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A.S.No.500 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 28.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.500 of 2025
and CMP.No.7475 of 2025

1.Varalakshmi
2.Nithya
3.Saritha

... Appellants

Versus

M/s.Avigna Private Limited
Rep by its Managing Director Mr.S.Rajasekaran
Having Office at No.1822, I Block
13th Main Road, Anna Nagar West
Chennai – 600 040

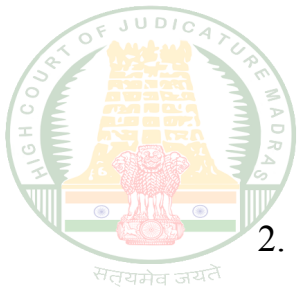
... Respondents

Prayer: Appeal filed under Section 96 of Code of Civil Procedure to set aside the order and decretal order dated 18.10.2024 made in I.A.No.3 of 2024 in O.S.No.256 of 2023 on the file of the learned Additional District Judge, Hosur.

For Appellants : M/s.J.Jyothi

JUDGMENT

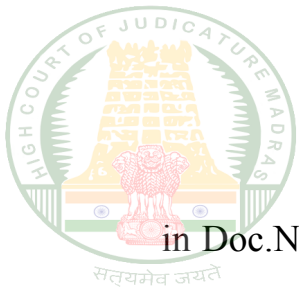
Challenging the order and decretal order rejecting the suit filed by the plaintiffs, the present appeal has been filed by the unsuccessful plaintiffs.



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2. The plaint has been proceeded seeking for partition of dividing the suit properties into twelve equal shares and allot one such separated share to the plaintiffs, deliver possession also for declaration declaring the sale deeds 836/2001 dated 07.06.2001, 3892/2005 dated 17.11.2005, 515/2006 dated 01.02.2006, 1288/2088 dated 07.03.2008, 1666/2008 dated 26.03.2008, 1667/2008 dated 26.03.2008, 7925/2011 dated 09.12.2011, 1739/2022 dated 07.02.2022, 7718/2022 dated 06.07.2022, 7719/2022 dated 06.07.2022, 11907/2022 dated 03.11.2022, 12467/2022 dated 17.11.2022 as null and void and for costs.

3. It is the case of the plaintiff that the suit properties were originally owned by Chinnappa as his ancestral properties. The said Chinnappa died leaving behind his wife/1st defendant, son/second defendant and daughter/6th defendant to succeed his property. After his death, the defendants 1, 2 and 6 are in joint possession of the suit properties. The plaintiffs are the children of the 6th defendant. According to them, the 6th defendant is acting against the interest of the plaintiff. There was difference of opinion between the plaintiff and the defendants 1, 2 and 6. When the matter stood thus, the defendants 1 to 5 already sold the property in respect of Item Nos.1 and 2 in favour of the 7th defendant by registered sale deed dated 07.06.2001



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in Doc.No.836/2001. Thereafter, the 7th defendant had already sold the property to the defendants 8 and 9 on 17.11.2005 in Doc.No.3892/2005, the defendants 8 and 9 sold the property to the 11th defendant and various transactions have been taken place and ultimately, the property have been subjected to various transactions. Hence, the suit by the plaintiffs.

4. An application has been filed by the 18th defendant under Order VII Rule 11(d) to reject the plaint on the ground that the 6th defendant herself did not have any right, therefore, the plaintiffs cannot claim partition on the basis of co-parcenary rights. That application has been opposed by the plaintiffs on the ground that the matter can be decided only at the trial of the suit.

5. Based on the above pleadings, the Trial Court framed the following issue for consideration:-

(i) Whether the plaint is liable to be rejected as barred by law?

6. Considering the oral and documentary evidences, the Trial Court has



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rejected the plaint holding that there is no cause of action and the plaintiffs have no

right. Challenging the above order, the present appeal is filed.

7. The learned counsel for the appellants submitted that the suit has been filed for partition, however, without allowing the parties to let in evidence, the entire suit has been rejected and the same cannot be permitted in the eye of law. Hence, seeks for allowing this appeal.

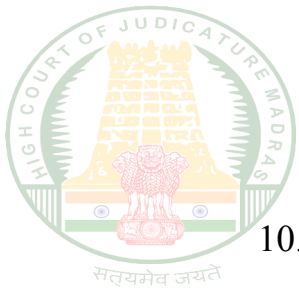
8. Heard the learned counsel for the petitioner and perused the materials placed on record.

9. Based on the above, the following issues arises for consideration in this appeal are:

(i) Whether the Trial Court was right in rejecting the plaint under Order VII Rule 11 of CPC?

(ii) Whether there was cause of action to maintain the suit for partition?

Points (i) & (ii)



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10. The suit has been filed by the plaintiffs who are the children of the 6th defendant. The entire pleadings in the plaint show that the suit properties are ancestral properties, therefore, they have share in the property. According to them, the 6th defendant/mother is also co-parcener, therefore, they have share in the property.

11. It is relevant to note that the rights of the daughter as coparcener as that of son is concerned, Hindu Succession (Amendment) Act, 2005 (39 of 2005) came into force with effect from 09.09.2005. The very proviso to Section 6 of the Hindu Succession (Amendment) Act, 2005 (39 of 2005) makes it very clear that the amendment of Section 6 will not affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before 20.12.2004. Therefore, any partition or alienation which has taken place prior to the cut off date, i.e., 20.12.2004 is saved from the amendment.

12. The very pleadings of the plaintiff makes it clear that the ancestral properties have been sold in the year 2001 and nothing remains for partition. When the ancestral property was already sold as early as 07.06.2001, i.e., prior to the cut



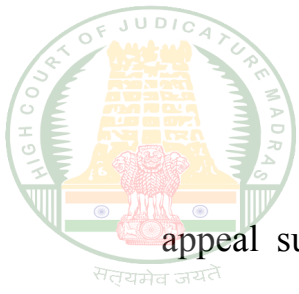
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off date, 6th defendant/mother claiming share in the property which was already sold in the year 2001 does not arise at all. Therefore, the plaintiffs seeking right under sixth defendant have no right as the properties have already been dealt in the year 2001 itself.

13. Considering the above, this Court is of the view that the Trial Court rejecting the plaintiff does not require interference as there was no cause of action and the very pleadings in the plaint clearly shows that from the year 2001 onwards, the properties have been sold to various person and ultimately the 15th defendant has purchased the property.

14. Such view of the matter, the plaintiff claiming partition is nothing but clear abuse of process of law and the plaintiffs are totally excluded from the property and the ancestral property had also been dealt by way of sale and nothing remains for partition. Accordingly, the points are answered.

15. In view of the above, I do not find any merits in this appeal and this



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appeal suit stands dismissed. No costs. Consequently, connected miscellaneous

petition stands closed.

28.03.2025

Index : Yes / No

Speaking/non speaking order

dhk

To,

1. The Additional District Judge,
Additional District Court
Hosur

2. The Section Officer
VR Section, Madras High Court

N. SATHISH KUMAR, J.



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