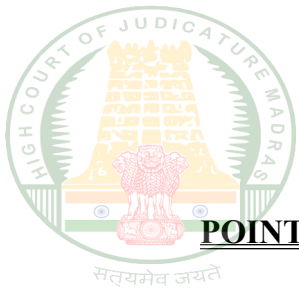
9. Mr.P.Saravana Sowmiyan, learned Counsel for M/s.C.Prabakaran, Counsel on record for the appellant / defendant submits that the Suit Property is a joint family property. After the demise of Arumuga Nadar, the plaintiff and the defendant borrowed a sum of Rs.5,00,000/- in 2008 and the said amount was given to the plaintiff for relinquishment of her share, at her instance. Hence, the plaintiff orally relinquished her interest in the Suit Property. The fact that the defendant's children were added as parties to the Sale Agreement and the Power of Attorney executed for the purpose of the loan at the instance of the lender – Sakthivel, shows that the Suit Property is a joint family property. The Trial Court failed to consider the fact that the Suit Property is a joint family property, in which the plaintiff was entitled to only 1/4 share as well as that the plaintiff received a sum of Rs.5,00,000/- from the



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defendant and orally relinquished her share in the Suit Property and hence, the plaintiff has no interest or right over the Suit Property and the Suit is not maintainable. The Trial Court erred in granting a Preliminary Decree for partition. Accordingly, he prayed to allow the appeal, set aside the Judgment and Decree of the Trial Court.

10. Per contra, Mr.J.Manikandan, learned Counsel for M/s.R.Marudhachalamurthy, learned Counsel on record for the respondent/plaintiff submits that the Suit Property is a separate property of Arumuga Nadar. Arumuga Nadar purchased the Suit Property on June 21, 1957 vide Ex-A.1 – Sale Deed. Arumuga Nadar died intestate on October 24, 1988 leaving behind his wife - Karuppayammal, his son / the defendant and his daughter / the plaintiff as his legal heirs / legal representatives. His wife – Karuppayammal passed away in the year 2003 leaving behind the defendant and the plaintiff as her legal heirs / legal representatives. Thus, the plaintiff and the defendant are entitled to 1/2 share each in the Suit Property. The plea of oral relinquishment is not valid and not proved. The Trial Court, after considering the evidence and documents, rightly decreed the Suit and there is no warrant to interfere with it. Accordingly, the learned Counsel prayed to dismiss the Suit.



POINTS FOR CONSIDERATION

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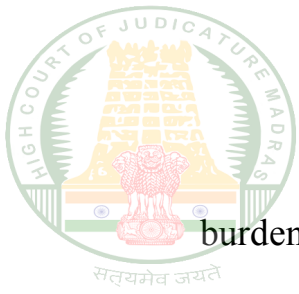
11. Heard on either side. Perused the entire materials available on record. The points that arise for consideration in this Appeal Suit are as hereunder:

- (i) *Whether the Suit Property is a joint family property as alleged by the defendant or a self-acquired property of Arumuga Nadar as alleged by the plaintiff?*
- (ii) *Whether the plaintiff orally relinquished her share in favour of the defendant as alleged by the defendant ?*
- (iii) *Whether the children of the defendant are necessary parties to the Suit?*
- (iv) *Whether the Court Fee paid is correct ?*

DISCUSSION:

Point No.(i)

12. The plaintiff and the defendant are children of one Arumuga Nadar. The plaintiff's case is that the Suit Property is the self-acquired property of Arumuga Nadar. To support this claim, the plaintiff produced the Sale Deed dated June 21, 1957, marked as Ex-A.1. Upon perusal of Ex-A.1, it is evident that the Suit Property was purchased by Arumuga Nadar from one S.R. Venkatesan Iyer for a sale consideration of Rs.600/-. Hence, the plaintiff has *prima facie* proved that the Suit Property is the separate property of Arumuga Nadar and discharged her initial



burden. The onus now shifts to the defendant to prove that the Suit

Property is a joint family property. Although the defendant pleaded that the Suit Property is a joint family property, he did not adduce any evidence to substantiate his claim. There is no evidence available on record to show the existence of joint family properties before Ex-A.1. Further, at the time of Ex-A.1, the defendant would have been around 2 years old and hence, it cannot be said that he contributed to the purchase of Suit land vide Ex-A.1. Therefore, the Trial Court rightly concluded that the Suit Property is a self-acquired property of Arumuga Nadar. This Court finds no illegality or infirmity with the said findings. Accordingly, this Court holds that the Suit Property is the self-acquired and separate property of Arumuga Nadar.

Point No. (i) is answered in favour of the plaintiff and against the defendant.

