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S.A. No. 1198 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2025

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 1198 of 2012

J.Anbazhagan

...Appellant

Vs.

J.Ramasamy

... Respondent

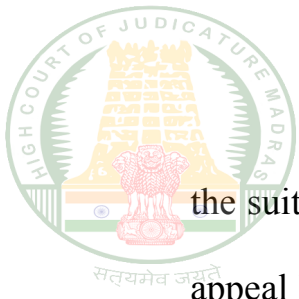
PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 10.11.2011 made in A.S. No. 22 of 2011 on the file of the Subordinate Judge Court, Hosur confirming the judgment and decree dated 25.02.2011 made in O.S. No.220 of 2008 on the file of the District Munsif Court at Harur.

For Appellant : Mr.P.Valliappan, Senior Counsel
For Mr.S.M.S.Sriram Narayanan

For Respondent : Mr.V.Nicholas

JUDGMENT

The appellant is the first defendant. The suit has been filed by the plaintiff for partition of his $\frac{1}{2}$ share in the suit property. The trial Court decreed the suit and passed a preliminary decree in respect of the $\frac{1}{2}$ share in



the suit property in favour of the plaintiff. The defendant filed an appeal. The appeal has also been dismissed by confirming the judgment of the trial Court.

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Now the defendants have preferred this second appeal.

2. The short facts pleaded by the plaintiff in the plaint in brief as under:-

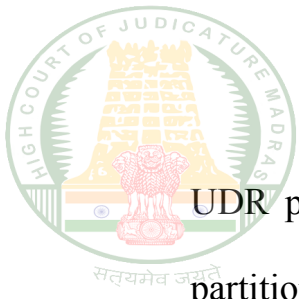
The plaintiff's father and the defendant's father, viz., Joki Gounder had two wives. The plaintiff born to Joki Gounder through his first wife, viz., Parvathammal and the defendant born to Joki Gounder through his second wife, viz., Pattu Ammal. The plaintiff's mother Parvathammal predeceased her husband Joki Gounder. Joki Gounder died 40 years ago. The suit property is the ancestral property and the plaintiff and defendant are enjoying the properties according to their convenience. The plaintiff is a retired teacher. When he was working as a teacher, the defendant alone was cultivating the entire property and dividing the profits in equal shares. Subsequent to the retirement of the plaintiff, he has taken up the cultivation of the portion of the property and the defendant is enjoying the property after digging up a Well. The plaintiff did not claim any share in the Well. The defendant claims 3 acres 59 cents in the suit property as though it is given to him through partition and he has also stated that the plaintiff is entitled to 1 acre 10 cents in the suit property, which is not correct. The plaintiff is entitled to $\frac{1}{2}$ share out of 4 acres



69 cents of the suit property. Since the defendant had got obtained Patta in respect of 3 acres 59 cents in the suit properties and attempted to tress-pass over the suit properties under the enjoyment of the plaintiff in Survey No.169/3 (which belongs to his mother), the plaintiff has filed this suit for partition.

3. The defendant resisted the suit by filing a written-statement, which is in brief :-

The plaintiff's mother died during delivery. The plaintiff's father married the defendant's mother, viz., Pattu Ammal, when the plaintiff was 8 years old. After four years, the defendant was born to Pattu Ammal. Pattu Ammal only arranged marriage for the plaintiff in the year 1974, subsequent to the death of his father and thereafter, there was an oral partition taken place in which an extent of 1 acre 98 cents in Survey No. 169/3 which stood in the name of the plaintiff's mother for an extent 1 acre in Survey No. 169/2 and totally 2 acres 98 cents was given to the plaintiff and the plaintiff is enjoying both the properties by having a common sub-divided Survey No. 169/2A. The remaining extent in Survey No. 169/2 measuring an extent of 3 acres 59 cents was allotted to the share of the defendant and he is enjoying the same by getting a sub-divided Survey No. 169/2B. So the plaintiff and the defendant are in enjoyment of their respective shares separately after the partition. The



UDR patta has been effected in the year 1987 in accordance with the oral partition. In view of the prior notice, the plaintiff has filed a suit and there is no merits.

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4. On the basis of the above pleadings, the trial Court has framed the following issues:-

- (1) Whether the plaintiff is entitled to obtain at first instance, judgment by allocating one portion of the suit property, dividing it into 2 equal parts, and on that basis, to obtain a separate interest and to file a petition for the final judgment?
- (2) Whether the permanent injunction relief sought by the plaintiff can be granted against the defendant?
- (3) Is the contention of the defendant that the suit property is a separate property vested in the defendant and the plaintiff has no interest therein?
- (4) What other remedies are available to the parties?
- (5) Are the documents changed in the revenue department in accordance with the fact that the verbal part has taken place?

5. During the course of the trial, three witnesses were examined as PW1 to PW3 and Exs.A1 to A3 were marked. On the side of the defendant, two



witnesses were examined as DW1 and DW2 and Ex.B1 was marked.

