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A.S. No.88 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2025
PRONOUNCED ON : .12.2025

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. No.88 of 2018
and CMP.No.2288 of 2018

1. Sambu Ammal
W/o.Late Perumal Gounder

2. P. Balu
S/o.Late Perumal Gounder

... Appellants

Vs.

Dhanam @ Dhanalakshmi
W/o.Chinnathambi Gounder
D/o.Late Perumal Gounder
Door No.1/10B, Koonankadu,
Valakuttapatti,
Yervadi Post, Mallur Via,
Salem Taluk, Salem District.

...Respondent

PRAYER in A.S.: Appeal Suit filed under Section 96 of CPC to set aside the judgment and decree dated 19.08.2017 passed in O.S.No.280 of 2014 on the file of II Additional District Judge, Salem.

Prayer in CMP.: To stay all further proceedings in pursuance to the judgment and decree dated 19.08.2017 passed in O.S.No.280 of 2014 on the file of II Additional District Judge, Salem till the disposal of the above first appeal.



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For Appellants : Mr.M.S.Krishnan
Senior Counsel for
M/s.Sarvabhauman Associates

For Respondent : Mr.P.Jagadeesan

J U D G M E N T

Heard

2. This appeal is preferred against the judgment and decree dated 19.08.2017 passed by the learned II Additional District Judge, Salem, in O.S. No.280 of 2014.

3. For the sake of convenience, the parties are referred to as arrayed in the suit

4. The brief facts of the plaintiff's case are as follows: The plaintiff is the step-sister of the 2nd defendant. The plaintiff was born to the first wife of her father, namely Nallayee. After the demise of the plaintiff's mother, her father, Perumal Gounder, married the 1st defendant and through her begot the 2nd defendant. The plaint contains five items of properties. Items 1 and 2 of the suit properties were purchased by Perumal Gounder under sale deeds



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dated 03.10.1969 and 02.12.1969 respectively and stand in his name. The 3rd item of property stands in the name of the 1st defendant and the 4th item of property stands in the name of the 2nd defendant. The plaintiff submits that Perumal Gounder obtained 0.33 cents of property under a registered family partition deed dated 27.10.1978. He alienated the property obtained under the said partition in favour of one Udhayakumari and purchased the 4th item of property in the name of the 2nd defendant. The defendants had no independent means to purchase the properties and therefore the 3rd and 4th items of properties were purchased by Perumal Gounder in the names of the defendants. The 5th item of property was also purchased by Perumal Gounder. He, along with the 2nd defendant, mortgaged the said property and later redeemed the same. Perumal Gounder died intestate in the year 1989 leaving behind the plaintiff and the defendants as his only legal heirs. Hence, the plaintiff claims 1/3rd share in the suit schedule properties.

5. The brief facts of the written statement are as follows: The defendants contended that the plaintiff is not the daughter of Perumal Gounder. The contention of the plaintiff that Perumal Gounder's first wife was Nallayee, that she gave birth to the plaintiff, and that after her demise Perumal Gounder married the 1st defendant, is denied. It is further contended



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that the 3rd and 4th items of properties were purchased by the defendants themselves. According to the defendants, they are the only legal heirs of Perumal Gounder and the plaintiff is a stranger to the family of the defendants, and therefore the suit is liable to be dismissed.

6. The Trial Court, after framing the necessary issues, held that the plaintiff is a legal heir of the deceased Perumal Gounder and granted partition of 1/3rd share in Items 1, 2 and 5 of the suit schedule properties, while negative the claim of the plaintiff in respect of Items 3 and 4 of the suit schedule properties standing in the names of the defendants.

7. In the grounds of appeal, the appellants inter alia contended that the Trial Court wrongly held that the plaintiff is the daughter of Perumal Gounder in the absence of any documentary evidence produced by the plaintiff and in the absence of any document to show that Nallayee was the first wife of Perumal Gounder.

8. The defendants in the suit have preferred this appeal. The plaintiff has not filed any appeal or cross-appeal in respect of Items 3 and 4 of the suit schedule properties, in respect of which her claim for partition was negated.



