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S.A. No. 448 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2025

CORAM

THE HONOURABLE Dr. JUSTICE R.N.MANJULA

S.A. No. 448 of 2011
and M.P. No. 1 of 2011

Usha

...Appellants

Vs.

- 1.Sankari (died)
- 2.Manimegalai
- 3.Kannagi
- 4.Durga
- 5.Poongothai
- 6.Padmanaban
- 7.Janardanan
- 8.Vedammal
- 9.Ganapathy
- 10.Selvi
- 11.Prabhu

**[Respondents 6 to 11 not necessary
parties in Second Appeal, hence
notice may be dispensed with]**

- 12.Yasodha
- 13.Vijakumar

...Respondents



S.A. No. 448 of 2011

[R1-died, R12 and R13 are brought on record as legal representatives of the deceased R1 vide Court order dated 22.01.2025 made in C.M.P. Nos. 25557, 25561 and 25564 of 2024 in S.A. No. 448 of 2011 made by this Court.]

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 13.12.2010 made in A.S. No. 8 of 2010 on the file of the Sub Judge, Vellore, reversing the judgment and decree dated 14.12.2009 made in O.S. No. 711 of 2003 on the file of the District Munsiff Court, Vellore.

For Appellants : M/s.R.T.Sundari

For Respondents : R1 – died
Mr.P.Rathanavel [RR2 to 5, 12 & 13]
RR6, 7 & 9 – dismissed
vide Court Order dated 16.12.2022.
R8, R10, R11 – Name printed
- No appearance

J U D G M E N T

The Second Appeal has been preferred by the appellant /7th defendant challenging the judgment of the learned Sub Judge, Vellore dated 13.12.2010 made in A.S. No. 8 of 2010. The respondents /plaintiffs had filed a suit in O.S. No. 711 of 2003 on the file of the District Munsif Court, Vellore for claiming partition in the suit property. The said suit was dismissed on



S.A. No. 448 of 2011

14.12.2009 and on which, the First Appeal has been preferred in A.S. No. 8 of 2010 before the Sub Judge, Vellore and the same got allowed on 13.12.2010.

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Aggrieved over the same, the 7th defendant had preferred this Second Appeal.

2. On hearing the arguments of both sides, who had advanced their arguments, I feel this Second Appeal involves only the following substantial question of law:-

(1) Whether the plaintiffs are entitled to share as per Amendment Act 39 of 2005 of Hindu Succession Act, if on that date there is no property of joint family?

3. The short facts pleaded by the plaintiffs in the plaint are as under:

3.1. The suit property was originally owned by the paternal grandfather of the plaintiffs and the defendants 1 to 4, viz., Gangadhara Gounder. Two brothers of the plaintiffs, viz., Parthasarathy and Natarajan were no more, even at the time of filing the suit itself and hence, their legal representatives were brought on record as defendants 5 and 6.

3.2. The appellant/ 7th defendant claims to be a purchaser of a



WEB COPY



S.A. No. 448 of 2011

portion of the property from defendants and hence, he filed an application to implead himself as a party to the proceedings and thereby, he also got impleaded as 7th defendant.

3.3. The grandfather of the plaintiffs, viz., Gangadhara Gounder died leaving behind two sons, viz., Munisamy and Venugopal. As Venugopal has remained unheard for several years and he also died without leaving any legal heirs, the whole of the property has been inherited and enjoyed by the plaintiffs' father, viz., Munisamy. The said Munisamy died on 26.12.1959 by leaving behind his wife, four sons and two daughters, who are the plaintiffs herein, as legal representatives.

3.4. The mother of the plaintiffs, Visalakshi also died on 03.06.1989. The plaintiffs filed the suit for partition by claiming that as the legal heirs of the deceased father, they are entitled to shares in the suit property. In view of the Amendment to Hindu Succession Act, was brought in the year 2005, the plaint got amended on that basis and thus, the plaintiffs claim equal share in the suit property along with their brothers.



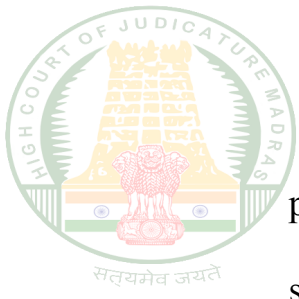
4. The brief averments in the written statement of the 1st defendant are as under:

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4.1. The date of death of Munisamy Gounder on 26.12.1959 is not admitted. He died prior to the coming into force of the year Hindu Succession Act, in the year 1956. Even during the life time of Munisamy Gounder, the joint family properties have been divided between the four sons and they have been allotted with each share. So, on the death of the Munisamy Gounder, there was no property left and hence, the plaintiffs cannot inherit any share in the suit property.

