



A.S.No.236 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 08.07.2025

Pronounced on:15.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.236 of 2022
& C.M.P.No.8595 of 2022

Periya Kolantha Gounder
S/o. Late Chinna Manga Gounder,
Tharkadu, Vannathi Thottam,
Olaiyur, Guruvareddiyur Post,
Anthiyur Taluk, Erode District.

.... Appellant/1st Defendant

/versus/

Kolanthayammal @ Rukumani (Died)

1. Kannupillai,
W/o. Late Tamil @ Anantha Gounder,
Thoppapalayam, Kattur,
P.K. Pudhur Post,
Anthiyur Taluk,
Erode District.

2. Mallika,
W/o. Late Annamalai,
Near Telephone Bhavan,
Aanai Goundanur,
Guruvareddiyur Post,
Anthiyur Taluk, Erode District.



A.S.No.236 of 2022

3.Parvathi

W/o. Late Kannisamy,
Thoppapalayam, Kattur,
P.K. Pudhur Post,
Anthiyur Taluk, Erode District.

4. Sarasu

W/o. Seerangan,
Old Door No.58,
New Door No.32,
Ramagoundanur, Ottapalayam,
Anthiyur Taluk, Erode District.

5. Lakshmi

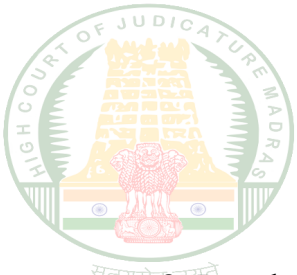
W/o.Palanisamy,
D.No.825, Kurichi Road,
Chittar, Kesarimangalam,
Anthiyur Taluk,
Erode District.

6. Eswari

W/o.Iyannan,
Thoppapalayam,
No.40 Aatta Kalanur,
Singampettai Post,
Bhavani Taluk, Erode District.

7. Muthalali (Died)

S/o. Late Palaniappan,
Old D. No.11/80A,
New D. No.427, Seelampatti,
Poonachi, Kurichi Village,
Bhavani Taluk, Erode District.



A.S.No.236 of 2022

8. Panchali,
W/o.Balusamy,
D.No.117, Sottaiyanur,
Singampettai Post,
Bhavani Taluk,
Erode District.

9. Saravanan,
S/o. Late Palaniappan,
D.No.426, Seelampatti,
Kurichi Village,
Anthiyur Taluk,
Erode District.

10. Shanmugaham
S/o. Late Palaniappan,
D.No.426, Sellampatti,
Kurichi Post,
Anthiyur Taluk, Erode District.

... Respondents 1 to 10/
Plaintiff 2 to 11

11. Arukkani
W/o. Muthusamy, Kurumbapalayam,
Vellithiruppur Village, Reddiarpalayam Post,
Anthiyur Taluk,
Erode District.

12. Kolantha Gounder
S/o. Late Chinna Manga Gounder,
Aanakkal Thottam, Near Periya Nagar,
Guruvareddiyur Post,
Anthiyur Taluk, Erode District.



A.S.No.236 of 2022

13. Pavunayal

W/o. Kolantha Gounder,
Aanakkal Thottam, Near Periya Nagar,
Guruvareddiyur Post,
Anthiyur Taluk, Erode District.

14. Thangarasu

S/o.Kolantha Gounder,
Anakkal Thottam,
Near Periya Nagar,
Guruvareddiyur Post,
Anthiyur Taluk, Erode District.

15. Eswaran,

S/o. Kolantha Gounder,
Aanakkal Thottam,
Near Periya Nagar,
Guruvareddiyur Post,
Anthiyur Taluk, Erode District.

16. M.Tamilarasi

W/o Late Muthalali,
Old D.No.11/80-A,
New D.No.427, Seelampatti,
Poonachi, Kurichi Village,
Bhavani Taluk, Erode District.

17. M.Umaiyarasi

D/o Late Muthalali,
Old D.NO.11/80-A,
New D.NO.427, Seelampatti,
Poonachi, Kurichi Village,
Bhavani Taluk, Erode District.



A.S.No.236 of 2022

WEB COPY

18. M.Ponnarasi

D/o Late Muthalali,
Old D.No.11/80-A,
New D.NO.427, Seelampatti,
Poonachi, Kurichi Village,
Bhavani Taluk, Erode District.

