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S.Nos.507 & 512 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	08.07.2025
<i>Pronounced on</i>	.08.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal Nos.507 & 512 of 2019
and C.M.P.Nos.8547 & 8597 of 2019

Second Appeal No.507 of 2019

Nirmala Devi

.. Appellant

versus

Sumaya Subath

.. Respondent

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the Judgment and Decree dated 19.04.2018 in A.S.No.3 of 2014 on the file of III Additional District and Sessions Court, Coimbatore, confirming the Judgment and Decree dated 26.02.2013 in O.S.No.1216 of 2010 on the file of the III Additional subordinate Court Coimbatore.

Second Appeal No.512 of 2019

1.Nirmala Devi

2.Sasiseelan (Mentally retarded)



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3.Mouli Kannan

4.Ravi Krishnan

.. Appellants

1.Gangadaran

2.Rajendran

3.K.B.Venugopal,

4.P.S.Chitra Devi

5.Easwaran

6.Rajbharath

... Respondents

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the Judgment and Decree dated 19.04.2018 in A.S.No.29 of 2014 on the file of III Additional District and Sessions Court, Coimbatore, confirming the Judgment and Decree dated 26.02.2013 in O.S.No.1217 of 2010 on the file of the III Additional Subordinate Court Coimbatore.

For Appellant in both appeals : M/s. R. Siddharth

For Sole Respondent

in S.A.No. 507 of 2019

: Mrs.Udaya P.S.Menon

For Respondents

in S.A.No.512 of 2019

: Mrs.Udaya P.S.Menon for R8

No appearance for R7

Not ready in notice for

R1 to R6 & R9



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COMMON JUDGMENT

WEB COPY These Second Appeals arises out of the judgment and decree dated 19.04.2018 made in A.S.No.3 of 2014 and A.S.No.29 of 2014 on the file of the III Additional District and Sessions Judge, Coimbatore, confirming the judgment and decree dated 26.02.2013 made in O.S.Nos.1216 of 2010 & 1217 of 2010 on the file of the III Additional Subordinate Judge, Coimbatore.

2.The defendant in O.S.No.1216 of 2010 on the file of III Additional Sub Court at Coimbatore, is the appellant in S.A.No.507 of 2019. The plaintiffs in O.S.No.1217 of 2010 is the appellant in S.A.No.512 of 2019.

3. For the sake of convenience, the parties herein after are referred to, as per their ranking in the trial Court.

4.The above suit in O.S.No.1216 of 2010 had been filed by the plaintiff for the relief of possession, damages and permanent injunction.



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5. The suit in O.S.No.1217 of 2010 had been filed by the plaintiff for the relief of partition, maintenance and rendition of accounts.

6. According to the plaintiff in O.S.No.216/2010 is that she purchased the suit properties from the husband of the defendant namely Selvaraj on 31.01.2001. The property tax assessment has been changed in the name of plaintiff and she has inducted tenants in the suit property. On 13.05.2001 trespassed into the suit property for which the plaintiff lodged a police complaint. Since no step was taken by the police she was constrained to file a private complaint before the Judicial Magistrate Court, Coimbatore. On receipt of the said complaint the police registered a criminal case against the defendant. On 13.02.2001 the plaintiff issued a legal notice to the defendant to hand over possession of the suit property and for damages at the rate of Rs.250/- per day. A reply was sent by the defendant with false allegations. Hence, she was constrained to file the above suit for delivery of possession and permanent injunction.

7. Per contra, it is the contention of the defendant that she and her



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three sons are the absolute legal heirs of one Selvaraj who is the previous owner of the suit property. They filed a suit for partition, rendition of accounts and to pay maintenance to the defendant against her husband Selvaraj before the Principle Sub Court, Coimbatore in O.S.No.386 of 1994. Her further contention is that the plaintiff has purchased the suit property on 31.01.2001 from the said Selvaraj. The suit property being an ancestral property and suit for partition was filed in the year of 1994 and by virtue of passing final decree in the partition suit, the sale deed executed in favour of the plaintiff by Selvaraj is void. Hence, prayed for dismissal of the suit.

