



WEB COPY

A.S.No



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2025

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.298 of 2022

Kuppanna Gounder [Died]
Thangaraj

... Appellant

-VS-

1. Sarasu
2. Vellayan

3. The Assistant Executive Engineer [O & M],
TANGEDCO, Chithalandur,
Thiruchengodu, Namakkal District.

4. The Superintendent of Engineer,
TANGEDCO, Paramathi Road,
Krishna Complex, Namakkal.

5. The Chief Executive Engineer,
TANGEDCO, Erode.

6. Tulasimani

... Respondents

Prayer: This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the decree and the judgment dated 11.01.2022 rendered in O.S.No.146 of 2013, on the file of the Sessions [Fast Track Mahila] Judge, Namakkal, by allowing this Appeal suit.

For Appellant : Mr.V.B.Jayachandran

For Mr.K.Soundararajan

For Respondents : Mr.T.S.Arthaneeswaran - R1

Notice dispensed with for R2 to R6

vide Order of this Court dated 08.09.2022



ORDER

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This matter is posted today under the caption “For Being Mentioned” at the instance of the learned counsel for the appellant.

2. Learned counsel for the appellant submitted that though the appeal was allowed on 10.02.2025 after extensive argument, in Paragraph No.16, the result pertaining to some other O.S.No.58 of 2012 dated 31.08.2021 has been inadvertently incorporated, as the challenge in the present appeal relates to O.S.No.146 of 2013 dated 11.01.2022 and to that extent, the order requires modification.

3. On going through the operative portion of the judgment dated 10.02.2025, viz., Paragraph No.16, it is seen that the error is apparent, as the result applicable to O.S.No.58 of 2012 has been wrongly typed in the judgment. Hence, Registry is directed to substitute the entire Paragraph No.16 of the judgment dated 10.02.2025 with the following Paragraph:

“16. In the result, this Appeal Suit is allowed and the judgment and decree of the suit in O.S.No.146 of 2013 dated 11.01.2022 is set aside. No costs.”



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4. Registry is further directed to amend the judgment and issue a fresh order copy to the parties forthwith. Except above, in all other respects, the judgment dated 10.02.2025 holds good.

28.02.2025

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THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 10.02.2025

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THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.298 of 2022

Kuppanna Gounder [Died]
Thangaraj
... Appellant

Versus

1. Sarasu
2. Vellayan
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TANGEDCO, Chithalandur,
Thiruchengodu, Namakkal District.
4. The Superintendent of Engineer,
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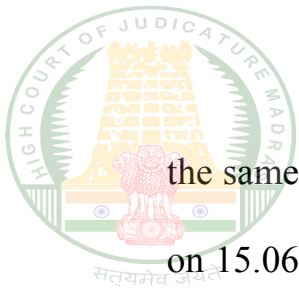
For Appellants : Mr.V.B.Jayachandran
for K.Soundararajan
For Respondents : Mr.T.S.Arthaneeswaran – R1
Notice dispensed with for R2 to R6
vide Order of this Court dated 08.09.2022

JUDGMENT

Challenging the decree and judgment of the trial Court in decreeing the suit granting preliminary decree for 1/3 share to the plaintiff and also setting aside the settlement deed dated 08.11.2012 in respect of the 1/3rd share of the plaintiff, the present appeal suit has been filed.

2. The parties are arrayed as per their own ranking before the trial Court.

3. It is the case of the plaintiff that the plaintiff is the daughter of the first defendant born through his first wife. The second defendant is the son of the first defendant through his second wife. It is the contention of the plaintiff that the property has been purchased by the first defendant out of the joint efforts of the plaintiff and others. It is the specific case of the plaintiff that the property has not been purchased out of the joint family nucleus or from the income of the ancestral property. The property has been purchased out of joint exertion and efforts and contribution made by the plaintiff. Hence, the plaintiff claims partition. However,

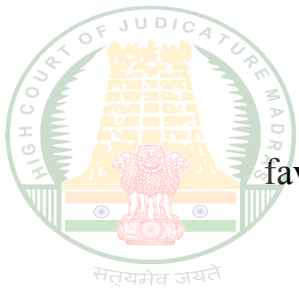


the same has not been considered. In this regard there was a panchayat in the village on 15.06.2012 and even in the panchayat, the first defendant failed to allot the share of the plaintiff. Now, the first defendant has executed a settlement deed in favour of the second defendant on 08.11.2012 Hence, the suit.

4. In the written statement, it is the contention of the first defendant that the property has been purchased on 24.05.1974 and the plaintiff was married in the year 1977 and he has also executed a release deed on 17.08.1978. Thereafter, the first defendant has executed a settlement deed on 08.11.2012 in favour of the second defendant. Hence, it is his contention that the subject property is his self acquired property. Hence, disputed the claim of the plaintiff.

5. The trial Court, based on the above pleadings, framed the following issues :

1. Whether the plaintiff is entitled for partition of $\frac{1}{2}$ share in the suit property?
2. Whether the suit property is a joint family property?
3. Whether the plaintiff is entitled to relief of declaration declaring the settlement deed dated 08.11.2012 is not valid with regard to the half share of the plaintiff?
4. Whether the plaintiff has executed a release deed in



favour of the first defendant with regard to her share?

5. To what relief?

Additional Issues :

1. Whether the defendants 5 to 7 are necessary parties to the suit?

2. Whether the suit properties are the self acquired properties of the first defendant as per the sale deed dated 24.05.1994?

