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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1497 of 2011
and
M.P.No.1 of 2011

Ponnusamy

... Appellant / 1st Defendant

Vs.

Ammakannu Ammal

... Respondent / Plaintiff

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 21.03.2011 in A.S.No.9 of 2006 on the file of the Subordinate Judge, Gingee, confirming the decree and judgment dated 20.01.2005 in O.S.No.59 of 1995 on the file of the Additional District Munsif, Gingee.

For Appellant : Mr.R.Rajaraman for
Mrs.Sasikala Ramadoss

For Respondent : Mr.T.Dhanasekaran



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JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 21.03.2011 in A.S.No.9 of 2006 on the file of the Subordinate Judge, Gingee, confirming the decree and judgment dated 20.01.2005 in O.S.No.59 of 1995 on the file of the Additional District Munsif, Gingee.

2. Heard Mr.R.Rajaraman, learned counsel for the appellant, Mr.T.Dhanasekaran, learned counsel for the respondent and perused the materials available on record.

3. The first defendant is the appellant against whom the plaintiff has filed a suit for partition and separate possession of 1/7th share in the suit property. The Trial Court has decreed the suit and passed a preliminary decree in respect of 1/7th share of the plaintiff as prayed. The first defendant has preferred a First Appeal challenging the preliminary decree passed by the Trial Court and the same was dismissed by confirming the judgment and decree of the Trial Court. Aggrieved over that, the first defendant has preferred this Second Appeal.



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4. The short facts pleaded in the plaint are as follows:

The suit 'A' schedule properties are the self-acquired properties of one Rayar Gounder. The suit 'B' schedule properties belonged to one Kuttiammal who is the sister of Rayar Gounder. However, Rayar Gounder was in enjoyment of 'A' and 'B' schedule properties. Kuttiammal did not have any legal heirs other than her brother Rayar Gounder. Both Rayar Gounder and Kuttiammal died intestate. Subsequent to the death of Rayar Gounder, his wife, four daughters and two sons inherited the suit properties as their legal heirs. The plaintiff is one among the four daughters. She was married to one Jayagopal Gounder and the said Jayagopal Gounder died at the young age and she lived separately in the suit property by assisting her father who was doing agricultural works. The plaintiff and the defendants are entitled to get equal share in the properties of Rayar Gounder. However, the first defendant who is one of the sons of the Rayar Gounder is claiming exclusive right over the suit property. Hence, the plaintiff has issued a legal notice to the defendants 1 to 3 on 02.12.1994 calling upon them to effect partition and to allot 1/7 share of her. The defendants 1 to 3 received the legal notice but did not send any reply. Hence, the plaintiff has filed a suit for partition.



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5. The written statement filed by the first defendant are as follows:

The items 1 to 3 under suit 'A' schedule property is the self-acquired property of the son of the first defendant by name Munusamy and he is in enjoyment of the same. Since the plaintiff was a widow, Kuttiammal executed a sale deed on 11.03.1987 in respect of the property in S.No.31/6 comprising an extent of 85 cents in favour of the plaintiff without receiving any consideration. On 11.03.1987, a settlement deed was also executed by the third defendant in favour of the plaintiff for 51 1/2 cents in S.No.24/8. The plaintiff is in possession and enjoyment of the suit property. The first and second defendants had purchased 20 cents out of 1 acre 35 cents in S.No.28/19 on 01.02.1989 in the name of Elumalai who is the minor son of the plaintiff. So the plaintiff has been given with enough properties even during the life time of Rayar Gounder and Kuttiammal in pursuant to the oral partition that has been entered in the month of June 1985.

5.1. The plaintiff's father had given the suit items 4,8,9,10,12,14,23 and 24 under 'A' schedule and western half of items 2,5,6,13,15,17,19 and



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22 of 'A' schedule property in favour of the second defendant. The properties in the name of Kuttiammal has been given to the second defendant and thereafter, they were obtained through a sale deed in favour of the second defendant's daughter. Items 3,7,11,16,18 and 25 in 'A' schedule properties and eastern half of items 2,5,6,13,15,17,19 and 22 of 'A' schedule properties and the whole of 'B' schedule properties have been allotted to the first defendant. From then onwards, the first and second defendants are in enjoyment of the suit properties as the properties allotted to their share in the family oral partition. So the plaintiff and the defendants 3 to 6 did not have any right in the suit properties. As the plaintiff's son has been married to second defendant's daughter Shanmuga Priya, the plaintiff has filed this suit with an intention to get more share through the second defendant. Hence, the suit should be dismissed.