8.This defendant in O.S.No.1216 of 2010 has filed the suit in O.S.No.1217/2010. According to her, she is the wife of the 1st defendant (Selvaraj) plaintiffs 2 to 4 are their sons. The 6th defendant is the brother of the 1st defendant. Defendants 2 to 5 are the tenants in the 1st item of the suit property. Defendants 7 and 8 are the children of the 6th defendant. The 9th defendant is the purchaser of the 2nd item of the suit property. The 10th defendant is the purchaser of the 1st item of the suit property. The further case of the plaintiff in O.S.No.1217/2010 is that her marriage with the 1st



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defendant was solemnized in the year 1918 and they live together till Feb

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1994. The 1st defendant was addicted to liquor and ill-treated the 1st plaintiff. Hence, the 1st plaintiff left the matrimonial home and was living with her parents along with her children.

9.The further contention of the plaintiffs is that the suit properties are the ancestral properties of the plaintiffs and defendants 1, 6 to 8. The 1st item of the suit property belongs to the plaintiff and the 1st defendant as per partition deed dated 12.12.1991 and the 2nd item of the suit property belongs to the plaintiff and the defendants 1, 6 to 8 as per partition deed dated 10.11.1993. The entire rental income of the suit property was received by the 1st defendant. On 25.11.1993 the defendants 1 & 6 sold the 2nd item of the suit property to the 9th defendant. The above sale was not genuine and it is not binding on the plaintiffs as the debts mentioned in the sale deed were not incurred for family welfare or family necessity. Hence, the plaintiffs 2 to 4 are entitled to 3/4th share in item No.1 and 3/8 share in item No.2 of the suit property. The 1st plaintiff is entitled to claim maintenance for herself at Rs.500/- as she is not possessed with any means. The plaintiffs are in joint



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possession of the suit property. The defendants 2 to 5 are impleaded since they are tenants in the 1st item of the suit property. The defendants 6 to 8 are cosharers in item 2 of the suit property. The 10th defendant has purchased the 1st item of the suit property during the pendency of the suit. He is not a bonafied purchaser, who died on 18.06.2006. Therefore, the plaintiffs 2 to 4 each will be entitled to 5/16th share in the 1st item and 5/32 share in the 2nd item of the suit property. The 1st plaintiff is entitled to 1/16th share and 1/32 share in the suit property.

10.The defendants resisted the claim of the plaintiffs by stating that the 1st plaintiff is not entitled to claim maintenance as she has left the matrimonial home without any justifiable cause. The 1st defendant borrowed Rs.3 lakhs for renovating the tiled house in the 1st item of the suit property and the same was leased out to the defendants 2 to 5. The 1st defendant is getting rental income of Rs.1350/- in total. For discharging the loan, the 1st defendant sold his share in the 2nd item of the suit property along with his brothers to the 9th defendant for a valid consideration of Rs.90,000/-. The above sale was for the absolute necessity of the family and for discharging



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the antecedent debts. The plaintiffs failed to seek declaration and cancellation of the above sale deed in favour of the 9th defendant.

11.The contention of the 10th defendant is that after purchasing the 1st item of the suit property on 31.01.2011 from the 1st defendant, the assessment was changed in the name of the 10th defendant. In March 2002 the plaintiffs forcibly took possession of the above said property. Hence, the 10th defendant filed a suit in O.S.No.538/2005 against the 1st plaintiff for delivery of possession in respect of the 1st item of the suit property. The 1st defendant inherited the separate property of his father and the same has not the joint family property. One Kandappa Gounder died living behind his 5 sons namely Sennimalai gounder, Ramana gounder, Marudha gounder, Palanigounder and Krishna gounder, the 1st defedant inherited the separate property of his father and it is not the joint family property. Palanigounder was the absolute owner of the item I of the suit property. He died in 1941 leaving behind his widow Palaniammal who enjoyed the property with a limited estate till her death on 10.2.1956. After the death of Palani gounder his wife Palaniammal filed a suit in O.S.No.111/1942 on the file of the

