



IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03 / 07 / 2025

JUDGMENT PRONOUNCED ON : 06 / 10 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.418 OF 2019

- | | |
|--------------------------------|-----------------------------------|
| 1. Amudham (Died) | ... Appellant No.1 /
Plaintiff |
| 2. Sudhakar
S/o. Ramalingam | |
| 3. Sutha
D/o. Ramalingam | ... Appellant Nos.2 & 3 |

Note: Sole appellant - Amudham passed away. Appellant Nos.2 and 3 were brought on record as legal representatives of the deceased sole appellant - Amudham vide Order of this Court dated July 5, 2024 made in CMP Nos.8570, 8572 and 8573 of 2023 in A.S.No.418 of 2019

Versus

- | | |
|--|---|
| Sakundhala (Died) | ... Defendant No.1 |
| 1.Kavitha
2.Suganthi
3.Elaiyaraja
4.Govindhan | ... Respondent Nos.1 to 4 /
Defendant Nos.2 to 5 |



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PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated March 7, 2019 passed in O.S.No.13 of 2015 by the III Additional District Court, Kallakurichi.

For Appellants	:	Mr.S.Parthasarathy Senior Counsel for M/s.P.Dinesh Kumar
For Respondents 1-3	:	Mr.Raja Rajan
For Respondent – 4	:	Served – No appearance

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated March 7, 2019 passed in O.S.No.13 of 2015 by the 'III Additional District Court, Kallakurichi' ['Trial Court' for brevity], the plaintiff therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The Suit Properties are all ancestral and joint family properties of

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Nangoor Udaiyar. The first defendant is his wife. In their wedlock, they had one son – one Tamilarasan and two daughters – the plaintiff and one Vimala. The second defendant is wife of said Tamilarasan. The third defendant and one late Sujatha are daughters of Tamilarasan.

3.1. During his lifetime, Nangoor Udaiyar was managing the Suit Properties as manager of the joint family. After the death of Nangoor Udaiyar in 1976, his son - Tamilarasan managed the Suit Properties as joint family Manager without effecting any partition.

3.2. The plaintiff got married in 1978. The other daughter - Vimala passed away intestate as a bachelorette in 1991 leaving behind her 1/3 interest in the Suit Properties. Tamilarasan passed away intestate on July 12, 2005 leaving behind defendants 1 to 3 as his legal heirs. First defendant executed a Gift Settlement Deed dated July 18, 2011 in favour of the plaintiff in respect of her entitlement in the Suit Properties. Plaintiff on September 17, 2012 executed a Sale Deed in favour of fifth defendant in respect of a portion of her share. Aggrieved by the same, the defendants 2 and 3, with an intention to encumber the Suit Properties, have fabricated a Sale Deed dated November 9, 2012 without consideration in respect of a



major portion of Suit Properties. Hence, the plaintiff filed the Suit for partition of her $\frac{1}{2}$ share in the Suit Properties.

DEFENDANTS' CASE

4. Though summons were duly served, defendants 1 and 5 didn't choose to appear and contest the case. Hence, they were called absent and set *ex-parte* by the Trial Court.

5. The second and fourth defendant filed a written statement which was adopted by the third defendant. The relationship between the parties as stated in the plaint is admitted. Sum and substance of the written statement is that Suit Item Nos.12 to 14 and 31 are self-acquired properties of Tamilarasan. Rest of the Suit Properties along with some other properties not included in this Suit are all Hindu joint family properties.

5.1. Nangoor Udaiyar passed away intestate in 1976. After his demise, Tamilarasan took over the management of the joint family and its properties. Tamilarasan conducted the marriage of the plaintiff with 40 Sovereign of gold besides the usual Seers in 1978.

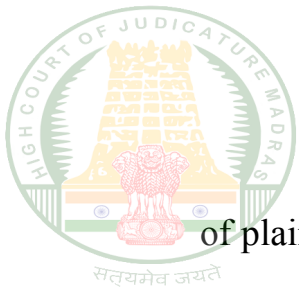
5.2. The second defendant married Tamilarasan in July 1981 and an