Point No.(ii)

13. As far as the plea of oral relinquishment is concerned, oral relinquishment is valid provided the defendant pleads and proves the same in the manner recognized by law [See Paragraph No.14 of the Judgment of this Court (Single Judge) made in *C.Mani -vs- C.Rajan*, reported in



(2024) 6 MLJ 238]. In this case, although the defendant pleaded that the plaintiff orally relinquished her share after receiving a sum of Rs. 5,00,000/-, no witness was examined to prove the alleged oral relinquishment. There is no documentary evidence available on record to infer oral relinquishment. Hence, this Court is of the view that the oral relinquishment, as pleaded by the defendant, has not been proved. Therefore, this Court concurs with the findings rendered by the Trial Court in this regard. **Point No. (ii) is answered accordingly, in favour of the plaintiff and against the defendant.**

Point No.(iii)

14. As already stated *supra*, the Suit Property is the separate property of Arumuga Nadar. The said Arumuga Nadar passed away as a Hindu; hence, the applicable law is the Hindu Succession Act, 1956. As per Section 8 of the Hindu Succession Act, 1956, after the demise of Arumuga Nadar, his wife - Karuppayammal, the plaintiff, and the defendants are the legal heirs of Arumuga Nadar. Wife of Arumuga Nadar namely Karuppayammal passed away intestate on September 30, 2003. Hence, as per Section 15(1) of the Hindu Succession Act, 1956, the plaintiff and the defendant are the legal heirs of Karuppayammal.

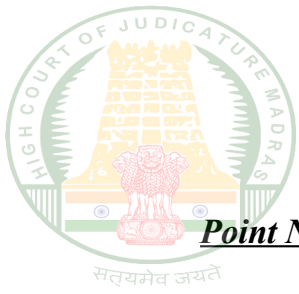


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Therefore, the plaintiff and the defendant are entitled to half-a-share each in the Suit Property under Sections 8 and 15 of the Hindu Succession Act, 1956.

15. To be noted, the Sale Agreement and the Power of Attorney were allegedly executed during the lifetime of the defendant and he is still alive, and further, Son's son and son's daughter are not legal heirs in the presence of son under Sections 8 and 15 (1) of the Hindu Succession Act, 1956. The Suit Property being a self-acquired property of Arumuga Nadar, the defendant's children had no pre-existing right on the date of the Sale Agreement and the Power of Attorney alleged executed for the purpose of loan of Rs.5,00,000/- from one Sakthivel, and merely because they were joined as parties to the aforesaid two documents, they are not necessary parties to the Suit [See Judgment of a learned Single Judge of this Court in *M.P.P. Jayagandhi Nadar & Company by partner, M.P.P. Jayagandhi Nadar -vs- Arunachalam Pillai*, reported in *1996 (1) MLJ 251*]. Hence, the children of the defendant, namely Gowthaman and Sumathi, are not necessary parties to the Suit. **Accordingly, Point No. (iii) is answered in favour of the plaintiff and against the defendant.**



Point No.(iv)

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16. As already stated *supra*, the Suit Property is a self-acquired property of Arumuga Nadar. After the demise of Arumuga Nadar and his wife - Karuppayammal, the plaintiff and the defendant being their legal heirs, became entitled to half-a-share in the Suit Property and thus, became co-heirs / co-owners of the Suit Property. Hence, the law thus presumes that the plaintiff and defendant are in joint possession and enjoyment of the Suit Property. Unless the plea of ouster is pleaded and proved, the plaintiff is entitled to her $\frac{1}{2}$ share in the Suit Property. There is no plea of ouster in the first place and further, there is no evidence available on record to prove ouster. Hence, the plaintiff remains a co-owner. Accordingly, the Court Fee paid under Sections 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, is correct [*See. Neelavathi Vs. N.Natarajan*, reported in *AIR 1980 SC 691*]. **Point No. (iv) is answered accordingly in favour of the plaintiff and against the defendant.**

17. Assuming, for the sake of argument, that the Suit Property is an ancestral or joint family property of Arumuga Nadar, in view of Section 6 of the Hindu Succession Act, 1956 as amended by the Hindu



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Succession (Amendment) Act, 2005 (Act No.39 of 2005) read with the

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Judgment of the Hon'ble Supreme Court in *Vineeta Sharma -vs- Rakesh*

Sharma reported in (2020) 9 SCC 1, the plaintiff would still be entitled to half-a-share in the Suit Property.

18. In view of the foregoing narrative, this Court finds no perversity or infirmity with the Judgment and Decree of the Trial Court. There is no warrant to interfere with the Judgment and Decree of the Trial Court. Hence, the Appeal Suit must fail.

RESULT

19. In the result, the Appeal Suit is dismissed and the Judgment and Decree dated November 10, 2017 passed in O.S.No.93 of 2016 by the learned II Additional District Judge, Erode is hereby confirmed. Considering the facts and circumstances of the case, there shall be no order as to costs.

24.06.2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To
The II Additional District Judge
II Additional District Court
Erode.



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R.SAKTHIVEL, J.

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