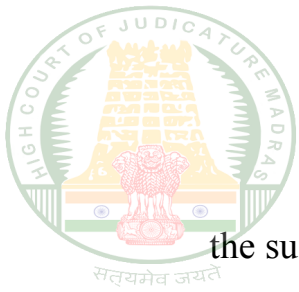


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Subordinate Judge, Coimbatore in respect of item 1 of suit property and it

was dismissed holding that she had only a widow's estate over the properties belonged to her husband. One Krishna gounder brother of Palanigounder filed another suit in O.S.No.247/1946 on the file of Subordinate Judge, Coimbatore for a declaration that the alienation made by his brother's wife will not bind the reversioners and the sale of will be effective only during the life time of his brother's wife Palaniammal. An appeal filed in the High Court in A.S.No.827/1948 was also dismissed. Palaniammal died on 10.2.1956 before the Hindu succession Act came into force. Palani gounder brother Sennimalai gounder's son filed a suit in O.S.No.107/1963 on the file of Subordinate Judge, Coimbatore. After the death of Palaniammal the sons of Palani gounder were allotted 1/5th share in the estate of Palani gounder. Thus as per the final decree dated 31.10.1968 this defendants, vendor's father Arumuga gounder was allotted with the 1st item of the suit property along with other properties and it is his separate property. The first defendant is now colluded with the plaintiff. Hence, prayed for dismissal of the suit.

12.The trial Court upon considering the materials on record, decreed



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the suit in O.S.No.1216 of 2010 and dismissed the suit in O.S.No.1217/2010 by a common judgement dated 26.02.2013. Aggrieved by this, the defendant in O.S.No.1216 of 2010 who is the 1st plaintiff in O.S.No.1217 of 2010 preferred the appeal suits in AS.No.3 of 2014 and A.S.No.29 of 2014 before the III Additional District and Sessions Court, Coimbatore. The 1st Appellate Court dismissed the above appeal suits by a common judgement and decree dated 19.04.2018.

13.Challenging the judgement and decree dated 19.04.2018 passed by the 1st appellate Court, the present second appeals are preferred.

14.The following substantial questions of law were raised in the memorandum of appeal in

S.A.Nos. 507 of 2019

1. Whether the Judgment and the Decree of the Courts below in granting the relief of Recovery of Possession sought for by the Respondent are based upon perverse



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findings and conclusions and misdirected against the evidence on record and also against the principles of law pertaining to the facts of the case?

2. Whether both the Courts below are correct in holding that the suit property is a separate property of A. Selvaraj, husband of the 1st Appellant herein, when the suit property is referred as ancestral property both in the Partition deed, Ex. A.1, dated 12.12.1991 and the sale deed, Ex. A. 5, dated 31.01.2001?

3. Whether both the Courts below are correct in holding that the suit property is a separate property of A. Selvaraj, husband of the 1st Appellant herein, when both A Selvaraj as well as his brother had blended the suit property with other ancestral properties and the same had been reflected in the Partition deed, Ex. A.1, dated 12.12.1991 and the sale deed, Ex. A. 5, dated 31.01.2001?

3. Whether Respondent herein is a bonafide purchaser of the item 1 of the suit property as the suit property was sold by the husband of the 1st Appellant, pending partition suit filed by the Appellant herein?



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4. Whether the suit filed by the Respondent for mere recovery of possession without declaration of title is maintainable when the Appellants herein are denying the title of the Respondent as well as the Respondent's Vendor title?

S.A.Nos.512 of 2019

1. Whether the Judgment and the Decree of the Courts below in not granting the relief of Partition sought for by the Appellants are based upon perverse findings and conclusions and misdirected against the evidence on record and also against the principled of law pertaining to the facts of the case?

2. Whether both the Courts below are correct in holding that the item 1 of the suit property is a separate property of A. Selvaraj, husband of the 1st Appellant and father of the 2nd to 4th Appellants herein, when the item 1 of the suit property is referred as ancestral property both in the Partition deed, Ex. A. 1, dated 12.12.1991 and the sale deed, Ex. A. 5, dated 31.01.2001?

3. Whether both the Courts below are correct in holding that



the item 1 of the suit property is a separate property of A. Selvaraj, husband of the 1st Appellant herein, when both A. Selvaraj as well his brother had blended the 1st item of the suit property with other ancestral properties and the same had been reflected in the Partition deed, Ex. A. 1, dated 12.12.1991 and the sale deed, Ex. A. 5, dated 31.01.2001?