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oral family arrangement was effected in the same year among the legal heirs of Nangoor Udaiyar, as per which, the entire Suit Properties along with some more properties fell into the hands of Tamilarasan. Based on the oral family arrangement, Patta No.171 was issued in the name of Tamilarasan for the Suit Properties and Tamilarasan had been in exclusive possession and enjoyment of the Suit Properties along with some more properties. Vimala passed away intestate and unmarried in 1991. Tamilarasan sold some of the joint family properties, not included in the Suit Properties, to third parties between 1992 and 1995 and in fact, the plaintiff's brother-in-law - Jagadeesan had purchased a portion of the joint family properties from Tamilarasan. After his demise, second and third defendants enjoyed the Suit Properties without any interruption for about 32 years ousting the plaintiff from the Suit Properties. Hence, the Suit filed by the plaintiff is barred by limitation. On April 15, 2005 Tamilarasan executed an unregistered Will in favour of the second and third defendants and late Sujatha in respect of Suit Properties. Sujatha passed away intestate in 2009 as a bachelorette. The second and third defendants are now enjoying the Suit Properties.

5.3. The alleged Gift Settlement Deed dated July 18, 2011 in favour



of plaintiff by first defendant is not genuine and void as the first defendant had no right to do so. The plaintiff has no right to object the Sale Deed executed by the defendants 2 and 3 in favour of the fourth defendant. Further, the plaintiff has no right to execute Sale Deed in respect of any portion of the Suit Properties in favour of fifth defendant. The plaintiff does not have any right in the Suit Properties. Stating so, the defendants sought to dismiss the Suit.

TRIAL COURT

6. Based on the above pleadings, the Trial Court framed the following issues:

- “1. Whether this suit is maintainable?*
- 2. Whether any oral family arrangement was effected in the year 1981?*
- 3. Whether the plaintiff is entitled for ½ share in the suit properties?*
- 4. Whether the plaintiff is entitled for the reliefs as prayed for?*
- 5. To what other relief the plaintiff is entitled?”*

7. Later, the following additional issue was framed:



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“Whether the Settlement Deed executed by the first defendant - deceased Sakunthala on July 18, 2011 in favour of the plaintiff regarding her share over Suit Schedule Property confers any right to the plaintiff? ”

8. At trial, plaintiff was examined as P.W.1 and one Jagadeesan was examined as P.W.2 and Ex-A.1 to Ex-A.13 were marked on the side of the plaintiff. On the side of the defendants, second defendant was examined as D.W.1, one Mani and one Jayakumar were examined as D.W.2 and D.W.3 respectively and Ex-B.1 to Ex-B.25 were marked.

9. During the pendency of the Original Suit, the first defendant passed away on July 21, 2016 and her legal heirs were already on record as plaintiff and the third defendant.

10. After full-fledged trial, the Trial Court concluded that oral family arrangement was effected in 1981, wherein and whereby the plaintiff and first defendant had relinquished their right in the Suit Properties and the other joint family properties. The Gift Settlement Deed allegedly executed by the first defendant on July 18, 2011 in favour of the

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plaintiff does not confer any right to the plaintiff. The Suit is not maintainable as framed. The plaintiff is not entitled to any relief.

Accordingly, the Trial Court dismissed the Suit.

APPEAL SUIT

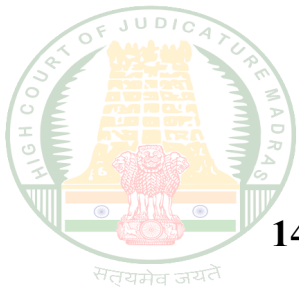
11. Feeling aggrieved, the plaintiff has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

12. During the pendency of this Appeal Suit, the sole appellant / plaintiff – Amudham passed away on July 21, 2022 leaving behind his son - Sudhakar and daughter - Sutha as her legal representatives, and they were brought on record as Appellant Nos.2 and 3 vide Order of this Court dated July 5, 2024 passed in CMP Nos.8570, 8572 and 8573 of 2023 in A.S.No.418 of 2019.

ARGUMENTS:

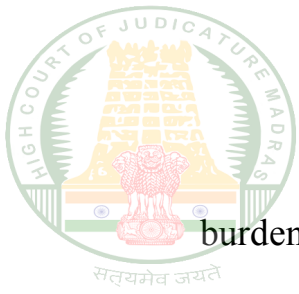
13. Both sides argued elaborately. Heard both sides in full.

