



A.S.No.152 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.06.2025

Pronounced on :13.06.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.152 of 2022

and

C.M.P.No.5472 of 2022

1.P.Govindammal, W/o late Mr.K.Palanisamy, 63 years,

2.P.Maheswari, D/o late Mr.K.Palanisamy, 40 years  
both are residing at Door No.7/205, Nadu Valavu,  
Sulthan Pettai Po., Suloor Tk., Coimbatore.

...Appellants/Plaintiffs

/versus/

1.K.Mani Gounder @ K.Palanisamy, yrs.  
S/o Late Karuprai Gounder.

2.Kumarasamy @ Sethilkumar,  
S/o Mani Gounder @ K.Palanisamy, yrs.

3.Muthu @ Nachimuthu,  
S/o Mani Gounder @ K.Palanisamy  
All are residing at 2/99, Mungil Thozuvoo village,  
Udumalaipettai Taluk, Tiruppur District.

... Respondents/Defendants



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Appeal Suit has been filed under Section 96 of C.P.C.,praying to set aside the judgment and decree dated 17.11.2021 passed in O.S.No.93 of 2016 on the file of III Additional District and Sessions Judge, Dharapuram.

For Appellant :Mr.R.Kannan

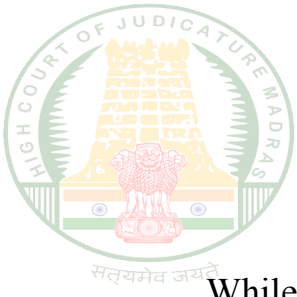
For Respondents :M/s H.Kavitha for  
Mr.M.N.Balakrishnan

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### JUDGMENT

O.S.No.93 of 2016 is a suit for partition filed in respect of the property which was purchased jointly by Palaniammal and her sister Chellammal on 13.12.1974.

2. The suit laid by one Palanisamy claiming that he and the first defendant Mani Gounder are sons of Palaniammal. After the death of Chellammal issueless, her share came to Palaniammal and she became the absolute owner of the entire property. On 08.11.1996, Palaniammal died intestate, leaving behind her two sons. Thus, the plaintiff and the first defendant became the joint owners of the property having equal share.



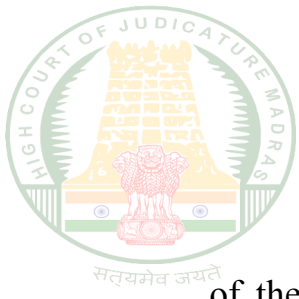
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Whiles, the second and third defendants, who are the sons of Mani Gounder, filed O.S.No.8 of 2010 on the file of District Munsif Court, Udumalaipet, for declaration of title in respect of the suit property based on a Will dated 05.08.1996 alleged to have have executed by Palaniammal in their favour in respect of the suit property. The said suit was decreed exparte on 17.11.2011 without proper summon to the plaintiff, who was as sole defendant. On coming to know about the exparte decree behind his back, necessary steps have been taken to set aside the exparte decree by the plaintiff and the exparte decree was set aside and suit is pending. Unable to enjoy the property peacefully along with the joint owners namely the defendants, Palanisamy instituted the suit for partition, which is the subject matter of their appeal.

3. Pending suit, the plaintiff Palanisamy died. Hence his wife and daughter got impleaded and pursued the suit.

4. The defendants contested the suit by admitting the joint purchase



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of the property by Planaiammal along with her sister Chellammal and on death of Chellammal intestate and issueless, her share came to Palaniammal. Thus, she became the absolute owner of the entire property. Death of Palaniammal on 08.11.1996 also admitted by the defendants. The bone of contention in the written statement was that, the plaintiff left the village in the year 1994 for better pasture got separated from the joint family and permanently settled with his wife and children at Sultanpet, Suler Taluk. From then the relationship of joint family and joint enjoyment had come to an end ousting the plaintiff. The defendants were in exclusive enjoyment of the property from 1994. Without any protest, the first plaintiff allowed the defendants to enjoy uninterceptedly the property exclusively. The plaintiff is not in possession of the property. Therefore, ought to have valued the suit under Section 37(1) of the Tamil Nadu Suit Valuation and Court Fees Act and not under Section 37(2) of the said Act. For the said reason alone, the suit is liable to be dismissed. Further, having knowingly lost the right of his share in the property as early as 1994, the suit seeking partition is barred by limitation.



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5. The plaintiff was indulging in activities disgracing the family and particularly his conduct was against the wishes of Palaniammal. Therefore, Palaniammal during her life time executed a Will on 05.08.1996 bequeathing the suit property to the second and third defendants vesting life interest on Mani Gounder @ K.Palanisamy and his wife Mylathal to enjoy the property till their life without alienating.