4. Whether both the Courts below are correct in casting the burden upon the Appellants to prove that the item 2 of the suit property is not sold for family necessity, when the real burden is upon the purchaser/ 7th Respondent herein of the joint family property to prove that the suit property was sold for family necessity?

5 Whether 8th Respondent herein is a bonafide purchaser of the item 1 of the suit property as the suit property was sold by the husband of the 1st Appellant, pending partition suit filed by the Appellant herein?

15.The learned counsel appearing for the appellant submits that the Courts below erroneously held that the suit properties are separate of deceased Selvaraj, husband of appellant, when the suit properties are in



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ancestral nature. In the documents marked by the respective parties, the suit properties are referred as ancestral properties. Even in the sale deed in favour of the respondent who is a lis pendence purchaser, the suit property is referred as ancestral property. The Courts below failed to note that the husband Selvaraj has blended the suit property with the other joint family properties and treated the suit property as joint family properties. The sale deed in favour of the respondent would not bind the appellant and her children as they were not made as parties in the sale deed. The findings of the Courts below that after the death of Palani gounder and his wife Palaniammal the 1st item of the suit property was allotted to Arumugam in O.S.No.107 of 1963 under Ex.B.5 in a suit for partition and therefore, the properties allotted to said Arumugam should be construed as a separate property is erroneous. The Courts below failed to note that the 1st item of the suit property was blended with other ancestral properties subsequent to the decree passed in O.S.No.107 of 1963 and therefore, the 1st item of the suit property was shown as ancestral property in the partition deed between Selvaraj and Eshwaran dated 12.12.1994 and therefore, the 1st item of the suit property should be treated as ancestral property. When the appellants



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herein are denying the title of respondents as well as the vendors title, the respondent ought to have prayed for declaration of title instead of recovery of possession alone. The learned counsel for the appellant would submit that property reverted to reversioners after widow's death retains ancestral character. His further contention is that, even assuming that the 1st item of the suit is the separate property of the plaintiff's vendor, the sale consideration of the 2nd item of the suit property was utilized for renovating the 1st item property. Therefore, doctrine of blending operates and so the plaintiffs are entitled for a share in the suit property. To support his contention, he has relied upon the judgement in the case of ***P.L.N.Paramasivam Vs. P.K.Ramawami Gounder and ors.***, reported in ***(1971)ILR 1Mad173*** and ***R.Deivanai Ammal and Another vs., G.Meenakshi Ammal*** and Others reported in ***2004(4) CTC 208***.

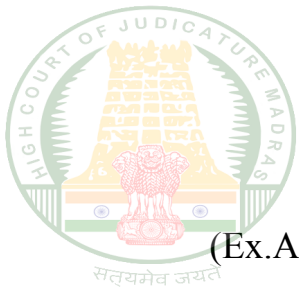
16. On the other hand, the learned counsel appearing for the respondent submits that the first item of the suit property purchased by the plaintiff is the separate property of her vendor Selvaraj by virtue of the decree passed in O.S.No.107/1963 by Sub Court, Coimbatore. As per the final decree dated 31.10.1968 the plaintiff's vendor father Arumuga gounder



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was allotted the 1st item of the present suit property along with other properties. Hence, it is the separate property of plaintiff's vendor Arumuga gounder who got through obstructed heritance from his father's brother Palani gounder. The said Arumuga gounder was in absolute and enjoyment of the said property having full ownership over the same till his death. After his death, the property devolved upon the plaintiff's vendor Selvaraj and his brother Eshwaran by law of inheritance. Hence, item No.1 of the suit property is not the ancestral property of the plaintiff's vendor Selvaraj and the same is the separate property of Selvaraj. Therefore, the sale deed executed in favour of the plaintiff by Selvaraj is valid. Thus, the contention of the learned counsel is that the 1st item of the suit property inherited by Arumuga gounder from other relation had become his separate property and his legal heirs does not take any interest by birth. To support his contention, he has relied upon the judgment reported in **1992 AIR SC 1254, 1992 (2) LW 496 & 1983 SCC (3) 376.**

17. The learned counsel for the respondent submits that the 1st and 6th defendants entered into a registered partition deed dated 12.12.1991



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(Ex.A1), under which the 1st defendant became the absolute owner of the 1st item of the suit property.