14. The arguments of Mr.S.Parthasarathy, learned Senior Counsel appearing for Appellant Nos.2 and 3 can be summarised as follows:



14.1. Though Ex-B.5 to Ex-B.7 – Sale Deeds in respect of Suit Item

Nos.12, 20 and 31 stand in the name of Tamilarasan, the aforesaid properties were purchased in and out of surplus income from more than 10 Acres of high yielding joint family agricultural properties. Further, the second defendant has not established that her husband – Tamilarasan had substantial separate income other than the income derived from the joint family for the purchase of properties covered under Ex-B.5 to Ex-B.7 and Ex-A.10. Further, Ex-B.5 was executed in 1970 and at that time, Tamilarasan was a minor. Ex-A.10, Ex-B.6 and Ex-B.7 were executed in the years 1981, 1985 and 1990 respectively, and there exist no evidence to show that he had sufficient independent income to purchase the properties covered thereunder. Ex-B.21 – Letter dated December 2, 1996 from the Provident Fund Office addressed to Tamilarasan stating that he has been sanctioned a sum of Rs.14,545/-, and Ex-B.22 – Letter dated June 25, 1996 from A.R. Damodara Mudaliar and Company stating that his security deposit of Rs.16,335/- is refunded to him. These are all years after Ex-A.10, Ex-B.5 to Ex-B.7 and hence not relevant. Hence, the properties covered under Ex-A.1, Ex-B.5 to Ex-B.7 are all ancestral and joint family properties. The defendants 2 to 4 pleaded oral family arrangement. The

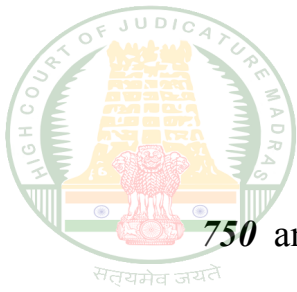


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burden to prove the same lies upon them. But the defendants failed to prove the plea of oral family arrangement.

14.2. D.W.1 / second defendant in her chief examination deposed that oral family arrangement took place in 1981, while in her cross-examination on February 27, 2018, she deposed that when her marriage with Tamilarasan was being discussed, as her family was hesitant that were loans payable by Tamilarasan, at that time, first defendant, plaintiff and late Vimala assured that they would not claim any share in joint family properties. During her further cross-examination on April 9, 2018, she deposed that in 1977, the plaintiff and late Vimala orally declared that they want no share in the joint family properties and the same came to her knowledge from her husband. Despite these contradictions, no independent witness was examined to prove the alleged family arrangement. The defendants have failed to prove the same.

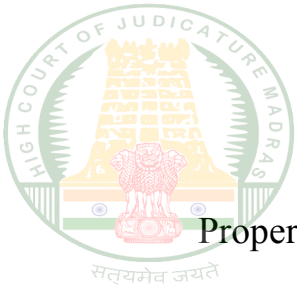
14.3. Further, any relinquishment in immovable property above the value of Rs.100/- must be registered and in support of the contention, he would rely on the Judgment of a learned Single Judge of this Court in *Prema Suryanarayanan -vs- Venkataraman*, reported in *2018 (2) CTC*



750 and the Judgment of a learned Single Judge of the Hon'ble High Court of Kerala in ***Kannan P V -vs- Meenakshi M***, reported in **2013 (2) ILR (Kerala) 764**.

14.4. As regards the alleged Ex-B.20 – Will dated April 17, 2005, it would have come into effect on July 12, 2005 upon Tamilarasan's demise. That disposition, even if it's true and genuine, would not bind or affect the plaintiff's right in view of the proviso to sub-section (1) of Section 6 of the Hindu Succession Act, 1956.

14.5. The plaintiff's marriage was in 1978 but in view of the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005), the daughter - plaintiff is a co-parcener entitled to equal share to that of the son – Tamilarasan, and hence, dehors the validity of the alleged Tamilarasan's Will (Ex-B.20), the plaintiff is entitled $\frac{1}{3} + \frac{1}{9}$ share = $\frac{4}{9}$ share. The first defendant would be entitled to $\frac{1}{9}$ share, and second and third defendants would be jointly entitled to $\frac{4}{9}$ share. As first defendant passed away pending Suit leaving behind $\frac{1}{9}$ share, the same devolve under Section 15 (1) (a) of the Hindu Succession Act, 1956 upon the plaintiff and third defendant. In short, the plaintiff is entitled to $\frac{1}{2}$ share in the Suit



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Properties and the defendants 2 and 3 would be jointly entitled to $\frac{1}{2}$ share.

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14.6. The defendants 2 and 3 had no right to execute Sale Deed in respect of more than $\frac{1}{2}$ share in the Suit Properties and hence, Ex-A.3 – Sale Deed is not binding on the plaintiff and would not affect her right in any manner.