4.2. Before five years, the 2nd defendant along with the deceased brother Parthasarathy had sold the lands and house sites, which fell under their shares to a third party. The house sites have also been divided and they were sold by the defendants three years ago, despite the plaintiffs knew the sale deed did not question the same.

4.3. The 7th defendant purchased the suit property under a registered sale-deed dated 18.10.2002 from the defendants 1 to 6 and he is in possession and enjoyment of the same. The



WEB COPY



S.A. No. 448 of 2011

plaintiffs have got no right as they have lost their right. The suit has been filed by the plaintiffs at the instigation of some third parties and hence, the same should be dismissed.

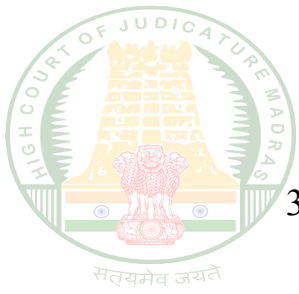
5. The 7th defendant written statement in brief :-

5.1. The defendants 1 to 6 are the absolute owners of the suit property purchased by the 7th defendant. The defendants in their right had entitled and sold the property in favour of the 7th defendant for a valuable consideration of Rs.1,00,000/-. Hence, the 7th defendant is a bonafide purchaser and hence, his right is protected under the law. The 7th defendant is in possession of the suit property and hence, the suit should be dismissed.

6. On the basis of the above pleadings, the learned trial Judge has framed the following issues:

“1. Whether the plaintiffs are entitled for partition in the suit properties?

2. Whether the 7th defendant is a bonafide purchaser for value if so her right, title and interest is to be protected under law?



3. To what other relief, the plaintiffs are entitled?

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7. During the course of trial, on the side of the plaintiffs, 2 witnesses were examined viz., P.W.1 and P.W.2 and 8 documents were marked viz., Ex.A1 to A8 and on the side of the defendants, 2 witnesses were examined viz., D.W.1 and D.W.2 and 4 documents were marked viz., Ex.D1 to Ex.D4.

8. On the conclusion of trial, considering the evidences available on both sides, the trial Court had dismissed the suit. Hence, the plaintiffs preferred a First Appeal before the First Appellate Court. The First Appellate Court has allowed the said First Appeal by setting aside the judgment of the trial Court and decreed the suit. Aggrieved over the same, the 7th defendant has filed the present Second Appeal challenging the judgment of the First Appellate Court.

Submission of the appellant:-

9. The learned counsel for the appellant /7th defendant submitted that an oral partition between the sons of the deceased Munisamy had taken place even during his life time and they had alienated the suit properties to third parties in accordance with the share obtained by them during the oral



partition. Since the oral partition had come into effect the plaintiffs were excluded from claiming any inheritance right as per the Hindu Succession Act (Amendment Act) 2005.

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10. He further submitted that the respondents /plaintiffs were kept quite when the properties have been sold in the year 1967 itself by some of the defendants to the third parties. Since the family partition had taken effect even during the life time of the deceased Munisamy, the inheritance does not open and hence, the suit should be dismissed.

11. The learned counsel for the respondents /plaintiffs submitted that the respondents /plaintiffs have filed the death certificate of the father in order to show that the father had died on 26.12.1959 and they are entitled to the right to inherit as per the Hindu Succession Act 1956. The defendants did not produce any documents to show that the oral partition had actually taken place during the life time of their father and they are in enjoyment for their separate share.

12. As the amendment was brought to the Hindu Succession Act in 2005,



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the plaintiffs had sought to amend the plaint by claiming equal share as per the amended Section 6 of the Hindu Succession Act and the First Appellate Court had rightly appreciated their entitlement. As the defendants did not prove the oral partition, the respondents/ plaintiffs, who are very much co-owners of the suit properties in their capacity as equal co-parceners, are also entitled to the equal share of the suit property and hence, the Second Appeal should be dismissed.

Discussion:-

13. The relationship between the plaintiffs and defendants is not in dispute. The origin of the suit property that it belonged to the paternal grandfather of the plaintiffs and their four brothers is also not in dispute. Even though the defendants have denied the fact that the father had died subsequent to the year 1956, during which year the Hindu Succession Act brought into force, the plaintiffs have produced the death certificate of their father to show before the First Appellate Court and got it marked as Ex.A9 in order to show that the father died on 26.12.1959.