... Respondents 11 to 15/
Defendants 2 to 6

R7 died, R16 to R18 are brought on record as LR's of deceased R7, *vide* order of court dated 06/02/2025 made in C.M.P.Nos.23285, 23287 and 23288 of 2024 in A.S.No.236 of 2022 (NSKJ)

Prayer:- Appeal Suit has been filed under Section 96 of the Civil Procedure Code, against the Judgment and Decree dated 10.01.2022 made in O.S.No.14 of 2017 on the file of IV Additional District Court, Bhavani, Erode District.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondents : Mr.C.Ramaraj, for R2 to R6, R8 to R10,
for R16 to R18

: Mr.D.Lakshmipathy, for R12 to R15

: No appearance, for R1 & R11

: Died, for R7



A.S.No.236 of 2022

WEB COPY

JUDGMENT

The appellant, Periya Kolanda Gounder, is the first defendant in the suit for partition laid by his sister Kolandaiyammal @ Rukmani (deceased) along with respondents 1 to 10 herein.

2. The parties litigating are the children born to the first and second wife of Chinna Manga Gounder.

3. Chinna Manga Gounder had two wives. The senior wife Nallirusayammal had one son (Periya Kolanda Gounder) and one daughter (Kolandaiyammal @ Rukmani). The junior wife Irusammal had 6 children viz., Kannupillai, Kolanda Gounder, Arukkani, Mallika and Parvathi.

4. The suit for partition in respect of 3 properties laid on the ground that, the first item property was purchased from the income of joint family property and the sale proceeds of the ancestral properties jointly sold by Chinna Manga Gounder and his son Kolanda Gounder. The purchase was in the name of defendants 1 to 3



A.S.No.236 of 2022

pursuant to the decree passed by the Court in the specific performance suit

O.S.No.139 of 1983. The second item property is the ancestral property jointly held by the plaintiffs and defendants 1 to 3. The third item property purchased in the name of Nallirusayammal in the year 1949 from the joint family income. This property was put into the hotchpot of the joint family nucleus. Thus, all the three properties are to be divided into 7 parts and each of the sons and daughters of Chinna Manga Gounder to be allotted $1/7^{\text{th}}$ share.

5. The defendants 1 to 3 in whose name the first item property purchased through Court decree not the exclusive property of these three defendants alone. The sale of $1/2$ share each in the first item property by the second and third defendants through sale deeds dated 02.01.2006 is not genuine and it is without any consideration. Likewise, the settlement deed dated 25.01.2005 by Chinna Manga Gounder in favour of the first defendant in respect of 2^{nd} item property, which is the ancestral property, is without right, hence, to be ignored.

6. The suit opposed by the first defendant namely Periya Kolanda Gounder on the ground that, the first item property was purchased jointly in his name and



A.S.No.236 of 2022

defendants 2 and 3 from their individual income. The sale deed for the property was executed on 01.07.2002 pursuant to the decree passed in the specific performance suit O.S.No.139 of 1983 and later, confirmed by the High Court in the Second Appeal S.A.No.191 of 1987. The defendants 2 and 3, who were joint owners of the property along with the first defendant, later sold their 1/3rd share each, to the plaintiff vide deeds dated 02.01.2006. Since then, the first defendant is the absolute owner of the first item property.

7. The second item property was already the subject matter of the partition suit O.S.No.72 of 2007 between the first defendant Kolanda Gounder and his deceased father Chinna Manga Gounder. In the said suit, the Court has held that all the seven children of Chinna Manga Gounder are entitled for 1/7th share. In that suit, the plea of partial partition was taken mentioning non-inclusion of items 1 and 3 in the present suit. The Court in the prior suit O.S.No.72 of 2007 had framed issue, whether the suit suffers partial partition and held that items 1 and 3 are not the joint family property. The appeal in A.S.No.6 of 2022 preferred by Chinnakolanda Gounder was dismissed for default. Thereafter, final decree application I.A.No.211 of 2008 filed and the same is pending for Commissioner



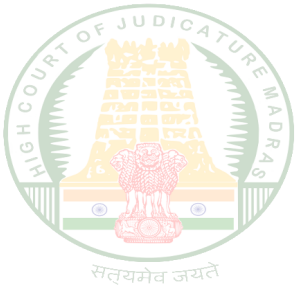
A.S.No.236 of 2022

Report. Also, I.A.No.155 of 2016 filed for amendment of the preliminary decree to divide the property into 14 equal shares and allot 8/14 shares to the first defendant (Periya Kollanda Gounder) and same was allowed on 15.06.2017. The present suit in O.S.No.14 of 2017 is the second suit for partition suppressing earlier partition decree. Hence, it is hit by *res judicata*. In view of the finding in O.S.No.72 of 2007, the present suit O.S.No.14 of 2017 for partition of the properties which was subject matter of the prior suit, is not maintainable.