14.7. He would rely on the Judgment of this Court in ***Kandasamy -vs- Thangavel***, reported in ***MANU/TN/3583/2024*** (Division Bench) to contend that the relief of partition sought for is well within limitation.

14.8. The Trial Court failed to consider the said aspects and dismissed the Suit. Accordingly, he would pray to allow the Appeal Suit, set aside the Judgment and Decree of the Trial Court, and grant the relief of partition.

15. Per contra, Mr.Raja Rajan, learned Counsel for the Respondent Nos.1 to 3 / Defendant Nos.2 to 4 would argue that Suit Item Nos.12 to 14,

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20 and 31 are all separate and self-acquired properties of Tamilarasan vide

Ex-A.10, Ex-B.5 to Ex-B.7 – Sale Deeds. There are sufficient evidence

available on record to show that Tamilarasan was working in a private

company and earned sizeable income during the purchase of Ex-A.10, Ex-

B.6 and Ex-B.7. Tamilarasan passed away leaving behind Ex-B.20 – Will

and the same has been proved as per law by examining the attesting

witnesses. Hence, *qua* Suit Item Nos.12 to 14, 20 and 31, the plaintiff has

no right to seek partition. Nangoor Udaiyar and Tamilarasan were co-

parceners having equal interest in the joint family properties. When

Nangoor Udaiyar passed away in 1976, succession opened in respect of

his $\frac{1}{2}$ interest in the joint family properties and the plaintiff, Vimala, first

defendant and Tamilarasan became entitled to $\frac{1}{8}$ share each. As

Tamilarasan took care of the plaintiff, Vimala and the first defendant,

including the marriage of the plaintiff, they voluntarily relinquished their

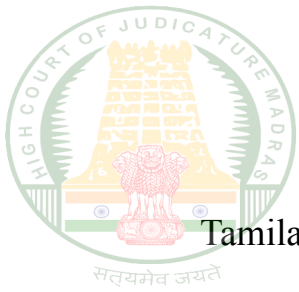
right in respect of joint family properties, in the oral family arrangement

held in 1981. Pursuant to the family arrangements, revenue records in Ex-

B.8 to Ex-B.13 were mutated in the name of Tamilarasan. Similarly

electricity service connection were also mutated vide Ex-B.3 and Ex-B.4

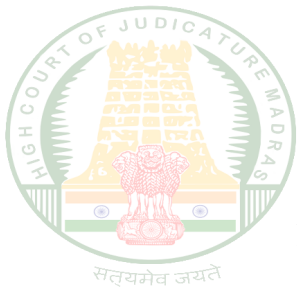
in the name of Tamilarasan. Further, pursuant to oral family arrangement,



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Tamilarasan executed Ex-B.2, Ex-B.15 to Ex-B.17 – Sale Deeds in respect of some other joint family properties not included in Suit Properties in favour of third parties. Similarly he has been paying Kist in respect of joint family properties vide Exs-B.18 and B.19. Hence, Tamilarasan was enjoying the Suit Properties exclusively without any interference from the plaintiff or first defendant or late Vimala. The plaintiff and first defendant have no right in the Suit Properties. He executed Ex-B.20 – Will in favour of defendants 2 and 3, and late Sujatha. The attesting witnesses of the Will was examined as D.W.2 and D.W.3 and thereby it was proved as per law. After demise of Tamilarasan, the plaintiff with a view to trouble the second defendant, executed a Sale Deed in respect of a portion of Suit Properties in favour of fifth defendant and also obtained Ex-A.1 – Gift Settlement Deed from first defendant. Based on the above documents, the plaintiff clandestinely included her name in the revenue records right before the Suit in 2013, without notice to Defendant Nos.2 and 3. Further, the plaintiff's right if any is extinguished by law of limitation. Further the relief of partition sought for is barred by limitation. The Trial Court rightly dismissed the Suit and there is no reason to interfere with the Judgment and Decree of Trial Court.

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15.1. He would rely on the following decisions in support of his contentions:

- (i) Judgment of this Court in this Court (Division Bench) in ***R.Rayappan -vs- Rajammal***, reported **2025 (1) CTC 407**;
- (ii) Judgment of this Court in ***Puniyavathi -vs- Pachaiaimmal*** [A.S. No.251 of 2011, decided on February 22, 2022].