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6. At the completion of the trial Court and considering the evidence on record, the trial Court has decreed the suit and passed a preliminary decree for partition in respect of the $\frac{1}{2}$ share in the suit property. The first appeal preferred by the defendant was also dismissed by confirming the judgment of the trial Court. Aggrieved over the same, the defendant has filed this second appeal.

7. The learned counsel for the appellant submitted that the trial Court did not consider the admissions given by PW1, who is the plaintiff during his evidence and no evidenciary value has been given to the separate patta effected in the names of the plaintiff and the defendant and that their respective shares have been sub-divided. Since the plaintiff's mother had predeceased his father the plaintiff's father would become the legal heir of his mother's property in Survey No. 169/3 and after the demise of his father, the share so inherited by his father should be inherited by the plaintiff and the defendant as his legal heirs. The plaintiff did not include the above property in the partition suit and that would make the suit bad for partial partition, in case the plaintiff claims that there was no oral partition.



8. The courts below had overlooked Section 15(1) of the Hindu Succession Act, 1956 before holding that the plaintiff has the exclusive right in the lands in Survey No.169/3, which belonged to his mother.

9. The learned counsel for the respondent submitted that the suit is only in respect of Survey No.169/2 and insofar as the lands in Survey No.169/3 is concerned, the defendant cannot be the legal heir. The Courts below have rightly appreciated the evidence of DW1, where he has stated that no partition deed had been effected so far and also the evidence of DW2, who had stated in his cross-examination that he did not know how the partition between the plaintiff and the defendant had taken place.

10. Based on the above submissions of both side counsels and on perusal of records, the Second Appeal had been admitted on the following substantial questions of law:-

(1) When the oral partition pleaded by the appellant had been clearly proved by virtue of Exs.B1 to B5 - Patta's & Chitta's coupled with the admissions made by PW1 are the Courts below correct in law in disbelieving the plea of oral partition?

(2) Whether the Courts below have correctly appreciated the



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law of Succession to the immovable property of a female Hindu, prior to the coming into force of Hindu Succession Act, 1956?

(3) Whether the Husband of a female Hindu, has a share over the property of the female Hindu, when they have issues, both prior to and after coming into force of Hindu Succession Act, 1956, are the courts below correct in law in holding that the property in S.No.169/3 exclusively belonged to the respondent, overlooking the fact that the appellant will have 1/4th share?

11. For the sake of convenient discussion, the parties are referred to as per their rank and capacity in the suit.

12. The relationship between the parties are not denied. The fact that the suit property in Survey No. 169/2 was the property belongs to the father of the plaintiff and defendant is also not in dispute. The mother of the plaintiff had pre-deceased her husband, who is the father of the plaintiff. Though the plaintiff has contended that the suit property remains an undivided property, the defendant has taken up the stand that there was an oral partition under



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which the suit property had already been partitioned along with other property stood in the name of the plaintiff's mother and accordingly, the plaintiff had been given with an extent of 2 acres 98 cents and the defendant has been given with 3 acres 59 cents in the suit properties. Only in pursuant to the oral partition and the separate enjoyment the Pattas and Chittas for the respective shares of the plaintiff and the defendant have been effected separately. The plaintiff who was examined as PW1 has deposed in his evidence that they have been in enjoyment of the different portions in the suit properties and an extent of 3 acres 59 cents is under the enjoyment of the defendant and 1 acre is under the enjoyment of the plaintiff.

13. The plaintiff has further stated that the whole of 1 acre 98 cents in Survey No. 169/3, which was in the name of the plaintiff's mother have been annexed with 1 acre in Survey No. 169/2 and for the total extent of 2 acres 98 cents, a new Survey No. 169/2A was given. The defendant has been given with an another sub-divided Survey No. 169/2B in respect of the remaining 3 acres 59 cents in Survey No. 169/2. As the plaintiff has claimed that both the plaintiff and the defendant had been in enjoyment of the different portions in the suit properties for their convenient enjoyment, separate UDR Pattas have been given in the names of the plaintiff and the defendant in respect of the specified extent pursuant to the oral partition made in the year 1987. The suit



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has been filed in the year 2008. Till such time, the plaintiff did not raise any objection or file any appeal before the appropriate authority challenging the UDR patta that has been given separately by allotting separate sub-divided survey numbers in the names of the plaintiff and the defendant respectively.

14. For the reasons best known, the Courts below did not deal with the above admissions given by the plaintiff in his evidence but reliance was placed on evidence adduced by the defendant's witnesses DW1 and DW2 in their cross-examinations. Even while cross-examining DW1 it was suggested to him that according to the partition, whether he had invited the plaintiff to execute the partition deed. For which, the defendant had answered that the plaintiff did not come forward to execute the sale deed. The above suggestion would also show that the plaintiff has accepted the oral partition, but what remains is that reducing it in writing and get it executed as a partition deed. The other witness, who was examined as DW2 is said to be a panchayatdar, who stood as a witness during the family partition. Though the above witness has stated in his chief examination about the factum of oral partition, in the cross-examination he has stated that he did not know what properties were allotted to the plaintiff and the defendant.