8. The fourth plaintiff (Parvathi) in response to the written statement of the first defendant (Periya Kollanda Gounder) had filed reply statement reiterating the first item property is joint family property and third item property is not the personal property of Irusammal and the alleged oral relinquishment of her right in favour of the first defendant is false. He also asserted that the decree passed in O.S.No.72 of 2007 will not bind her, since she was not a party to that suit.

9. Based on the pleadings, the Court Below framed the following Issues before proceeding with the trial :-

1. Whether the 1st item of the suit properties is the self



WEB COPY



A.S.No.236 of 2022

acquired property of the 1st defendant?

2. Whether the suit in O.S.No.72 of 2007 on file of Sub Court, Bhavani, will operate as *resjudicata* to the present suit?

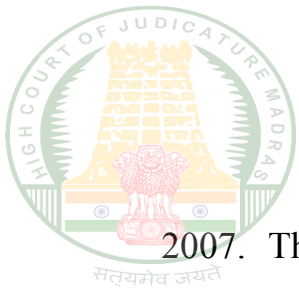
3. Whether the plaintiffs are entitled to share in the suit properties? If so, what is the share?

4. Whether the plaintiffs are entitled for permanent injunction?

5. To what relief?

10. On behalf of the plaintiffs, Parvathi (4th plaintiff) and Annadurai were examined as PW-1 and PW-2. Ex.A-1 to Ex.A-11 are the documents relied by the plaintiffs. On behalf of the defendants, Periya Kolanda Gounder (first defendant) and Kolantha Gounder (third defendant) were examined as DW-1 and DW-2. Ex.B-1 to Ex.B-29 are documents marked as exhibits in support of the defendants.

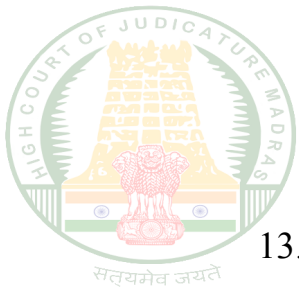
11. The Trial Court held that the first item property was purchased in the name of defendants 1 to 3 from out of the joint family nucleus. Hence, the seven children of Chinna Manga Gounder are entitled for 1/7 share. The second item property already subjected to partition in the earlier partition suit O.S.No.72 of



A.S.No.236 of 2022

2007. Therefore, the prior partition suit O.S.No.72 of 2007 will operate as *resjudicata* in respect of second item property. The third item property purchased in the name of Nallirusammal on 31.01.1949 under Ex.A-6. It is her absolute property in which only her legal heirs are entitled for share.

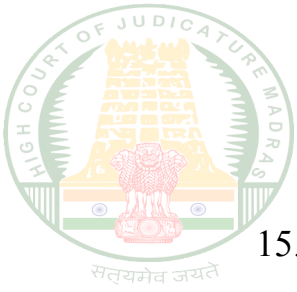
12. The Learned Counsel for the appellant, contended that, the Trial Court failed to consider that Ex.A-1 is the sale deed dated 23.04.1980 for a sale consideration of Rs.17,000/- executed by Chinna Manga Gounder on his behalf and on behalf of his minor son Kolanda gounder. In this document, the property is mentioned as both self acquired and from the ancestors. Ex.A-2, is sale deed dated 29.01.1981 for a sale consideration of Rs.5,000/- executed by Chinna Manga Gounder on his behalf and on behalf his minor son born to his second wife Kolanda Gounder and by Periya Kolanda Gounder the son born to the first wife. The sale proceeds of these two properties were not the source for purchase of first item property. The sale of these two properties and purchase of first item property were not within the reasonable time. Neither the sale consideration was more nor less equal to the sale price of first item property.



A.S.No.236 of 2022

13. Though recital in Ex.A-1 and Ex.A-2 say, the vendors are selling the property to meet out the family expenses and to acquire new property, the first item property was not purchased out of the said sale consideration. The date of purchase, the purchasers and the value of the property will clearly show that the first item property was not purchased from the income of the ancestral property devolved from the common ancestor Chinna Manga Gounder.