DISCUSSION:

16. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:

- (i) Whether the Suit Item Nos.12, 13, 14, 20 and 31 are self-acquired properties of Tamilarasan or joint family properties ?
- (ii) Whether oral family arrangement took place between the plaintiff, first defendant, late Vimala and Tamilarasan in 1981 as alleged ?
- (iii) Whether the relief of partition sought for is barred by limitation ?
- (iv) Whether Ex-B.20 – Will is true, genuine and valid ?
- (v) Whether the plaintiff is entitled to a share in the Suit Properties ?
- (vi) Whether Ex-A.3 - Sale Deed would bind and affect the rights of the

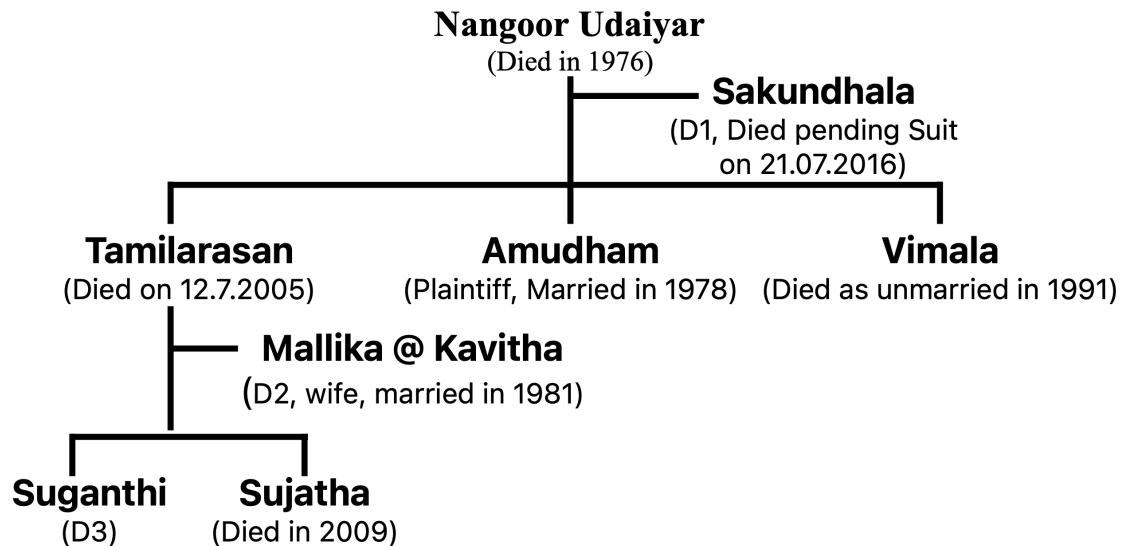


plaintiff ?

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(vii) Whether the alleged Sale Deed dated September 17, 2012 would bind the defendants 2 and 3 ?

17. For better appreciation of the facts of the case, the following genealogy tree is drawn and there is no dispute with the relationship between the parties :



Point No.(i)

18. From Ex-A.2 – Computerised Patta and Ex-B.8 to Ex-B.13 – Pattas issued under UDR Scheme and Natham Land Tax Scheme, it is discerned that joint family owned Nanja land of more than 4 Acre and Punja land of more than 9 Acre. D.W.1 / second defendant in her evidence

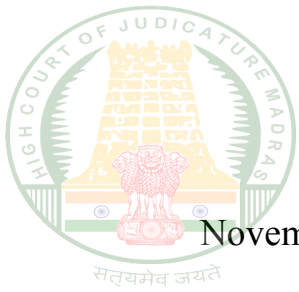


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admitted that the joint family owned about 9 to 10 Acre of agricultural land. Further, she admitted that after the demise of Nangoor Udaiyar, the first defendant, the plaintiff and the late Vimala, all were residing under one roof as a joint family and Tamilarasan was taking care of the joint family and its properties. Thus, the existence of joint family properties is proved. Now the plaintiff bears the burden to prove that there was surplus income from the joint family properties to purchase Suit Item Nos.12, 13, 14, 20 and 31.

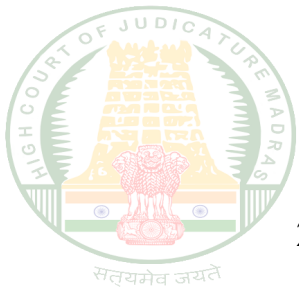
19. Nangoor Udaiyar purchased an extent of 26 Cents in Survey No.163/3 for Rs.1,000/- in the name of Minor Tamilarasan, as he then was, vide Ex-B.5 – Sale Deed. The said property is described as Suit Item No.12. Though Suit Item No.12 is purchased in the name of Tamilarasan, he could not have had any separate income to purchase it at that time and hence, it can only be considered as a property purchased out of joint family income by Nangoor Udaiyar and hence, it is a joint family property.

