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A.S.No.182 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-06-2025

CORAM

THE HONOURABLE MR JUSTICE M.JOTHIRAMAN

A.S.No.182 of 2021

P.Pandian
S/o.Ponnusamy Gounder
Bangalow Street, Thandarambattu Village and Post,
Thandarampattu Taluk, Tiruvannamalai District.

Appellant(s)/2nd Defendant

Vs

1.Malliga,
W/o.Mayavan,
Thandarambattu Village and Post,
Tiruvannamalai District.

2.Saradha,
W/o.Rajendran,
Narayanakuppam Village, Thandarampattu Taluk,
Tiruvannamalai District.

3.Alamelu
W/o.Elumalai
Amaranthaputhur Village, H/o.Ravanthavadi Village,
Thandarampattu Taluk, Tiruvannamalai District.

Respondent(s)/Plaintiff(s)



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WEB COPY Appeal Suit filed under Order 41 Rule 1 r/w Section 96 CPC against the judgment and decree dated 23.02.2021 passed in O.S.No.42 of 2015 on the file of the Additional District Court, Tiruvannamalai.

For Appellant(s): Mr.P.Singaram

For Respondent(s): Mr.K.A.Ravindran

ORDER

Unsuccessful second defendant has preferred the present appeal against the judgment and decree dated 23.02.2021 passed in O.S.No.42 of 2015 on the file of the Additional District Court, Tiruvannamalai.

2. The suit is filed seeking a preliminary decree for partition by granting 3/4th share to the plaintiffs. The trial Court decreed the suit as prayed for.

3. The parties are referred to as per rankings in the trial Court.



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WEB COPY 4. The brief case of the plaintiffs is as follows:

4.1 The suit property originally belonged to one Muthu Gounder. He has two sons *viz.* Ponnusamy Gounder and Periyasamy Gounder. Muthu Gounder died intestate and after his demise, the said Ponnusamy Gounder and Periyasamy Gounder jointly enjoyed the suit properties. Out of the income derived from the joint family, they have purchased some other properties. Subsequently, they partitioned the properties under a registered partition deed dated 19.06.1966.

4.2 Item No.10 of the suit property is the self-acquired property of Ponnusamy Gounder. He died intestate on 04.09.1996 leaving behind the plaintiffs and the defendants has his legal heirs to succeed the estate left by him. The first defendant is the mother of the plaintiffs and the second defendant is the brother of the plaintiffs. The patta for Item No.10 of the suit property stands in the name of the plaintiffs and the defendants. The patta for the remaining Item Nos.1 to 9 of the suit properties was transferred to the name of the second defendant. When the defendants were trying to



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alienate Item Nos.1 to 9 of the suit properties to third parties, the plaintiffs issued Advocate notice to the defendants on 22.05.2015. During pendency of the suit, first defendant/Kullammal, died intestate on 13.06.2016 leaving behind the plaintiffs and the second defendant to succeed her estate. So, the plaintiffs are entitled to 3/4th share over the suit properties. Hence the suit.

5. The brief case of the second defendant is as follows:

5.1 The written statement filed by the second defendant was adopted by the first defendant. All the suit properties originally constituted as joint family properties. Item No.10 of the suit properties is also a joint family property. At the time of death of Ponnusamy Gounder, he did not leave any properties to be inherited by the plaintiffs nor the second defendant.

5.2 The second defendant is in exclusive possession and enjoyment of the suit properties in his own rights and the plaintiffs are not entitled to any share.



5.3 The second defendant has performed the marriage of his sisters by spending considerable amount and they were given sufficient Sridhana.

He was only taking care of his parents. Due to some dispute between him and his sisters with regard to the marriage of his daughters, they filed the suit for partition. Hence, the suit has to be dismissed.

6. Based on the above pleadings, the trial Court framed the following issues:

- (1) Whether the plaintiffs are entitled to claim 3/4th shares in the properties as prayed for?
- (2) Was there any oral partition arrived and effected in between the plaintiffs and second defendant, during the life time of their father Ponnusamy, as alleged in the written statement?
- (3) Whether the second defendant alone is in exclusive possession and enjoyment of all the suit properties, in his own right, as alleged by him?
- (4) Whether the suit was filed by the plaintiffs without any basis, against second defendant?
- (5) To what other reliefs plaintiffs entitled for?

7. On the side of the plaintiffs, two witnesses were examined viz. first plaintiff/Malliga was examined as PW1 and Elumalai was examined as



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PW2 and Exs.A1 to A8 were marked. On the side the defendants, two witnesses were examined viz. second defendant/Pandian was examined as DW1 and Venkataraman was examined as DW2 and no documents marked.

8. Findings of the trial Court:

8.1 The oral partition pleaded by the second defendant stands unestablished by cogent pleadings and relevant evidence. The standing of the patta regarding Item No.10 of the suit properties in the name of the plaintiffs and the defendants would strengthen the case of the plaintiffs. Item No.10 of the suit properties was purchased from and out of the income derived from the Item Nos.1 to 9 of the suit properties.

8.2 The evidence of Venkataraman (DW2) reveals that the plaintiffs and the defendants are enjoying the suit properties and till date they have not partitioned the same. The suit properties have to be taken only as an ancestral property, over which, the parties would be obviously entitled to a partition.



9. The points for determination arise in this appeal are that:

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(1) Whether the oral partition effected between the parties as claimed by the second defendant? and (2) Whether the second defendant alone is in exclusive possession and enjoyment of all the suit properties?