18. The 9th respondent/ 10th defendant purchased the suit property from the 1st defendant for valuable consideration, as evidenced by Ex.B.10 and other sale documents. The 9th respondent /10th defendant was a bona fide purchaser without notice of any pending litigation. It was never disclosed to her that any suit or claim regarding partition was pending or contemplated. The concept of lis pendens under Section 52 of the Transfer of Property Act, 1882 is not a blanket bar against all transfers; it only affects transferees with notice or mala fide intent. The Hon'ble Supreme Court in **Hardev Singh v. Gurmail Singh (2007) 2 SCC 404** clarified that A bona fide purchaser for value without notice is not affected by lis pendens unless he had actual or constructive knowledge of the litigation.

Further, in K.K. Modi v. K.N. Modi (1998) 3 SCC 573, it was held that:

For a transfer to be hit by Section 52, it must be shown that the purchaser had either actual or constructive notice of the



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pending litigation and participated in any fraudulent design.

19. In the present case, there is no evidence that the 10th respondent had knowledge of any pending suit at the time of purchase. Moreover, the 10th respondent instituted a separate suit for possession (O.S. No. 1216/2010) when she was wrongfully dispossessed from the portion of the suit properties further demonstrating her bona fide belief in her lawful ownership. Hence, the learned counsel submitted that the Courts below has rightly rejected the claim of the plaintiffs that they do not have any right or share in item No.1 of the suit properties which warrants any interference by this Court.

20. Heard, records perused.

21. The undisputed fact is that the 1st defendant's father Arumuga Gounder was allotted with the 1st item of the suit property in a final decree dated 31.10.1968 passed in O.S.No.107 of 1963 by Sub Court, Coimbatore and the same is marked as Ex.A.3. A preliminary decree dated 04.03.1965 was passed in the said suit and same is marked as Ex.B.5. In E.x.B.5 it is



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shown that the suit item originally belong to one Palani gounder and after his demise in the year 1941, his widow Palaniammal enjoyed the property with limited estate till her death on 10.02.1956. It cannot be disputed that during her life time she filed a suit in O.S.No.111 of 1942 before Sub Court, Coimbatore, against the reversioners namely Palani gounder's brothers for declaration to declare the property absolutely belong to her and that her husband is only a benamidar. However, the said suit was dismissed holding that Palaniammal had only limited estate over the property. Ex.B.5 further reveals that the said Palaniammal after dismissal of the above suit, had alienated the property in favour of a third party. One of the reversioners of Palani Gounder, namely Krishna Gounder therefore filed a suit in O.S.No.274 of 1946 for declaration that the alienation is not binding on the reversioners. This suit has been decreed with a declaration that, the sale will be effective only during the lifetime of Palaniammal. The appeal preferred in A.S.No.827 of 1948 filed by Palaniammal was also dismissed. The said Palaniammal died on 10.02.1956 and the purchaser ceased to have any interest over the properties left. Thus, the property was succeeded by the reversioners of Palani Gounder. While so, one of the reversioners namely



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Sellappa Gounder filed a suit in O.S.No.107 of 1993 for partition in which the 1st item in the present suit was allotted to one Arumugam son of Subbanna Gounder who is one of the brothers of Palani Gounder. These facts emanated from the preliminary decree and final decree passed in O.S.No.107 of 1963 marked as Exs.B.3 & A.3 respectively. The above facts are not rebutted on the side of the defendants.

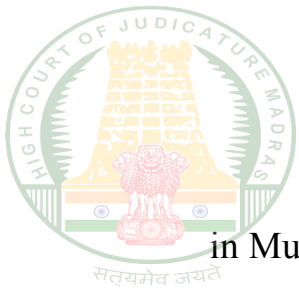
22. The short question, which arises for determination in this appeal is about the nature of the property in the hands of plaintiff in O.S.No.1216 of 2010, as to whether the same is to be treated as ancestral property or a separate property of her vendor Selvaraj. The contention of the defendants in the above suit is that the 1st defendant Selvaraj had no right to execute a sale deed in favour of the plaintiff in respect of the 1st item of the suit property since it is the ancestral property of the defendants. It is settled position that the essential feature of ancestral property, as regards male issue is the one which is inherited by a person from his father or father's father or father's father's father's father, or, in other words, it is that property in which the sons, grand sons and great grand sons of a person,