20. Vide Ex-A.10 - Sale Deed dated June 5, 1981, Tamilarasan purchased Suit Item Nos.13 and 14, which are agricultural lands, for a sum of Rs.3705/- from one Naina Udaiyar. Vide Ex-B.6 – Sale Deed dated



November 20, 1985, Tamilarasan purchased Suit Item No.31, which is a house site, in Ulundurpettai, for a sum of Rs.4,100/- and vide Ex-B.7, Tamilarasan had purchased Suit Item No.20, which is agricultural land of an extent of about 21 Cents.

21. There is no evidence available on record to show that there was surplus income from the joint family properties to purchase the properties covered under Ex-A.10, Ex-B.6 and Ex-B.7. On the other hand, from Ex-B.21, which is a Letter dated December 2, 1996 from the Office of the Regional Provident Fund Commissioner, Trichy addressed to Tamilarasan stating that he has been sanctioned a sum of Rs.13,464/-, it could be understood that Tamilarasan was working in Private Petrol Bunk, Ulundurpettai. Ex-B.22 is the Letter dated June 25, 1996 from A.R.Damodara Mudaliar and Company, a dealer of Bharat Petroleum Corporation, addressed to Tamilarasan stating that his security deposit of Rs.16,335/- is refunded. D.W.1 has deposed that in the house site purchased viz., Suit Item No.30, Tamilarasan built a house and the defendants 2 and 3 are currently residing there. Ex-B.24 – Property Tax Receipt would support her statement.

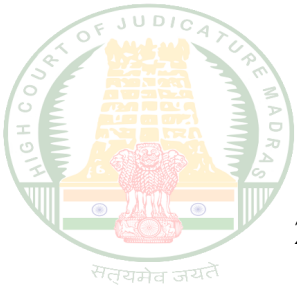


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22. From a wholistic consideration of Ex-A.10, Ex-B.6, Ex-B.7 Ex-B.21, Ex-B.22, Ex-B.24 and D.W.1, it could be discerned that Tamilarasan was working in Petrol Bunk in Ulunderpettai, had separate income therefrom and purchased Suit Item Nos.13, 14, 20 and 31. There is no bar against a joint family manager buying separate properties using his separate income. Hence, Suit Item Nos. 13, 14, 20 and 31 are separate properties of Tamilarasan. Rest of the Suit Properties are all ancestral and joint family properties and there is no satisfactory evidence to prove the contrary. **Point No.(i) is answered accordingly.**

Point No.(ii)

23. The defendants 2 to 4 in their written statement have pleaded that oral family arrangement took place in the year 1981, whereby the plaintiff, the first defendant and late Vimala relinquished their share in favour of Tamilarasan. It is settled law that oral family arrangement is valid, however it has to be pleaded and proved through satisfactory evidence. [See *Kale -vs- Deputy Director of Consolidation*, reported in *AIR 1976 SC 807*; *Lakshmipathy -vs- A.M.Chakrapani Reddiar*, reported in *2001-1-LW-257*]



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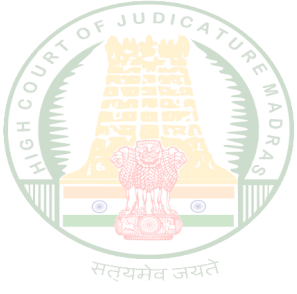
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24. Tamilarasan, on behalf of himself and his then minor daughters – Suganthi and Sujatha, executed Ex-B.2 – Sale Deed on May 3, 1995 in favour of Jagadeesan / P.W.2, who is the brother-in-law of plaintiff. In the said Sale Deed, there was no recital about any oral family arrangement. In Ex-B.15 – Sale Deed, Tamilarasan sold a joint family property of 3 Acre 44 Cents in Survey No.76/4 in favour of one Pichaikaran. In Ex-B.15 as well, there is no reference to the alleged oral family arrangement. In Ex-B.16 – Sale Deed, ancestral entitlement to an extent of 2 Acre 51 Cents was sold by Tamilarasan, on behalf of himself and his minor daughters, in favour of one Karuppa Udaiyar. There exist a specific reference in Ex-B.16 that the property covered thereunder is an ancestral entitlement. In the above transactions, there is nothing to infer oral family arrangement as alleged by defendants 2 to 4. On the other hand, from the recitals contained therein, it could only be inferred that the properties covered thereunder are joint family properties. At this juncture it is relevant to refer to following portion of the evidence of D.W.1/ second defendant – Kavita:

D.W.1. in para (3) of her chief affidavit has deposed as follows:

“என் பெற்றோர்கள் 1-ம் பிரதிவாதி வாதி மற்றும்
விமலா ஆகியோர்களிடம் மேற்படி கடன் தொல்லை
பற்றியும், குடும்ப நிலவரம் பற்றியும் பேசினார்கள்.