6. After the demise of Palaniammal, the two sons of Palanisamy to enjoy the property absolutely. In the year 2004, the peaceful enjoyment of the property by the defendants was disturbed by the first plaintiff. Hence, the suit O.S.No.549 of 2004 was filed for injunction against the plaintiff which was allowed on 07.04.2005. The decree in O.S.No.549 of 2004 binds his legal heirs, who are the plaintiffs 2 and 3.

7. After the declaration of title in O.S.No.8 of 2010, the property was sold to the third defendant under sale deed dated 16.02.2012. As absolute



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owner of the property, he had improved the property by digging well and installing electrical motor for the purpose of irrigation. For the past 23 years the defendants are enjoying the property without any obstruction and with the knowledge of the plaintiffs by cultivation vegetables and other crops. The plaintiffs are strangers and cannot seek partition.

8. Based on the above pleadings, the following issues and additional issues were framed:-

Issues framed on 04.10.2017:

(1)Is it correct to say that the mother of the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant died intestate on 08.11.1996?

(2)Whether the alleged Will dated 05.08.1996 is valid one and binding over the right of the 1<sup>st</sup> plaintiff?

(3)Whether the plaintiffs are entitled for decree of partition as prayed for? and

(4)What other reliefs, the plaintiffs are entitled to?



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9. Additional issue framed on 19.02.2019:

(1) Is it correct to say that the sale deed dated 16.02.2012 is sham and nominal and not binding over the plaintiffs?

10. Govindammal the second plaintiff mounted the witness box. Examined as PW-1. The certificate copy of the sale deed dated 13.12.1974 in favour of Palaniammal and Chellammal; the death certificate of Palaniammal; the plaint copy and written statement copy in O.S.No.8 of 2010 are marked as Ex.A-1 to Ex.A-4. On the side of defendants 3 witnesses-DW.1 Muthu @ Nachimuthu (third defendant), DW.2-Subramani, who is witness to Ex.B-2-the Will of Palaniammal, dated 05.08.1996 and DW.3-Mani Gounder the first defendant were examined. 25 documents were marked to establish that the Will of Palaniammal was already tested by court of law and proved as genuine and acted upon. The present enjoyment of the property by the third defendant Muthu @ Nachimuthu through the sale deed Ex.B1 and other documents.



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11. The trial Court held that the defendants have proved that the first plaintiff had left the village in the year 1994 and allowed the defendants to enjoy the properties exclusively without any objection. Thus, his claim of joint enjoyment is incorrect. Based on the decree passed in O.S.No.549 of 2004 and O.S.No.8 of 2010, the third defendant had purchased property from his father Palanisamy and mother Mylathal vide, sale deed dated 16.02.2012 and been enjoyed by the third defendant without any objection. Hence, the plaintiffs are not entitled for share in the property.

12. The second and third plaintiffs, who are the wife and daughter of the deceased first plaintiff, had preferred the appeal stating that the trial Court erred in dismissing the suit relying the exparte decree passed in O.S.No.549 of 2004 and exparte decree passed in O.S.No.8 of 2010 unmindful of the fact that those decrees were obtained behind the back of the first plaintiff showing wrong address. Further, the exparte decree passed in the declaration suit O.S.No.8 of 2010 was set aside. The same is admitted by the first defendant in the cross. The said suit O.S.No.8 of 2010 is still



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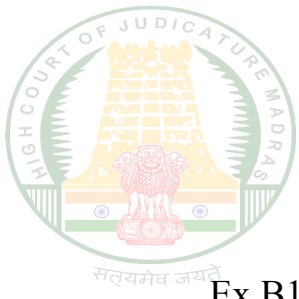
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pending. Therefore, the trial Court erred in holding that the title of the property in favour of the defendants already declared.

13. The sale deed (Ex.B-1), dated 16.02.2012 is on the strength of the exparte decree passed in O.S.No.8 of 2010. The said exparte decree is set aside and later the suit itself got dismissed for default. Hence, the validity of the sale deed (Ex.B-1) is lost. As per the Will of Palaniammal, Mani Gounder and Mylathal are only life interest holder without any right to alienate. Obviously, without right and title, the first defendant along with his wife Mylathal had executed a sham and nominal sale deed in favour of his son the third defendant. Therefore, the trial Court's judgment is against law and facts, hence, to be reversed and the suit has to be allowed.