14. The categorical contentions of the defendants including the 7th



S.A. No. 448 of 2011

defendant, who claims to be the subsequent purchaser from D1 to D6, is that there was an oral partition among the sons of late Munisamy and they have been allotted with the individual shares. In order to show that there was an oral partition and that each of the sons had been given with any specific share, no document had been produced.

15. The learned counsel for the appellant/7th defendant submitted that the sale deeds effected in the year 1967 and thereafter, in the year 2002 by the sons and the legal heirs would only show that there was an oral partition and that the sons alone got their shares in the suit property.

16. As the father of the plaintiffs died in the year 1959 and it has been established, the first defense taken by the defendants that the plaintiffs are not entitled to any right of inheritance has become unsuccessful.

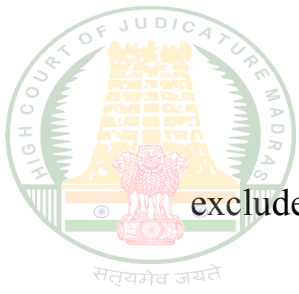
17. Admittedly, there is no registered partition deed executed between the father and sons. All that claimed by the appellant is only an oral partition between the sons of late Munisamy alone. In the absence of any written partition, the burden is on the part of the defendants to prove that there was an



oral partition and it had been acted upon and they were in enjoyment of their respective shares, subsequent to the alleged oral partition to the knowledge of the plaintiffs and the plaintiffs did not agitate the same.

18. Admittedly, the plaintiffs who are the daughters of late Munisamy are his legal heirs and they are entitled to the property left by their father Munisamy. It is neither the claim of the appellant that the deceased father had made any testamentary arrangement in respect of his share in the ancestral property nor the grandfather viz., Gangadhar Gounder had executed any such instrument.

19. It is a settled position of law that possession and enjoyment of one of the shares of the Hindu Joint Family would represent the possession and enjoyment of the other co-shares and the burden is on the defendants to prove that the plaintiffs at any point of time ousted from the said possession and enjoyment and thereafter, the suit property had become the individual property of the sons. Except the sale deeds that were executed in favour of the third parties, no other document has been produced to substantiate that there was an oral partition to the knowledge of the plaintiffs and the plaintiffs were



excluded from the sale.

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20. There is no evidence to show that the plaintiffs had the knowledge about the transactions done by their brothers in respect of the joint family properties. In view of the Hindu Succession Act amendment of the year 2005, the daughters also have become equal co-parceners along with the sons. In accordance with the amended Section 6 of the Hindu Succession Act. So, the respondents, who are the daughters are also entitled to 1/9th share each in the suit property.

21. The trial Court could not get convinced about the equal entitlement of the plaintiffs share in the suit property, as the plaintiffs did not establish the fact that the father died only after the year 1956. However, before the First Appellate Court the fact has been proved by producing the death certificate of their father and hence, there cannot be any quarrel about their right of inheritance that had opened in the year 1959 as well.

22. Regarding their entitlement for equal share, the position has been settled in the year 2005 by virtue of passing of the Amendment Act and

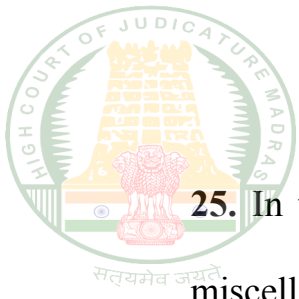


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amended Section 6 of the Hindu Succession Act. In the absence of any proof to show that there was a partition that had taken place prior to the amendment, it cannot be said that the respondents/ plaintiffs are not entitled to any share in the suit property. Insofar as the suit property is concerned, it is very much a joint family property enjoyed by the defendants as co-sharers along with the other co-sharers viz., the plaintiffs also.

23. The facts and the law before the Court have established that the plaintiffs are also the legal heirs of the late Munisamy and the suit property was the ancestral properties of their family and they are entitled to equal share. While so, the First Appellate Court cannot hold otherwise.

24. As the First Appellate Court has rightly appreciated the fact and law and has decreed the suit by determining the share of each of the plaintiffs at 1/9, I do not find any reasons for interference. As the contention of the appellant/ 7th defendant that there was no joint family properties were available on the date when the father of the plaintiffs died has not been established along with the fact that there was an oral partition, the substantial question of law is answered against the appellant.



S.A. No. 448 of 2011

25. In the result, the Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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18.09.2025

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

Maya

To

1. The Sub Judge, Vellore.
2. The Principal District Munsif Judge, Vellore.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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S.A. No. 448 of 2011

Dr.R.N.MANJULA, J.

Maya

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