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who inherits it acquire an interest in it by birth. The ancestral property is called unobstructed heritage. The property inherited as obstructed heritage by a Hindu from a person other than father, father's father or father's father's father is his separate property. In other words the property that a Hindu gets by inheritance from any relation other than his father or father's father or father's father's father is called the obstructed heritage. It is so known because the accrual of right in it is obstructed by the existence of the owner. The heir who gets this property on the death of the owner had no interest in it by birth. His own son also gets no interest in it by birth. The property inherited from once brother, son, uncle, nephew, mother, grand mother or from a paternal ancestor beyond the fourth degree of ascent is obstructed heritage. It is obstructed because the inheritor had no interest in the property before the death of the owner. In other wards, the accrual of interest in it to him was obstructed by the existence of the owner of the property. This property is separate and no one has the right of joint tenancy in it even his sons do not get a right by birth in this property.

23. Under settled principles of Mitakshara Hindu Law, as enunciated



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in Mulla's Principles of Hindu Law, such inheritance constitutes "obstructed heritage" (Sapratibandha Daya) and does not acquire the character of ancestral property.

(i)Mulla, Hindu Law, Rule 217: Property which devolves upon a person by succession is his separate property, if he does not inherit it from his father, grandfather or great-grandfather.

(ii)Rule 211: Property inherited from a collateral male relative (like uncle) is separate property, not joint family or ancestral property.

In Modern Hindu Law by Ramesh Chandra Nagpal, the learned author has discussed about the concept of separate property thus:-

The property that a Hindu gets by inheritance from any relation other than his father or father's father or father's father's father is called obstructed heritage. It is so known because the accrual of right in it is obstructed by the existence of the owner. The heir who gets this



property on the death of the owner had no interest by birth. The property inherited from one's brother, son, uncle, nephew, mother, grandmother or paternal ancestor beyond fourth degree of ascent is obstructed heritage. It is obstructed because the inheritor had interest in the property before the death of the owner. In other words the accrual of interest in it to him was obstructed by the existence of the owner of the property. This property is separate and no one has the right of joint tenancy in it. Even if his sons do not get a right by birth in this property.

24. In the present case, the said Selvaraj's father Arumuga gounder got the 1st item of the suit property through obstructed heritage from his father's brother Palani gounder and was in absolute possession and enjoyment till his death. Since the said Arumuga gounder inherited the property as obstructed heritage from his father's brother Palani gounder the suit 1st item would be deemed as his separate property and not ancestral property.

25. Therefore, the property inherited by Arumugam from his father's brother Palani Gounder is his separate property and his children namely the



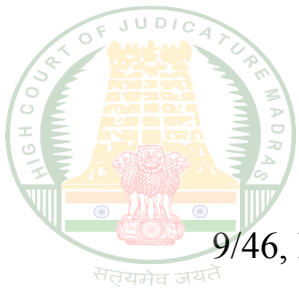
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defendants 1 and 6 cannot claim any right by birth in this property. After the demise of Arumugam, his legal heirs namely the 1st and 6th defendants have inherited the properties by operation of Section 8 of Hindu Succession Act. Therefore, the contention by the appellants that even after the death of Palaniammal, the property which comes back to the reversioners would be ancestral in nature cannot be accepted.

26. Therefore, the contention of the appellant that item no.1 of the suit property is ancestral in nature has been rightly rejected by both the Courts below. The recitals in Exhibits B-6 to B-9 [Exb.A3] and the Preliminary and Final Decrees in O.S. No. 107/1963 on the file of the Subordinate Judge, Coimbatore, dated 31.10.1968, affirms that:

(i) Palani Gounder was the son of Kandappa Gounder and brother to Sennimalai Gounder, Ramana Gounder, Marudha Gounder, and Krishna Gounder.

(ii) The suit property (Item No. I) formed part of 15 cents of house site and buildings absolutely owned by Palani Gounder, situated in T.S. No.



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9/46, Rangakonar Street, Kattoor, Coimbatore.