10. The learned counsel appearing for the appellant/second defendant would submit that the second defendant performed the marriage of his sisters by spending considerable amount and the plaintiffs were given sufficient Sridhana articles at the time of marriage; after performing the marriage of the plaintiffs, the second defendant, his father along with the consent and knowledge of the plaintiffs brought about an oral partition in the family with a direction that the second defendant must maintain his father and mother by providing all basic comforts to them; the second defendant accepted the same and he is in exclusive possession and enjoyment of the suit properties in his own right and therefore, the plaintiffs are not entitled to any share in the suit properties.

11. *Per contra*, the learned counsel appearing for the respondents/plaintiffs would submit that Item No.10 of the suit properties is



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the self-acquired property of Ponnusamy Gounder; Item Nos.1 to 9 of the suit properties were allotted to the share of Ponnusamy Gounder as “A” schedule property under the registered partition deed dated 19.06.1996. Ponnusamy Gounder died intestate on 04.09.1996 leaving behind the plaintiffs and the defendants as his legal heirs to succeed the estate left by him; the plaintiffs and the defendants are jointly enjoying the suit scheduled properties without any division in a manner known to law till date and therefore, the plaintiffs are entitled for share in the suit properties.

12. This Court has considered the submissions made on either side and perused the records.

13. It is not in dispute that one Muthu Gounder had two sons *viz.* Ponnusamy Gounder and Periyasamy Gounder. On a perusal of Ex.A1 partition deed dated 19.06.1996, it shows that there had been a partition between the said Ponnusamy Gounder and Periyasamy Gounder and in the partition, the properties covered under “A” schedule items therein were allotted to the share of Ponnusamy Gounder and the properties covered under “B” schedule therein were allotted to Periyasamy Gounder. It is also



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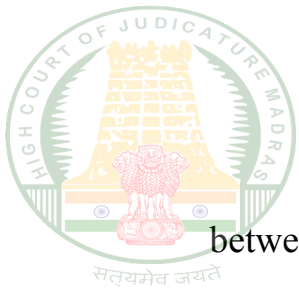
not in dispute that Item Nos.1 to 9 of the suit properties were allotted to

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It is the specific case of the plaintiffs that Item No.10 of the suit properties was purchased by their father.

14. On the contrary, the second defendant contended that it was purchased by him in the name of his father. In this regard, Pandian (DW1), the second defendant, in his cross-examination categorically admitted that Item No.10 of the suit properties was also an ancestral property, but, he deposed that the entire suit schedule properties were allotted to him in the oral partition.

15. In the pleadings of the second defendant, he would plead that there was an oral partition and the suit properties were given to him in consideration that he performed the marriage of the plaintiffs by providing sufficient Sridhana articles and he would take care of their family. In order to prove the said oral partition, Venkataraman was examined as DW2, who, in his cross-examination categorically admitted that the partition entered



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between Ponnusamy Gounder and Periyasamy Gounder under Ex.A1.

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Venkataraman (DW2) also admitted that the plaintiffs and the defendants were jointly enjoying the suit properties and till date they have not partitioned the same and he did not know when an oral partition effected.

16. In order to prove the factum of oral partition, the second defendant has not examined any other independent witness. The evidence of Venkataraman (DW2) alone is not sufficient to prove the oral partition as pleaded by the second defendant. Venkataraman (DW2), in his evidence has categorically admitted that all the plaintiffs and the defendants were enjoying the suit properties and thereby, the oral partition has not been established and therefore, the suit properties are joint family properties. Hence, the suit properties have to be taken as an ancestral property, the plaintiffs are entitled for partition.

17. It is pertinent to mention that the daughters were also entitled to get share in the ancestral properties on par with the male issues. At this juncture, it is relevant to site Section 6 of the Hindu Succession (amended)



Act, 2005:

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“[6. Devolution of interest in coparcenary property.-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive



at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.-For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect-

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.-For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may



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be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.-For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.]”

18. The plaintiffs have established that Item Nos.1 to 9 of the suit properties are ancestral properties and Item No.10 of the suit properties has been purchased out of the income derived from Item Nos.1 to 9 of the suit properties and therefore, they are entitled to 3/4th share in the suit properties.

19. It is apropos to mention that the plea of ouster taken by the second defendant in the case of co-owner, the burden of proof heavily lies on him. At this juncture, it is relevant to site the judgment of the Apex Court in the case of **Vellapandian vs. Duraiappan and others** reported in **MANU/TN/0444/2022**, wherein, it has been held that broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co-owner. i) declaration of hostile animus, (ii) long and uninterrupted possession of the person pleading ouster, and (iii) exercise of right of



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exclusive ownership openly and to the knowledge of other co-owner. By applying the ratio laid down in the above judgment, the second defendant has not pleaded about the declaration of long and uninterrupted possession and exercise of right of exclusive ownership openly and to the knowledge of the plaintiffs.

20. In view of the foregoing discussions, this Court finds no reason to interfere with the judgment and decree passed by the Court below. Since there is no merit in this appeal, the same is liable to be dismissed.

In the result, this appeal suit is dismissed by confirming the judgment and decree dated 23.02.2021 passed in O.S.No.42 of 2015 on the file of the Additional District Court, Tiruvannamalai. No costs.

17-06-2025

nsd
Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No



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To

The Additional District Judge,
Tiruvannamalai.



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M.JOTHIRAMAN, J.

nsd

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