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அதனை அனுசரித்து தமிழரசன், 1-ம் பிரதிவாதி, வாதி மற்றும் காலஞ் சென்ற விமலா ஆகியோர் முன்னின்று 1981-ம் ஆண்டில் ஒரு வாய்மொழி குடும்ப ஏற்பாடு நடைபெற்றது.”

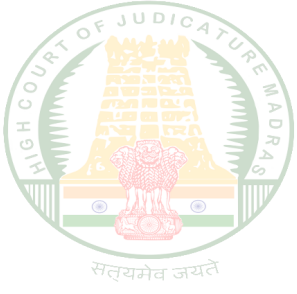
Further in her cross examination on February 27, 2018, she has deposed as follows:

“என்னை திருமணம் செய்து வைக்கும்பொழுது என் பெற்றோர்கள் தமிழரசன் வீட்டிற்கு மாப்பிள்ளை வீடு பார்க்க சென்றபோது கடன் இருப்பதை அறிந்து பெண் எவ்வாறு கொடுப்பது என்று என் பெற்றோர் யோசித்தபோது வாதி, என்மாமியார் மற்றும் விமலா ஆகியோர் சொத்துக்களில் தங்களுக்கு எதுவும் வேண்டாம் எனவும், நீங்கள் தாராலமாக பெண்ணை கொடுக்கலாம் என்று சொன்னதின்பேரில்தான் திருமணம் நடந்தது.”

Further in her cross examination on April 9, 2018, she has deposed as follows:

“தாவா சொத்திற்கான பட்டா எண்.171 ஏற்கனவே நாங்கூர் உடையார் பெயரில் இருந்தது. அவர் 1976-ல் இறந்தபிறகு 1977-ல் தமிழரசன் பெயரில் மாற்றிக்

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கொண்டார். நாங்கூர் உடையாரின் ஆண்வாரிக
என்றமுறையில் தமிழரசன் பெயரில் பட்டா மாறியது
என்றால் சரி பட்டா மாற்றம் ஏற்படும்போது விசாரனை
ஏதாகிலும் நடைபெற்றதா என்றால் இல்லை.....

நாங்கூர் உடையார் 1976-ல் காலமான பிறகு
மேற்படி மூவரும் பங்கு வேண்டாம் என கூறியது
எப்போது என்றால் 1977-ம் ஆண்டு வேண்டாம் என
கூறினார்கள். 1977-ல் எனக்கு திருமணமாகவில்லை,
அப்பொழுது எனக்கும், அந்த குடும்பத்திற்கும்
சம்மந்தமில்லை என்றால் சரி....

வாதி, சகுந்தலா மற்றும் விமலா தங்களுக்கு
பங்கு வேண்டாம் என்று விடுதலை ஆவணம் எழுதி
தரவில்லை, வாய்மொழியாகதான் தெரிவித்தார்.
வாய்மொழியாக தெரிவித்த விபரம் குறித்து என்
கணவர்தான் சொன்னார். மேற்படி மூவரும் வாய்மொழி
விடுதலை எதுவும் கொடுக்கவில்லை எனவும்
வழக்கிற்காக கொடுத்ததாக சொல்கிறேன் என்றால்
தவறு....”

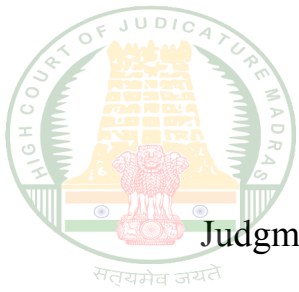
25. D.W.1 in her chief examination has deposed that oral family
arrangement took place in 1981. In her cross-examination on February 27,

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2018, she deposed that when her marriage with Tamilarasan was being discussed by both side families, her family was hesitant that there were loans payable by Tamilarasan, and at that time, first defendant, plaintiff and late Vimala assured that they would not claim any share in joint family properties. During her further cross-examination on April 9, 2018, she deposed that in 1977, the plaintiff, first defendant and late Vimala orally declared that they want no share in the joint family properties and the same came to her knowledge from her husband. The above contradictions makes it clear that D.W.1 has not taken a clear and categoric stand on the oral family arrangement. There is no clear and cogent evidence as to when the oral family arrangement took place, in the presence of whom, what were the specific arrangements made etc. Hence, this Court is of the view that the oral family arrangement has not been satisfactorily proved by the defendants 2 to 4.