6. On hearing both sides and on the basis of the above pleadings, the Trial Court has framed the following issues:

"1. Whether the suit properties are the self-acquired properties of the deceased Rayar Gounder, the father of the plaintiff?"



2. Whether the plaintiff is the legal-heir of the deceased Rayar Gounder and is entitled for 1/7th share in the suit properties?

3. Whether the defendants 4,5 and 6 are entitled for share in the suit properties?

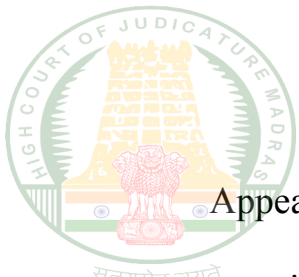
4. Whether the defendants 7 to 10 are entitled for 1/7th share of the deceased 4th defendant?

5. Whether the plaintiff is entitled for preliminary decree of partition as prayed for?

6. To what relief, the plaintiff is entitled?"

7. During the course of the trial, on the side of the plaintiff, one witness was examined as P.W.1 and Exhibits A1 to A3 were marked. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and Exhibits B1 to B35 were marked.

8. At the conclusion of the Trial and on considering the evidence available on record, the Trial Court has decreed the suit and passed a preliminary decree in respect of the plaintiff's 1/7th share in the suit 'A' and 'B' schedule properties. The First Appeal preferred by the first defendant challenging the same was also dismissed by confirming the judgment and decree of the Trial Court. Now, the first defendant has preferred this Second



Appeal and this Second Appeal was admitted on the following substantial questions of law.

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"1. Is not the decree and judgment of the First Appellate Court wrong in decreeing the suit when the suit itself is bad for mis-joinder of cause of action and non-joinder of necessary parties?

2. Whether the First Appellate Court is correct in confirming the decree and judgment of the Trial Court when the suit is bad for partial partition?

3. Is not the First Appellate Court wrong in decreeing the suit without evidence and when the plaintiff failed to discharge the burden laid on her shoulders to prove her case?"

9. The learned counsel for the appellant / first defendant submitted that the first defendant has filed an application before the First Appellate Court to receive additional documents and filed an additional written statement and those were not allowed by the First Appellate Court and no reasons have also been stated in the judgment of the First Appellate Court, despite the petition was also dismissed along with the First Appeal. It is further submitted that the Trial Court has not framed any issues as to the oral partition as pleaded by the defendants. As the plaintiff has stated in her



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plaint that the first and second defendants are in enjoyment of the suit properties denying the rights of the plaintiff, that itself would prove the oral partition and the 1st and 2nd defendants' exclusive enjoyment in the properties allotted to their share as stated in the oral partition. But the Second Appeal has been admitted only on the above questions of law which are to the effect of non-joinder of necessary parties and that the suit is bad for partial partition and that the plaintiff had discharged the burden of proof.

10. But these points have not been addressed by the appellant and the course of appeal is deviated by making arguments on other grounds. However, those submissions can also be collectively considered during the course of this discussion.

11. The learned counsel for the respondent / plaintiff submitted that despite the first defendant has pleaded that some of the properties have been purchased in the name of her son, no document has been produced to substantiate the same. The oral partition as alleged by the first defendant was also not proved. Hence, it is right for the Trial Court to believe the case of the plaintiff and decree the suit as prayed.



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12. The subsequent contention of the appellant / first defendant in his written statement is that the suit items 1 to 3 under 'A' schedule has been purchased by his son Munusamy and subsequent to the said purchase, he is in enjoyment of the same. Even in the written statement, he has not alleged about the date of purchase. During the cross-examination of D.W.1, he has stated that the patta in respect of the above properties stands in the name of the plaintiff's father and not in the name of his son. When the first defendant claims that there is a sale deed in favour of his son, he ought to have produced it as an evidence.

13. The learned counsel for the appellant / first defendant submitted that had the appellant was allowed to produce the additional documents by the First Appellate Court, he would have substantiated the sale obtained in the name of his son in respect of the suit items 1 to 3 under 'A' schedule. Even now, it is only a presumption that the additional documents might contain the sale deed in favour of the first defendant's son. There is no acceptable reason stated as to why the sale deed alleged to have been obtained in the name of his son has not been produced before the Trial Court itself.