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27. After Palani Gounder's demise in 1941, his widow Palaniammal held a limited estate over the said property. Her claim for absolute ownership (as a benamidar) was dismissed in O.S. No. 111/1942. In O.S. No. 247/1946, filed by the youngest brother(reversioner) Krishna Gounder, culminated in a decree declaring that alienations by the widow would not bind the reversioners beyond her lifetime. This Court also confirmed the same in A.S. No. 827/1948. Upon Palaniammal's death on 10.02.1956 (prior to the Hindu Succession Act, 1956), succession opened in favour of the sons of the deceased brothers of Palani Gounder, as all the brothers had predeceased her. Therefore, each branch was entitled to 1/5th share, as rightly recorded in the final decree dated 31.10.1968.

28. Item No. I of the suit property, measuring about 3 cents, was allotted to Arumugha Gounder, father of the first respondent, under the final decree. After Arumugha Gounder's demise, the property devolved upon his sons A.Selvaraj and A. Easwaran, as per the personal law of inheritance.

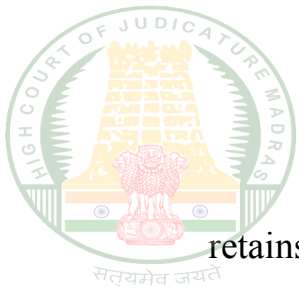


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Thus, Selvaraj became the absolute owner of his share of the said property and had full legal competence to alienate the same in favour of the plaintiff in O.S.No.1216 of 2010.

29. The Appellant's plea that the suit property is ancestral is devoid of merit and contrary to the settled legal position as established in the evidence. Ancestral property must be inherited up to four generations undivided; in this case, Item No. I was the self-acquired property of Palani Gounder and devolved through succession by his brothers' sons not by survivorship. Therefore, no coparcenary right accrues to the plaintiffs (children of the 1st defendant) in O.S.No.1217 of 2010 by birth in the said property. Upon the death of Arumugham Gounder, the property devolved upon the 1st and 6th defendants as his Class I heirs under Section 8 of the Hindu Succession Act, 1956. Both courts below have meticulously analyzed the evidence and held that the suit property was not ancestral but rather separate property in the hands of the vendor Selvaraj.

30. Hence, the arguments putforth by the learned counsel for the appellant that the property reverted to reversioners after widow's death



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retains ancestral character is unsustainable. Moreover, in the judgments relied on the side of the appellant, in those cases the property originally formed part of the coparcenery. In the present case, there is nothing on record to show that the property was coparcenery property in the hands of Palani gounder. Hence, the principle of reversion under suspended survivorship has no application in the present case.

31. The further case of the appellant is that the suit 2nd item was alienated in favour of the 9th defendant for the purpose of discharge of loan availed by the 1st defendant for putting up construction in the suit 1st item ought to have held that the suit 1st item property is a joint family property by applying the doctrine of blending. However, it is settled law that mere user or pooling of funds does not constitute blending. The law regarding blending requires a person alleging blending should show that, there was an unequivocal expression of intention by the owner to abandon his ownership in the property, thus making it a joint family property. It must be shown that the holder of separate property intended to abandon his separate rights and treat it as joint family property, which has not been proved in this case.



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When there is no pleading and issues raised as to whether a particular self

acquired property was thrown into common hotchpot, Court cannot suo moto come to the conclusion that it is so thrown into common hotchpot.[Ref: ***Dasegowda Vs.Gangaraju***, reported in **2003 (1) KCCR 334**].Therefore, a clear intention to waive the rights to his separate property by a member of a joint family has to be established to prove the blending of such separate property with the joint family property. Mere fact that the other members were allowed to use such properties or income from the separate property was used for the joint family property does not lead to inference that such property was blended with the joint family property.[Ref: ***AIR 1963 SC 1601***] Moreover, the sale proceeds from the 2nd item of property was only utilized for renovating the building in the 1st item of the property. Is not by mere act of physical mixing with joint ancestral property, but intention by waiving separate right in property must be discovered. The theory of blending involves the process of wider sharing of ones own properties by permitting the members of ones joint family the privilege of common ownership and common enjoyment of such properties. Moreover, the existence of coparcenary property is essential for proving



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blending of separate property into that of coparcenary property, which is not found in the present case. As rightly pointed out by the 1st Appellate Court, mere dealing with the self acquired property as joint family property does not necessarily affect its character of separate property. Therefore, the suit 1st item property cannot be said to be a joint family property merely because the sale consideration was utilized to discharge a loan that was availed renovating the house. Therefore, the findings rendered by the Courts below that the suit 1st item of the property is a separate property in the hands of the 1st defendant does not suffer any infirmity. Therefore, the plaintiffs in O.S.No.1217 of 2010 cannot claim any right by birth in the suit properties.