14. The point of determination:

Whether the trial Court erred in holding that the defendants had perfected title by ousting the plaintiffs and that by virtue of the decree in O.S.No.549 of 2004 and O.S.No.8 of 2010, the sale of the property under



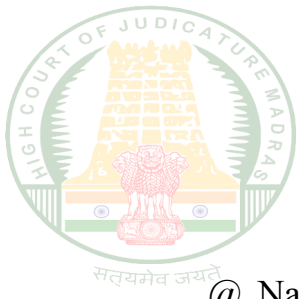
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Ex.B1 by the first defendant and his wife in favour of the third defendant is valid?

15. The suit property admittedly purchased by Chellammal and her sister Palaniammal vide, Ex.A1 on 13.12.1974. The parties admitted that Chellammal died unmarried, issue-less and interstate and her share devolved upon Palaniammal being the second class heir of Chellammal. It is also not in dispute that Palaniammal died on 08.11.1996 and the same is also proved through the death certificate marked as Ex.A2. While the case of the first plaintiff is that Palaniammal died intestate and he as her grand-son entitles for a share in the property, the case of the defendants is that during her lifetime, Palaniammal executed an unregistered Will on 05.08.1996 and that unregistered Will came into effect after the demise of Palaniammal. According to the defendants, Palaniammal, who purchased the property by Doc.No.4042 of 1974 (Ex.A1), bequeathed under Will to and in favour of her son Mani Gounder @ K.Palanisamy and his wife Mylathal to enjoy the property till their life time without encumbrance. Thereafter, the property shall vest with her grand children Kumarasamy @ Senthil kumar and Muthu

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@ Natchimuthu. After demise of their parents, Palanisamy and Mylathal shall take possession of the property and enjoy it absolutely and equally.

16. The Will of Palaniammal was attested by Subramaniam, S/o Ramassamy Naidu, Moongil Thozhuvu (DW-2) and Chenniappa Gounder, S/o Subbi Gounder. The plaintiffs dispute the existence of the Will and also questioned the validity of the exparte decree obtained against him in O.S.No.549 of 2004 and O.S.No.8 of 2010. Ex.B5 is the decree copy of O.S.No.549 of 2004. The cause title of the decree indicates Mani Gounder @ Palanisamy, as the first plaintiff and his wife Mylathal as the second plaintiff. The defendant is the first plaintiff in the suit under appeal. The suit is for the relief of declaration that Mani Gounder and his wife Mylathal have a life interest in the suit property as per the unregistered Will of Palaniammal, dated 05.08.1996 and a consequential injunction against the defendants, their men and agents from interfering with their peaceful possession. In the said suit, the defendant was set exparte and the relief sought was granted. This decree has not been challenged by the plaintiff and



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it has reached finality.

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17. The certified copy of the decree in O.S.No.8 of 2010 is marked as Ex.B6. The perusal of the documents reveals that this suit was filed by Kumarasamy @ Senthilkumar, S/o Mani Gounder @ Palanisamy and Muthu @ Natchi Muthu, who is the second and third defendants in the present suit O.S.No.93 of 2016. The prior suit O.S.No.8 of 2010 was instituted by these two defendants against Palanisamy the first plaintiff in the present suit. This suit in O.S.No.8 of 2010 filed seeking declaration of title and injunction was allowed on 17.12.2011 declaring the title of the plaintiffs (Kumarasamy @ Senthilkumar and Muthu @ Natchimuthu), in the suit property as per Will dated 05.08.1996 and permanent injunction restraining the defendant Palanisamy(the plaintiff in the present suit) and his men from interfering with the peaceful possession.

18. Relying upon certain admission that in the DW-1 cross, the plaintiffs contended that the exparte decree passed in O.S.No.8 of 2010 was



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later set aside and it is pending. Apart from the decree passed in O.S.No.8 of 2010 in which the first plaintiff is the defendant. There is an earlier decree against him passed on 07.04.2005 in O.S.No.549 of 2004 wherein the unregistered Will of Palaniammal dated 05.08.1996 been disclosed and declaration of the life interest vested with Mani Gounder @ Palanisamy and his wife Mylathal been declared and the said declaration has reached finality.

19. Even assuming, though no evidence that the subsequent suit filed for declaration in O.S.No.8 of 2010 in respect of the property by the sons of Mani Gounder @ Palanisamy against the plaintiff, was later set aside, the declaration of life interest vested with Mani Gounder @ Palanisamy and his wife Mylathal based on the Will dated 05.08.1996, as per decree in O.S.No.549 of 2004 remains valid and not challenged by the first plaintiff, though he is the sole defendant in the suit. Having allowed the decree in the suit filed by his parents seeking declaration and injunction to protect their life interest in the suit property based on the Will executed by Palaniammal



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on 05.08.1996, the first plaintiff cannot now challenge the validity of the said Will by filing a fresh suit in the year 2016, after suffering the decree in the year 2005.