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14. Despite the first defendant has pleaded in his written statement that the oral partition has taken effect in the year 1985, in the evidence, he has stated that the oral partition has taken effect in the year 1982. The witness who has been examined on the side of the first defendant as D.W.2 is said to be one of the Panchayatars for the oral partition. He has stated in his evidence that he is not even aware of the details of the suit property and that the patta for the suit property stands in the name of Rayar Gounder and he has been paying the kists for his life time. In fact, he has admitted in his cross examination that he does not know anything about the partition alleged to have taken place in Rayar Gounder's family. So D.W.2 cannot be of any help for the first defendant to prove the alleged oral partition and his own evidence and the documents produced by him also do not prove any exclusive right in respect of the suit items 1 to 3 in favour of his son Munusamy.

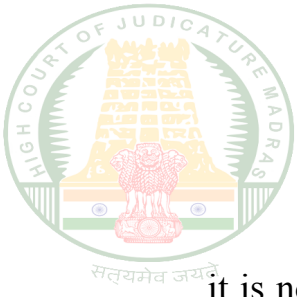
15. In the absence of any proof of the alleged sale in the name of the first defendant's son and the alleged oral partition of the year 1985, there is no reason to deny the plaintiff's joint right over the suit property. The



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defendants' contention of oral partition itself would show that the properties were joint family properties. The relationship between the plaintiff and the defendants is not in dispute. The plaintiff's father Rayar Gounder and his sister Kuttiammal who were the owners of 'A' and 'B' schedule properties have died intestate by leaving the plaintiff and the defendants 1 to 6 as their legal heirs. Not only positive evidence of the plaintiff, but also the deficiency in the evidence of the defendants would only go in favour of the plaintiff.

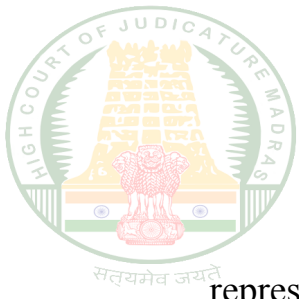
16. Though it is true that the Trial Court ought to have framed the issue as to whether the oral partition as claimed by the first defendant is true, the Courts below had dealt the above point by discussing the evidence of plea of oral partition. So the above technical difficulty alone cannot take away the merits of the decree passed by the Trial Court and confirmed by the First Appellate Court. As the appellant / first defendant did not establish why the suit is bad for non-joinder of parties and mis-joinder of cause of action, **the first substantial question of law is answered against the appellant.**



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17. Even though the appellant has pleaded about the partial partition, it is not explained which of the family properties have not been included in the suit. Without any detail, the first defendant cannot simply state that the suit is bad for partial partition and hence, **the second substantial question of law is answered against the appellant.**

18. So far as the third substantial question of law is concerned, apart from the plaintiff's positive evidence, the defendants' claim for partition itself proved that the properties are joint family properties. The fact that the first defendant did not produce any proof to show that suit items 1 to 3 are the self acquired properties of his son Munusamy would support the fact that the suit properties are the joint family properties of the plaintiff and the defendants 1 to 6. As the defendants had been in enjoyment of the suit properties by denying the rights of the plaintiff, the plaintiff has issued a pre-litigation notice before filing the suit. Despite the same was received by the defendants especially the contesting first defendant, he has not chosen to send any reply.



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19. The possession of one member of the joint family would only represent the possession on behalf of other members of the joint family, even though the first defendant might deny the right of the plaintiff in respect of the suit properties. As the plaintiff is also one of the legal heirs of the deceased Rayar Gounder and his sister Kuttiammal and the suit properties belonged to them, the plaintiff along with the defendants 1 to 6 is entitled to get equal share and that has been rightly appreciated by the Courts below and the suit has been decreed as prayed in respect of 1/7th share of the plaintiff. **The third substantial question of law is also answered accordingly.**

20. In the result, this Second Appeal is dismissed and the judgment and decree passed by the First Appellate Court in A.S.No.9 of 2006 dated 21.03.2011 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

27.01.2025

Speaking order

Index : Yes

Neutral Citation : Yes

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R.N.MANJULA, J.

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To

- 1.The Sub-ordinate Judge,
Gingee.
- 2.The Additional District Munsif,
Gingee.

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