



A.S.No.274 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2025

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

A.S.No.274 of 2022
and
C.M.P.No.10310 of 2022

Muthu Naidu

.. Appellant

Vs.

1.Kasturi
2.Vijaya

.. Respondents

PRAYER: Appeal Suit is filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree in O.S.No.52 of 2017 on the file of Additional District cum Sessions Court / Fast Track Court, Villupuram, dated 03.01.2022.

For Appellant : Mrs.R.Poornima

For R1 : Mr.G.Saravanabhavan

For R2 : No appearance



A.S.No.274 of 2022

WEB COPY

JUDGMENT

The suit for partition based on a *Will* executed by the female heir of one Ramachandran Naidu, which is the subject matter of this appeal.

2. The plaintiff, who is the son of Rajammal, filed a suit on the premise that the suit property originally belonged to one Ramachandran Naidu. His son Govindarajilu Naidu and his daughter Rajammal jointly enjoyed the property after his demise. After the death of Ramachandran Naidu, on 07.04.2011, Rajammal bequeathed her share under a *Will* and later passed away on 03.08.2014. After the demise of his mother, the plaintiff stepped into her shoes and continued to enjoy the property along with Govindarajilu Naidu. However, when he sought partition with the daughters of Govindarajilu, who had inherited his $\frac{1}{2}$ share, they refused. Hence the suit in O.S.No.52 of 2017 was filed.

3. The defendants, who are the daughters of Govindarajilu Naidu, contested the suit stating that during her lifetime, Rajammal had relinquished her rights in the property in favour of her brother



A.S.No.274 of 2022

WEB COPY

Govindarajilu Naidu. On the demise of her father, Ramachandran Naidu, in the year 1952, the entire property thus devolved upon their father Govindarajilu Naidu. During his lifetime, Govindarajilu Naidu along with the two daughters, who are the defendants, effected a partition, in which Item Nos.28 to 34 were allotted to the 2nd defendant and Item Nos.35 to 39 were allotted to the 1st defendant.

4. It was further contended that the plaintiff is none other than the husband of the 2nd defendant and was fully aware of the said oral partition, which allegedly took place in the year 1985. They claim that after the death of Rajammal, who had allegedly relinquished the rights, a fabricated and antedated *Will* created and produced by the plaintiff for the purpose of maintaining this partition suit.

5. Claiming right in the suit property, the 1st defendant filed a counter claim seeking a declaration that she is entitled ½ share in the suit property and also sought possession.



6. The Trial Court has framed the following issues:-

“1. Whether there was an oral partition in the year 1985 as claimed by the 1st defendant and whether it was acted upon?

2. Whether the Will dated 07.04.2011, propounded by the plaintiff, is true and valid?.

3. Whether the plaintiff is entitled to a share in the suit property? If so, to what extent?

4. Whether the plaintiff is entitled to possession of the suit property?

5. What other reliefs?”

7. To prove his case, the plaintiff and one Sivakumar has mounted the witness box and were examined as PW.1 and PW.2 respectively. Twelve (12) documents were marked as Ex.P1 to Ex.P12 on their behalf. The 1st defendant alone entered the witness box and examined as DW.1 and no documents were marked on their side.

8. The trial Court, after appreciating the oral and documentary evidence, dismissed the suit, holding that the plaintiff had failed to establish his right in the suit property to seek partition. It further held that



A.S.No.274 of 2022

only defendants 1 and 2 were entitled to a share in the suit property.

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9. Being aggrieved, the plaintiff has filed the present appeal on the ground that the 1st defendant has admitted that the property belonged to Ramachandran Naidu and he died intestate. In such circumstances, both his class I legal heirs, namely son Govindarajilu and daughter Rajammal are entitled for equal share in the property as per Section 8 of Hindu Succession Act, 1956, read with the proviso to Section 6(1) of the Act. The property of Ramachandran Naidu ought to have been devolved upon his son as well as daughter, who are his class I heirs under the Hindu Succession Act.

10. The learned counsel appearing for the appellant contended that there is no proof for Rajammal relinquishing her right in the property. On the contrary, the *Will* executed by Rajammal clearly establishes that she did not relinquish her share in favour of her brother. Therefore, based on the *Will* dated 07.04.2011, the plaintiff is entitled to succeed to the share of Rajammal by applying the principal of notional partition.



A.S.No.274 of 2022

WEB COPY 11. The learned counsel appearing for the 1st respondent submitted that even according to the plaintiff, the property was already divided and mutation had taken place. Patta had been issued based on the possession and enjoyment of the respective portions by the parties. He further submitted that a partition had taken place in the year 1985 between Govindarajilu Naidu and his two daughters (the defendants). In this suit, the 2nd defendant conveniently remained ex parte, since she is married to the plaintiff. During her lifetime, Rajammal neither enjoyed the property jointly nor asserted any claim for a share.

12. The point for determination :

Whether the suit schedule properties, originally belonging to Ramachandran Naidu, devolves upon the plaintiff and the defendants in accordance with the law of succession? or Whether such succession was interrupted by an oral relinquishment by Rajammal and a subsequent oral division in the year 1985 between Govindarajilu Naidu and his two daughters?.



A.S.No.274 of 2022

WEB COPY

13. The case of the plaintiff is based on the *Will* of his mother Rajammal. The said *Will* is marked as Ex.A8. It is an unregistered *Will* dated 07.04.2011, wherein the testatrix had stated that she is entitled for 2/8 share in the property and that one of his brother's daughters Vijaya, is entitled to a 3/8 share through her father Govindarajilu. Thus, the total 3/8 share in the property been enjoyed by her son, Muthu Naidu, the plaintiff herein. Out of love and affection, she bequeathed her 2/8 share to her son Muthu Naidu. The schedule to the *Will* consists of 28 items of the property located in Thirukovilur panchayat, Villupuram district, and Konalavadi and Arunmurumbai village, in the same district.