15. The learned counsel for the appellant submitted that DW2 has been



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examined 38 years after partition and it is quite possible that he could not remember the details of partition, but the fact that the sub-division had taken in the names of the parties, ought not to have been ignored by the Courts below. In support of his above contention, he relied on the contention of this Court held in the case of *Jagannathan -vs- Ramachandran* reported in **2011 (3) MWN (Civil) 149**, wherein it is held that though the revenue records would not confer any title the patta transferred in the names of the individuals can be considered as a proof for oral partition.

16. In the said case, the parties have admitted the oral partition. In the instant case, the plaintiff denied the oral partition. However, he could not give any possible explanation as to why he did not prefer any appeal challenging the sub division that has taken effect during survey and separate Patta that had occurred in the name of the plaintiff and the defendant separately.

17. The enjoyment of the plaintiff over the whole property belonged to his mother would probablize the oral partition, in view of the fact that the defendant is also the legal heir of the father's share inherited from the plaintiff's mother. To put it otherwise, the plaintiff did not choose to include the properties in Survey No. 169/3 by claiming separate right over the same.

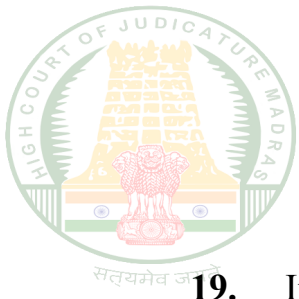
Despite the defendant can also have 1/4th right in Survey No. 169/3, if there



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was no partition had taken place in the family partition, the plaintiff did not consider the said fact and include the said property also in the suit for partition. The plaintiff cannot file a suit for selective partition in respect of one property by ignoring the other properties, if he pleads a complete case of 'no partition' till the date of the suit.

18. Despite the Patta and Chitta had been effected in the name of the plaintiff and the defendant and PW1 has also given evidence confirming the same and his conduct of not preferring any revenue appeal over the individual UDR Patta given in the name of the plaintiff and defendant in respect of the specified extent, the trial Court and the first appellate Court had failed to appreciate the above evidence. All that the Courts below had done was to discuss only the cross-examination of DW1 and DW2 by ignoring the evidence adduced by the plaintiff during his cross-examination. Had his evidence been appreciated collectively, it would have been possible for the Courts below to hold that there was an oral partition taken place between the plaintiff and the defendant and only in pursuant to that they have been in enjoyment of two different portions and that the individual Patta and Chitta had been effected in their names separately during UDR survey 1987. **So the substantive substantial question No.1 is answered in favour of the appellants.**



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19. Insofar as the other properties in Survey No. 169/3 is concerned, the submission made by the defendant is that the defendant would also become a legal heir of the property stood in the name of the plaintiff's mother. Though the defendant is not a son born to the plaintiff's mother, the plaintiff's father would get a share in his mother share as he has predeceased his mother. In that case, the defendant also become a legal heir for being the son of plaintiff's father. Hence, the defendant and plaintiff both will get equal shares in the $\frac{1}{2}$ share inherited by the plaintiff's father in the property belonged to his mother.

20. Even though the son and husband of a Hindu Female are Class-I legal heir to inherit the immovable property of a Female Hindu as per Section 15(1) of the Hindu Succession Act, 1956, the Courts below did not appreciate the above position of law in a proper perspective. Had it been understood in a right perspective, the Courts would have arrived at a conclusion that the plaintiff have filed a suit for partial partition without including the other property in Survey No. 169/3, which stood in the name of his mother. **Hence, the substantial question of law Nos. 2 and 3 are also answered in favour of the appellant.**

21. The claim with regard to the Survey No. 169/3 was made by the



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defendant as an alternate plea on the arguments that if the plaintiff denied the oral partition then he ought to have included the other property in Survey No.169/3 in a suit for partition filed by him. However, the materials produced before the Court, especially for the sub-division which had taken place in respect of the suit property under the enjoyment of the plaintiff and the defendant respectively and the admissions given by the plaintiff himself that both the parties are separate enjoyment of the portion and for which separate patta and sub-division which has taken place, would only show that the plaintiff is not entitled to get the relief sought by the plaintiff. As the Courts below did not appreciate the evidence properly, but misguided themselves the judgment of the first appellate Courts confirming the judgment of the trial Court is liable to be set aside.

22. In the result, this second appeal is allowed and the judgment of the Subordinate Court, Harur made in A.S. No.22 of 2011 dated 10.11.2011 is set aside and the suit is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.01.2025

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



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1. The Subordinate Judge Court, Hosur
2. The District Munsif Court at Harur.
3. The Section Officer,
V.R. Section,
High Court, Madras.

R.N.MANJULA, J.

Maya

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Dated : 27.01.2025