20. The only point, which remains is whether after getting the decree of declaration upholding Mani Gounder and his wife Mylathal had derived the life interest in the property of Palaniammal by virtue of her Will dated 05.08.1996, can Mani Gounder sell the property to the third defendant under the sale deed Ex.B1 on 16.02.2012.

21. In this regard, it is to be noted that the property was jointly purchased by Palaniammal and her sister Chellammal in the year 1974 under Ex.A1. After the death of Chellammal intestate and issue less, Palaniammal became the absolute owner of the entire property and she during her lifetime had executed the Will Ex.A2 dated 05.08.1996 and died on 08.11.1996 (Ex.A2). The Will has been tested twice. First, in O.S.No.549 of 2004 filed by Mani Gounder and his wife Mylathal against Palanisamy (plaintiff



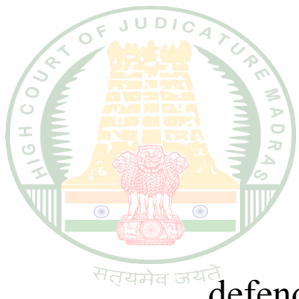
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herein) for declaring their life interest conveying in the Will the suit was decreed as against the first plaintiff in the present suit. He remained exparte and the decree has reached finality and there is no evidence placed by him that he has taken steps to set aside the exparte decree dated 07.04.2005 passed in O.S.No.549 of 2004.

22. Again, the Will was the subject matter of the suit in O.S.No.8 of 2010. This suit seeks declaration that the remainder interest vests with the second and third respondents/defendants herein under the same Will. This suit has been instituted by two sons of Mani Gounder as against the first plaintiff in O.S.No.93 of 2016(the deceased first appellant). This suit was also decreed, upholding the validity of the Will of Palaniammal. Though it is an exparte decree and the plaintiff claims that he has taken steps to set aside the exparte decree and it was allowed, he has not placed any documents to that effect.

23. In the said circumstances, the other documents relied by the



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defendants, which are marked as Exs.B8 to B19, would show that the third defendant had obtained electricity connection for the property and had been cultivating the property availing agriculture loan and Patta has been issued in his favour. After his parents' demise, the remainder interest in the property has been vested in his favour. Apart from the two Court decrees upholding the validity of the Will executed by Palaniammal, in this suit also one of the attesting witnesses was examined to prove the due execution of the Will. The Will cannot be questioned at this point of time by the plaintiff, who remained exparte in the earlier two proceedings. The right of alienating the property in favour of the third defendant by the first defendant and his wife, by virtue of deed (Ex.B1) dated 16.02.2012, at the least ought to have been challenged by Kumarasamy @ Senthilkumar, the other son of Mani Gounder and Mylathal, since in the Will, Palaniammal had given absolute right in the property equally to the said Senthilkumar along with Muthu @ Natchimuthu/the third defendant. Though the said Kumarasamy is one of the defendants in the suit, he has not challenged the sale deed(Ex.B1) dated 16.02.2012.



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24. In the said circumstances, the suit for partition alleging that Palaniammal died intestate, is not sustainable. The first plaintiff failed to prove that he had been in joint possession of the property along with the defendants even after the death of Palaniammal. Contrarily, the third defendant proved through documents Ex.B1 to Ex.B25 had positively established that the property had ultimately come into his hands from Palaniammal through his father Mani Gounder, and mother Mylathal on the strength of documents like Ex.B2 the Will of Palaniammal dated 05.08.1996, Ex.B5 — the decree passed in O.S. No. 549 of 2004, Ex.B6 — the decree passed in O.S. No. 8 of 2010, and the sale deed (Ex.B1) dated 16.02.2012. Hence, this Court holds that the suit has been rightly dismissed by the trial Court.

25. In the result, **this Appeal Suit is dismissed as devoid of merits.**  
Consequently, connected Miscellaneous Petition is closed. No costs.

13.06.2025



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Index:yes/no

Speaking order/non speaking order

Neutral citation:yes/no

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To

1.III Additional District and Sessions Judge, Dharapuram.

2.The Section Officer, V.R.Section,High Court, Madras.



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A.S.No.152 of 2022

Dr.G.JAYACHANDRAN,J.

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delivery judgment made in  
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