14. The witness to the *Will*, Sivakumar, son of Duraikannan, signed as second witness and was examined as PW.2. To prove due execution of the *Will*, a proof affidavit in lieu of chief examination was filed. During cross-examination, the defendant suggested that the witness was not aware of the details of the properties covered under the *Will*. The *Will* was written on three sheets and Sivakumar was called to witness it as the plaintiff is his friend.

15. The contention of the defendant is that the *Will* is antedated



A.S.No.274 of 2022

WEB COPY *Will* prepared for the purpose of filing the suit.

16. On perusal of the records, particularly with respect to the mutation of revenue records assigning patta in specific survey numbers with extents vis-a-vis the *Will* marked as Ex.A8 and the schedule of suit properties, this Court finds that it is evidently clear that while Rajammal thought fit to bequeath her 2/8 share in the 59 items of property allegedly inherited from her father. These items have different survey numbers are located in different places and have varying extents. In the suit only 48 items of properties shown available for partition.

17. Surprisingly, in this suit, neither party has filed title documents to prove that the suit properties were held as ancestral property by Ramachandran Naidu and that they devolved upon his legal heirs, except for the alleged demand raised by the 1st defendant in the reply notice marked as Ex.P12. The plaintiff, who seeks partition based on the *Will* executed by his mother, claims that she had acquired a 2/8 share in her father Ramachandran Naidu's property. However, there is no



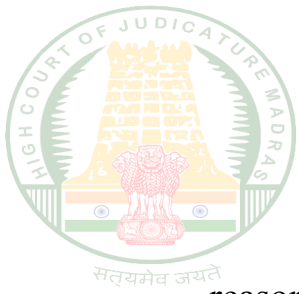
A.S.No.274 of 2022

WEB COPY

material evidence on record for the Court to presume that the properties were inherited from Ramachandran Naidu by his son and daughter. More particularly, the averments in the pleadings indicate that Ramachandran Naidu died in the year 1952. If that is the case and if the property was ancestral, then only Govindarajilu Naidu, being the sole surviving coparcener at that time, would be entitled to inherit the entire property.

18. The parties have not stated when Ramachandran Naidu got married and how Rajammal was enjoying the property as a co-owner. The conduct of the Rajammal, who did not seek partition during lifetime, indicates that she allowed Govindarajilu Naidu to enjoy the property absolutely, without asserting any right or share in the property. Only after her demise in the year 2014, the present suit has been filed in the year 2017. Meanwhile, a partition among the Govindarajilu Naidu and his daughters had already come into effect and they have been enjoying their respective share since then.

19. It cannot be accepted that the plaintiff was unaware of the said partition of the year 1985 and the mutation of records, for the simple



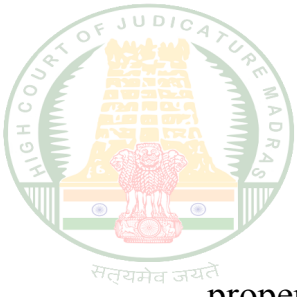
A.S.No.274 of 2022

WEB COPY

reason that the plaintiff is none other than the husband of the 2nd defendant, who is the daughter of Govindarajilu Naidu. Only after the demise of Rajammal in 2014 and three years thereafter, for reasons best known to him, the plaintiff has come forward with an unregistered *Will* and filed the suit for partition. The records before this Court, at the outset, do not provide concrete proof that the suit properties are ancestral in nature, carrying the characteristics of coparcenary property.

20. That apart, there is no evidence placed before this Court to show that Rajammal jointly enjoyed the property along with her brother Govindarajilu during her lifetime. Though her *Will* Ex.A8 states that she had been enjoying 2/8 share of the property, the plaintiff has not explained how this share ratio was arrived at and when such a division took place.

21. The documents relied by the plaintiff, including Ex.A8 (the *Will*) have also not been proved as required under law. One of the attesting witnesses has given a contrary evidence about the *Will*, which allegedly runs to five pages and contains detailed descriptions of the



A.S.No.274 of 2022

WEB COPY

property. However, the witness stated that the *Will* which he attested contains three pages, thereby casting serious doubt on the authenticity and due execution of the *Will*.

22. This Court also finds that only the last page of the *Will*, the witness has signed, whereas in the other four pages do not contain any such signature. Therefore, there is every reason to suspect the genuineness of the *Will* marked as Ex.A8. For the reason stated above, since the plaintiff has failed to establish that the suit properties are ancestral in nature and were jointly and uninterruptedly enjoyed by the siblings of Ramachandran Naidu, the claim of the plaintiff is liable to be rejected.

23. The trial Court has rightly held against the plaintiff by dismissing the suit, after re appreciation of evidence and after hearing the arguments of the respective counsels. This Court is of the view that the appeal deserves to be dismissed as devoid of merits.



A.S.No.274 of 2022

WEB COPY

24. Accordingly, this *Appeal Suit is dismissed*. Consequently, the connected Civil Miscellaneous Petition is also dismissed. There shall be no order as to costs.

03.07.2025

Index: Yes/No

Speaking/Non Speaking order

Neutral Citation: Yes/No

rpl

To

1.The Additional District cum Sessions Court / Fast Track Court,
Villupuram

2.The Section Officer, V.R.Section, High Court of Madras, Chennai.



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A.S.No.274 of 2022

Dr.G.JAYACHANDRAN,J.

rpl

A.S.No.274 of 2022

03.07.2025