



A.S.No.136 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2025

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

A.S.No.136 of 2022

K.Rajamani

.. Appellant

Vs.

R.Sivani

.. Respondent

PRAYER: Appeal Suit is filed under Section 96 read with 41 Rule 1 & 2 of C.P.C, to set aside the judgment and decree dated 23.12.2021 made in O.S. No. 227 of 2014 on the file of the learned First Additional District Judge, Erode by allowing this First Appeal.

For Appellant : Mr.V.Anandhamoorthy

For Respondent : No appearance

JUDGMENT

Appeal preferred by the defendant who has lost partition suit filed by his daughter.



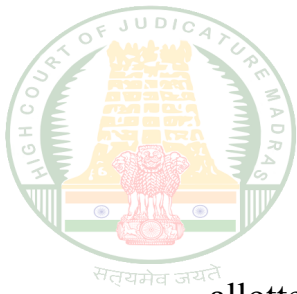
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2. The brief facts involved in the appeal are as follows:

The suit property is situated in Koogalur Village, Gobichettipalayam Taluk, Erode District. The plaintiff, who is the daughter of the defendant, filed a suit for partition alleging that she was born to the defendant on 30.11.1998. Due to misunderstanding between her parents, they got separated and a decree of divorce was granted. The plaintiff has been residing with her mother since then. At the time of filing the suit, she was a minor and was subsequently declared a major on 29.08.2017.

3. It is contended that the suit property is ancestral in nature, which was allotted to her father/defendant and being ancestral property, she is a coparcener under Section 6 of Hindu Succession Act, is entitled for $\frac{1}{2}$ share in the property. The suit was contested by the defendant on the ground that the property was allotted to him by way of oral partition between himself, his father and his brother. The portion of the property allotted to him was subsequently improved by him using funds availed as a loan from the Tamil Nadu Mercantile Bank. In fact, the property was



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allotted to him pursuant to an earlier partition suit in O.S.No.211 of 1991, on the file of the District Munsif Court, Gobichettipalayam, between the defendant and his sibling. After the said partition, the property became the absolute property of the defendant and therefore, lost its character as coparcenary property.

4. Based on the pleadings, the trial Court had framed the following issues:-

1. Whether the plaintiff is entitled for partition as prayed for?

2. Whether the plaintiff is entitled for permanent injunction as prayed for?

3. To what relief?

5. To substantiate the claim for partition, the plaintiff examined herself and marked five (5) exhibits. On behalf of the defendant, two witnesses were examined and two (2) Court exhibits were marked, namely: (i) the Statement of Account for the loan availed by the defendant in Tamil Nadu Mercantile Bank and (ii) the Memo of Deposit of Title Deed.



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6. The trial Court, after considering the facts and the evidence adduced by both parties, allowed the suit and passed a preliminary decree, holding that the plaintiff is entitled to $\frac{1}{2}$ share in the suit property, along with the relief of permanent injunction against the defendant's men and agents. Being aggrieved, the present appeal has been filed on the ground that the desertion of the plaintiff's mother was voluntary and as a result of her desertion, the life of the defendant got ruined. It is further contended that the plaintiff been used as a tool by the estranged wife to create and cause harassment to the defendant.

7. The property was improved by availing a loan from the bank and the trial Court failed to take note of the fact that such improvements made by the defendant disentitle the plaintiff from claiming equal share in the property. Further, the plaintiff, having failed to discharge her duties as a daughter, cannot claim any share in the property. It is also contended that in view of the judgment and decree passed in O.S.No.211 of 1999, the earlier round of partition litigation between the siblings of his father, the character of the property has now become absolute and not



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coparcenary property. Therefore, the plaintiff is not entitled to any share under Section 6 of the Hindu Succession Act.

8. The learned counsel for the appellant submitted that Ex.A1 and Ex.A2- the Judgment and Decree passed in O.S.No.211 of 1999, would clearly show that the property described in the schedule to the earlier suit was allotted to the father of the defendant. On such division of the property, the character of the property ceased to be coparcenary in nature. Further, the Statement of Accounts marked Exs.X1 and X2, would clearly show that the second schedule property was mortgaged by depositing the title deed to avail a loan for business purpose and that the said loan was utilized for the construction of the house in the schedule property. The dues under the said loan were fully discharged by the defendant/appellant. These improvements ought to have been taken note before passing preliminary decree. The trial Court having failed to consider all the above facts. Hence, the preliminary decree passed against the defendant/appellant is liable to be set aside.



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9. After receipt of the notice, there is no representation for the respondent, though her name has been printed in the cause list.

10. This Court, on perusal the records, particularly Ex.A1, the Judgment passed in O.S.No.211 of 1999, by the District Munsif Court, Gobichettipalayam, indicates that it is a suit for partition between P.M.Komarasamy, the father of the present defendant, against Sigamani and Rajamani (defendant), who are the sons of P.M.Komarasamy. Pursuant to the decree passed in the partition suit in O.S.No.211 of 1999, it appears that an oral partition had taken place between the father and his two sons through a panchayat and thereafter, the parties have approached the Court and got the properties divided as per terms.

11. However, this fact alone does not alter the character of the property, which is admittedly inherited from the ancestral and retains the ingredients of coparcenary property. On separation of the property and allotment of a share to the defendant, his daughter becomes entitled to a share in the said property under the amended Section 6 of the Hindu Succession Act.



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12. Therefore, the trial Court has rightly considered the legal position and the admitted facts and held that the partition of the joint property by virtue of an oral settlement through panchayat on 18.01.1999 and subsequent decree passed in O.S.No.211 of 1999, do not affect the coparcenary nature of the property. The defendant, who has inherited the property from ancestor, is bound to share with his legal heirs and cannot claim it to be his absolute property.

13. Regarding the improvements and borrowings, the same have been established through Exhibits X1 and X2. However, the trial Court has rightly observed that the loan was availed after the partition decree and therefore, the defendant cannot deny or deprive the plaintiff of her rightful share in the property on the ground of such subsequent encumbrance.

14. This Court is of the view that insofar as any improvements or investments made by the defendant, to that extend, he can claim reimbursement from the plaintiff at the time of passing of final decree,



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provided he is able to establish that such amounts were invested by him for the protection or improvement of the suit property. Except for the above observation, this Court finds that the defendant/appellant has no valid reason or ground to resist the division of the property as per the preliminary decree and hence, the Appeal Suit is dismissed with the above observation. There shall be no order as to costs.

04.06.2025

Index: Yes/No
Speaking/Non Speaking order
Internet: Yes
Neutral Citation: Yes/No
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To

- 1.The First Additional District Judge, Erode
- 2.The Section Officer, High Court of Madras, Chennai.

DR.G.JAYACHANDRAN,J.



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