32. Both the trial Court and appellate Court rightly held that the property in the hands of the plaintiff is separate property of her vendor and he had every right to sell the same the plaintiff's in O.S.No.1217 of 2010 has no birth right in the 1st item of the suit property. The findings of the Courts below are based on sound reasoning, supported by documentary evidence and established legal principles. Upon unlawful occupation by the defendants in O.S.No.1216 of 2010, the plaintiff rightly sought for



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possession, mense profits and injunction. The trial Court and 1st Appellate Court have rightly decreed redelivery of possession in respect of the 1st item of the suit property in favour of the plaintiff in O.S.No.1216 of 2010 based on settled legal principles and cogent evidence.

33. With regard to the 2nd item of the suit property during pendency of the second appeal joint memo of compromise was filed between the parties and the same is extracted hereunder:

*JOINT MEMO OF COMPROMISE FILED BY THE
PARTIES*

In the out of court mediation, the Appellants and the 7th Respondent to the above second appeal agree as follows:

a)The appellants in the above Second Appeal (plaintiff in the suit) Nirmala Devi, Sasiseelan (Mentally retarded), Mouli Kannan, Ravi Krishnan, all residing at Door no. 284/4, RangaKonar Street, Kattoor, Coimbatore agrees to withdraw the Second Appeal on receiving Rs.2,00,000/- (Rupees Two Lakhs Only) Demand Draft No.000034, HDFC Bank Coimbatore Branch, dated on



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14.07.2021 and the another part of hand cash of sum of Rs.2,00,000/- receiving on 16.07.2021 from the 7th Respondent.

b) The 7th respondent (Jefendant in the suit) Ranga.aj, S/o. Krishnasamy Mudaliar, residing at 156, Thoddarayan Koil a total sum of street, Kattoor, Coimbatore, shall pay Rs.4,00,000/-(Rupees Four Lakhs Only) through Demand Draft and hand cash in favour of the 4th Appellant S. Ravikrishna, who receives the said amount on behalf of himself and the other three appellants.

c) The appellants shall withdraw the second appeal filed by them in S.A. No.512 of 2019 and the same may be dismissed in view of the above settlement arrived between the parties.

d) It is further agreed that the process of withdrawal of the second appeal and the payrment of Rs.4,00,000/- (Rupees For Lakhs Only) Demand Draft No.000034, HDFC Bank Coimbatore Branch, and hand cash on 16.07.2021 to the appellants shall be made simultaneously.



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e) The appellants agree that the 7th Respondent Mr.Rangaraj is the absolute owner of the suit property.

f) The appellants agrees that they will not make any claim whatsoever in the suit property either claiming any share or otherwise.

34. In view of the above, this Court is of the view that the Courts below were right in holding that the plaintiffs in O.S.No.1217 of 2010 are not entitled for any share in the 1st item of the suit properties. Since a compromise has been entered between the parties in respect of the 2nd item of the suit properties, the 2nd appeal in S.A.No.512 of 2019 is decreed in terms of compromise and the said joint memo of compromise form part of the decree. No costs.

35. As regards the second appeal in S.A.No.507 of 2019 is dismissed. The judgement and decree in A.S.No.3 of 2014 dated 19.04.2018 passed by the 1st Appellate Court confirming the judgment and decree in O.S.No.1216



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of 2010 dated 26.02.2013 on the file of the III Additional Subordinate Court, Coimbatore, in respect of suit item No.1 property is upheld. No costs. Consequently connected miscellaneous petitions are closed.

.08.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

- 1.The III Additional District and Sessions Court, Coimbatore
- 2.The III Additional Subordinate Court, Coimbatore,
- 3.The Section Officer, V.R.Section, High Court, Madras.

K.GOVINDARAJAN THILAKAVADI,J.

vsn



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Second Appeal Nos.507 & 512 of 2019
and C.M.P.Nos.8547 & 8597 of 2019

.08.2025