14. In respect of first item property, the defendants 1 to 3, who are the sons of Chinna Manga Gounder born to his senior wife and the junior wife along with one daughter of the junior wife, jointly entered into a sale agreement on 13.07.1980 with one Narayanasamy and paid part sale consideration of Rs.20,000/- as against the total sale consideration of Rs.60,000/-. Narayanasamy before performing his part of contract died, hence, the suit for specific performance was filed and pursuant to Execution Petition in E.P.No.45 of 2001 in O.S.No.139 of 1983, sale deed Ex.A-3 was executed by the Court on 01.07.2002 after depositing the balance sale consideration of Rs.40,000/-. The remoteness in time and value of the first item property purchased will clearly show that it was not purchased from the joint family nucleus.



A.S.No.236 of 2022

15. The Learned Counsel for the appellant also submitted that, the Court below while considering the issue of *resjudicata*, failed to take into consideration that in the earlier partition suit O.S.No.72 of 2007, the issue of partial partition was framed and the Court in the previous suit has held that, the first item property is not an ancestral property. In Ex.B-2 judgement, there is a categorical finding that items 1 and 3 are not the properties purchased from ancestral nucleus.

16. While so, despite specific issue framed, whether decree in O.S.No.72 of 2007 will operate as *resjudicata* to the present suit, the Court below erred in holding that in the earlier suit the plaintiffs were not parties and it will operate as *resjudicata* only in respect of 2nd item property and not for the other two items. This finding is *exfacie* perverse, since in the previous suit, the respondents or their predecessors were parties.

17. Per contra, the Learned Counsel for the respondent submitted that, Ex.A-3 sale deed executed in respect of the first item property is by the Court pursuant to the decree passed in the specific performance suit. The proximity between the sale agreement with Narayanasamy on 13.07.1980, the payment of



A.S.No.236 of 2022

advance of Rs.20,000/- and the source to pay the advance from the sale proceeds of Rs.17,000/- and Rs.5,000/- for the ancestral property under Ex.A-1 and Ex.A-2, dated 23.04.1980 and 29.01.1981 respectively is well established by the plaintiffs before the trial Court. In the previous suit, since these documents were not placed in the previous suit, the Court held that the defendants failed to prove that the first item property purchased from ancestral nucleus.

18. Point for determination:

Whether the first item property in the suit purchased from the ancestral nucleus and whether the suit in O.S.No.72 of 2007 on the file of Sub-Court, Bhavani will operate as *resjudicata* only to item 2 of the suit schedule property is factually and legally sustainable?

19. The parties to the partition suit are the descendants of one Chinna Manga Gounder, who had two wives and totally seven children through them. Though it was claimed by the children of the first wife that Irusammal is not the legally wedded wife of their father Chinna Manga Gounder, evidence proves otherwise. The Trial Court has rightly held that Chinna Manga Gounder had



A.S.No.236 of 2022

married Irusammal after the demise of his first wife. Even otherwise, since he had married her before 1955, the marriage is valid. That apart, in Ex.A-2, this Court finds that Chinna Manga Gounder had himself referred Kolanda Gounder, the third defendant in this suit as his son born to his junior wife. Therefore, there can be no dispute over the legal heir ship of Chinna Manga Gounder. All his seven children two from first wife and five from second wife are equally entitled to inherit his properties, if he had left any.

20. The first item property as per Ex.A-3 is not the property of Chinna Manga Gounder, through whom the plaintiffs claim right. The title document for the first item property stands in the name of defendants 1 to 3. In the earlier partition suit O.S.No.72 of 2007 instituted by Kolanda Gounder the son of Chinna Manga Gounder born to his first wife Periya Erisayiammal @ Nallirusayammal, the Court has held it as individual property. For partition in respect of the second item property, it was allowed and in this suit, when plea of partial partition raised by the defendants citing the first and third item property, issue was framed and decided against the defendants namely Chinna Manga Gounder (first defendant), Chinna Kolanda Gounder(second defendant), who is the son of Chinna



A.S.No.236 of 2022

MangaGounder born through his second wife Erusayiammal and Ponnusamy (third defendant). The said Ponnusamy is alleged to have got a settlement deed dated 25.01.2005 from the first defendant in respect of the suit properties, which has triggered the plaintiff to instituted the suit for partition claiming that the properties mentioned in the schedule (second item in the present suit) are ancestral property and to be divided into 14 shares and he be given 8/14 shares.

21. Pending suit O.S.No.72 of 2007, the first defendant, Chinna Manga Gounder died in the year 2009, hence, his other legal heirs born to his first wife and second wife were brought on record as defendants 4 to 14.