6. On the side of the plaintiff, P.W.1 and P.W.2 have been examined and Ex.A.1 to Ex.A.4 have been marked. On the side of the defendants, D.W.1 has been examined and Ex.B.1 to Ex.B.4 have been marked. Considering the oral and documentary evidence, the trial Court granted preliminary decree in favour of the plaintiff. Challenging the same, the present appeal has been filed by the first defendant.

7. The learned counsel appearing for the appellant mainly would submit that the trial Court has only for the purpose of decreeing the suit considered Ex.B.1 and rejected the evidence of D.W.1 and the documents filed on his side. Further, the trial Court has held that the release deed has not been established. However,



relying on the contents of the release deed, the trial Court decreed the suit, which cannot be permitted in the eye of law. Further, there is no evidence to show that the property has been purchased out of the joint family nucleus.

8. In the light of the above submissions, the following points arise for consideration :

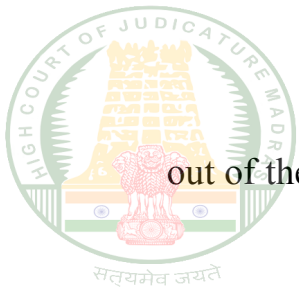
1. Whether the suit properties are joint family properties purchased out of the joint family nucleus?

2. Whether the plaintiff is entitled for a share in the suit property?

9. Despite an opportunity being given to the respondent, the respondent has not appeared before this Court. In the last hearing, the learned counsel appearing for the respondent sought time to argue the matter. However, none appeared for the respondent today. Hence, this Court is inclined to dispose of the appeal suit.

10. It is the specific case of the plaintiff that the property has been purchased by the father, viz., the first defendant herein. Joint family nucleus or income of the joint family has not been utilized for the purchase of the property.

Whereas, the specific case of the plaintiff is that the property has been purchased



out of the joint exertion and efforts put by the plaintiff and others.

11. The plaintiff was married in the year 1977 itself. The property has been purchased by the first defendant in the year 1974 under Ex.A.1. With regard to the nature of the joint efforts put by the plaintiff, there is absolutely no evidence. Even assuming that the property has been purchased out of the joint family nucleus, in the entire pleadings, there is no materials, whatsoever, to the effect that the ancestral property was available at the relevant point of time and the family possessed sufficient nucleus.

12. The main contention of the learned counsel appearing for the appellant is that the trial Court has held that the release deed itself clearly indicate that the property is a joint family property. But in this regard, absolutely, there is no materials whatsoever in the pleadings as to the nature of nucleus possessed by the joint family.

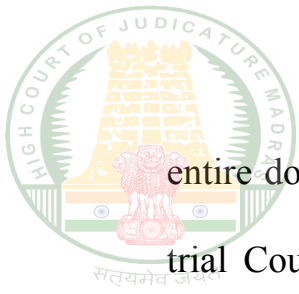
13. When a person claims that any property is purchased out of the income of the joint family property, the initial burden is on him to show that there is sufficient nucleus available in the family to purchase the property and possess some ancestral property atleast to infer that the properties were generating income at the relevant point of time. Whereas, the specific plea asserted by the plaintiff in the



plaint is that the property was never purchased out of the income of the joint family income. The stand taken by the plaintiff is that the property has been purchased with joint exertion and efforts put by the plaintiff. There is no materials whatsoever in the entire evidence as to the nature of efforts and joint exertion put by the plaintiff. The plaintiff has married within three years of the purchase of the property. Therefore, it is highly improbable to contend that the property has been purchased out of the contribution of the plaintiff and others.

14. It is also relevant to note that Ex.B.1 release deed is a registered document executed by the plaintiff releasing her share in the entire property. Whereas in her cross examination she had pleaded ignorance of the registration of the document. Therefore, once a document has been executed and registered and there is no denial of the document, pleading ignorance will not relieve the plaintiff from discharging her burden to show that the release deed has not been executed by herself. The trial Court infact has committed fundamental error, having held that the release deed has not been proved in the manner known to law, only for the purpose of decreeing the suit in favour of the plaintiff, contents of the release deed has been used, which, in view of this Court, is totally against the settled position of law.

15. Once a document is not proved in the manner known to law, the



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entire document has to be rejected. There cannot be any selective approach by the trial Court to rely upon certain content of the document in favour of any of the parties. Therefore, the approach of the trial Court in this regard is fundamentally wrong and against settled position of law. Therefore, in the absence of any other evidence that the property has been purchased out of the joint family nucleus or joint efforts of the plaintiff and others, on the basis of Ex.B.1, in view of this Court, as the plaintiff has released her right over the property, the trial Court granting preliminary decree cannot be sustained and the same has to be necessarily interfered. The points are answered accordingly.

16. In the result, this Appeal Suit is allowed and the judgment and decree of the suit in O.S.No.58 of 2012, dated 31.08.2021 is modified to the effect that the plaintiff is entitled to 1/3 share. In respect of other aspects, the judgment of the trial Court is Confirmed. There shall be no Order as to costs. Consequently, connected miscellaneous petition is closed.

10.02.2025

Index : Yes / No
Internet: Yes
Speaking/non speaking order
vrc
To
The Sessions Judge,
Fast Track Mahila Court, Namakkal.



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N.SATHISH KUMAR, J.

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