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9. For disposal of this appeal, the following points arise for consideration:

1. Whether the plaintiff is the daughter of the deceased Perumal Gounder and, as such, a legal heir of Perumal Gounder?
2. Whether the plaintiff has a share in the suit schedule properties?
3. Whether the judgment and decree of the Trial Court passed in O.S. No.280 of 2014 are liable to be set aside?

10. Point Nos.1 to 3: As contended on the side of the appellants, no documentary evidence has been produced to show that the plaintiff is the daughter of Perumal Gounder. From Ex. A3 partition deed, it is seen that Perumal Gounder had two brothers, namely Sendrayan and Raman. The plaintiff examined one of the brothers, Mr. Raman, as P.W.2. At the time of his examination, he was aged about 93 years. On the side of the defendants, it was not disputed that P.W.2 is the brother of Perumal Gounder. This witness, in his evidence, deposed that the plaintiff is the daughter of his elder brother Perumal Gounder through his first wife. He further stated that Nallayee was the mother of the plaintiff and that after her death his brother lived with the 1st defendant and subsequently married her. Another witness examined as P.W.3 is the daughter of another brother of Perumal Gounder, namely



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Sendrayan. She also deposed that the plaintiff is the daughter of her paternal uncle Perumal Gounder through his first wife, Nallayee. These two witnesses are crucial witnesses. On the side of the defendants, it was not disputed that P.W.2 is the own brother of Perumal Gounder and that P.W.3 is the daughter of the brother of Perumal Gounder. Even though they were subjected to cross-examination, nothing was elicited to disprove the contention that the plaintiff is the daughter of Perumal Gounder. Thus, the plaintiff has proved that she is the daughter of Perumal Gounder. Once the same is established, the burden lies upon the defendants to prove that they are the only legal heirs, excluding the plaintiff. No document has been produced and no witness has been examined by the defendants in this regard. It is also noticed that the plaintiff expressed her readiness to subject herself to a DNA test, but the defendants did not pursue the same to establish their contention. In these circumstances, it is proved that the plaintiff is the daughter of Perumal Gounder through Nallayee and is a legal heir of the deceased Perumal Gounder along with the defendants.

11. Ex. A10 is the invitation for the puberty ceremony of the daughter of the plaintiff, held on 16.07.1986, during the lifetime of Perumal Gounder, who died in the year 1989. The said invitation bears the names of Perumal



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Gounder and the defendants, along with the name of the plaintiff. There was no serious resistance or challenge raised against this invitation. This document also demonstrates the proximate relationship between the plaintiff and the defendants and establishes the case of the plaintiff.

12. The Trial Court held that Items 1, 2 and 5 of the suit schedule properties stand in the name of Perumal Gounder and, as such, the plaintiff has a share in those properties along with the defendants. On the side of the plaintiff, it was contended that even though Items 3 and 4 were purchased in the names of the defendants, they were purchased by Perumal Gounder out of his own earnings and disposing of the property obtained under the family partition respectively . However, to prove the said contention, the plaintiff did not furnish details regarding the income of Perumal Gounder or the extent of his earnings from the family properties. In the absence of substantial evidence, the Trial Court declined to grant any share to the plaintiff in respect of Items 3 and 4 of the suit schedule properties standing in the names of the defendants. Against this finding, as already noted, the plaintiff has not filed any appeal or cross-appeal.

13. On the side of the defendants, joint possession of the plaintiff in the suit properties was denied. However, when the plaintiff is held to be the

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daughter of Perumal Gounder and one of his legal heirs, it has to be construed that she is in constructive possession of the suit schedule properties left by her father, Perumal Gounder.

14. For the reasons discussed above, the plaintiff is entitled to 1/3rd share in Items 1, 2 and 5 of the suit schedule properties, as decided by the Trial Court. There is no error in the findings of the Trial Court. Accordingly, the judgment and decree of the Trial Court passed in O.S. No.280 of 2014 dated 19.08.2017 are confirmed.

15. In fine, this appeal is dismissed with costs. Consequently, connected miscellaneous petition is also closed.

.12.2025

dpq

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

To

1. The Learned II Additional District Judge,
Salem



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment in
A.S. No.88 of 2018
and CMP.No.2288 of 2018



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