22. In the previous suit O.S.No.72 of 2007, Kolanda Gounder as the plaintiff, had specifically said in his plaint that the first item property in this suit was purchased jointly by him along with his brother (Chinna Kolanda Gounder) and sister (Arugani) as per sale deed dated 01.07.2002. Later, his brother and sister have sold their respective $1/3^{\text{rd}}$ share to him under sale deeds dated 02.01.2006 and 15.05.2006 respectively, thus, he had become the absolute owner of the first item property.

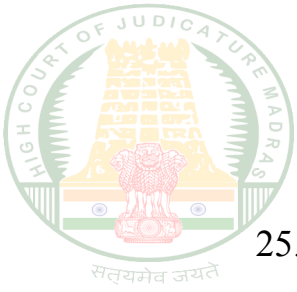


A.S.No.236 of 2022

WEB COPY

23. The second defendant in O.S.No.72 of 2007 (Chinna Kolanda Gounder) as well as the other defendants had pleaded in their written statement that, the suit is hit by principle of partial partition by exclusion of the property purchased by Kolanda Gounder and others on 01.07.2002 (first item property in this suit) and the property purchased in name of Irusammal in the year 1949 (third item property in this suit).

24. Based on the above rival statements, the court below in O.S.No.72 of 2007 had framed an issue whether the suit is hit by partial partition? After considering the evidence, the Court in the previous suit had categorically held that the suit is not hit by partial partition. There is no evidence to prove that the property purchased through the Court decree (first item in this suit) or the property purchased in the name of Nallirusayammal were purchased from joint family nucleus. The Court has further held that except the suit properties (which are item 2 in the present suit), no other property left for partition among the descendants of Chinna Manga Gounder.

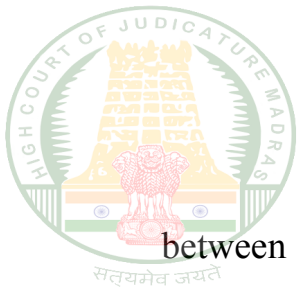


A.S.No.236 of 2022

25. As pointed out by the learned Counsel for the appellant, the trial Court had erroneously correlated the sale under Ex.A-1 and Ex.A-2 with purchase of the first item property under Ex.A-3. Except mention that the property is sold to purchase new property after meeting out the family expenses, there is nothing to prove that after meeting out the family expense, anything left to buy or the sale proceeds from these two sales were used for the purchase of the first item property. Neither the price paid nor the date match to correlate and infer that first item property is purchased from the joint family nucleus.

26. In the earlier partition suit, the appellant herein had disclosed the first item property and how it came into his hand. The Court had also framed issue and held in favour of the appellant. While so, the principle of *resjudicata* squarely applies to the facts of the case. It is both factually and legally incorrect to claim that the respondents were not party to the previous suit for partition, hence it will not bind them.

27. Section 11 of CPC., bar the Courts to try the suit or issue in which the matter directly or indirectly and substantially heard and decided in the ealier suit



A.S.No.236 of 2022

between the same parties, or between parties under whom they or any of them

claim.

WEB COPY

28. In the case in hand, regarding the nature of the property shown as item-1 as well as item 3 in the present suit were issues in the previous suit O.S.No.72 of 2007. In the previous suit it is held that those properties are not joint family property. Hence, the Court has held that exclusion of those properties in the previous suit for partition will not hit by partial partition. Having held so by the Court and accepted, there cannot be another suit for partition including this property as well the properties(second item) which are already divided and preliminary decree passed.

29. This Court hold that the subsequent suit is a vexatious suit, filed by suppressing facts. Unfortunately, the Court Below failed to examine the pleadings and decision in the earlier proceedings. Hence, the Trial Court judgement and decree is to be set aside.



A.S.No.236 of 2022

WEB COPY

30. As a result, **this Appeal Suit is allowed.** Judgment and decree in O.S.No.14 of 2017, dated 10.01.2022 is set aside. Consequentially, the suit for partition filed in O.S.No.14 of 2017 is dismissed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

15.07.2025

Index :Yes/No.

Neutral citation :Yes/No.

ari

To,

1. The IV Additional District Court, Bhavani, Erode District.
- 2.The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



A.S.No.236 of 2022

Dr.G.JAYACHANDRAN,J.

ari

delivery judgment made in
Appeal Suit No.236 of 2022
& C.M.P.No.8595 of 2022

15.07.2025