26. Mr.S.Parthasarathy, learned Senior Counsel would contend that oral relinquishment has to be in writing if its value exceeds Rs.100/-. He would invite the attention of this Court to ***Prema Suryanarayanan's Case*** (Single Judge of this Court) and ***Kannan's Case*** (Single Judge of Kerala High Court) [cited *supra*]. At the same time, he would fairly point out two



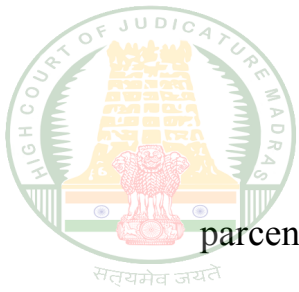
Judgments authored by me, in ***C.Mani -vs- C.Rajan***, reported in **2024 (3)**

WEB COPY ***MWN (Civil) 691 and Vedhavalli -vs- Venkatesan***, reported in **2024-5-**

LW-609, wherein I have held that relinquishment need not mandatorily be in writing under the Transfer of Property Act, 1882 and oral relinquishment is valid just like how oral partition is valid, provided it is proved. In view of the above finding that oral family arrangement has not been proved in this case, this Court is of the view that there arises no need to delve into the question of validity of oral relinquishment. **Point No.(ii) is answered accordingly in favour of plaintiff and against the defendants.**

Point Nos.(iii), (iv) and (v)

27. In this case, in 1976, father – Nangoor Udaiyar passed away. Upon his demise, Tamilarasan alone was the surviving co-parcener; at that time, neither the plaintiff nor her sister – late Vimala were a coparcener. It is quite natural that the revenue records were mutated in the name of the only surviving co-parcener - Tamilarasan. Then the plaintiff got married in 1978 and hence, she ceased to be a joint family member. Then the Tamil Nadu Act No.1 of 1990 came into picture with effect from March 25, 1989. In view of Tamil Nadu Act No.1 of 1990, late Vimala became a co-



parcener by birth along with Tamilarasan with effect from March 25, 1989.

She had equal interest in the Suit Properties on par with her brother – Tamilarasan. Shortly thereafter, Vimala passed away unmarried and intestate. She did not partition her share during her lifetime. Upon Vimala's demise, her coparcenary interest fell back into the hands of Tamilarasan, the sole surviving member of the coparcenary, as per Section 29 B of the Hindu Succession Act, 1956 as amended by Tamil Nadu Act No.1 of 1990. In these circumstances, it would be no wonder that the revenue records in respect of joint family properties stand in the name of Tamilarasan. For ready reference, said Section 29-B is extracted hereunder:

"29-B. Interest to devolve by survivorship on death.--When a female Hindu dies after the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989, having, at the time of her death, an interest in a Mitakshara coparcenary property by virtue of the provisions of section 29-A, her interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that if the deceased had left any child



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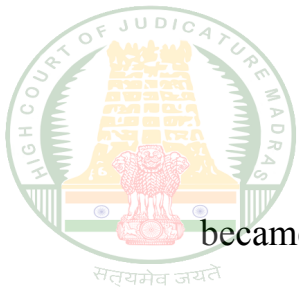
or child of a pre-deceased child, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation I.--For the purposes of this section, the interest of a female Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to her if a partition of the property had taken place immediately before her death, irrespective of whether she was entitled to claim partition or not.

Explanation II.--Nothing contained in the proviso to this section shall be construed as enabling a person who, before the death of the deceased, had separated himself or herself from the coparcenary or any of his or her heirs to claim on intestacy a share in the interest referred to therein."

28. Then the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005) came into effect from September 9, 2005, as per which, irrespective of the date of death of the father, the daughter is a co-parcener by birth. In other words, by virtue of the amended Section 6, the plaintiff

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became a coparcener by birth. Needless to mention that though the plaintiff became a coparcener by birth, her rights are enforceable only from the date of commencement of the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005). In this regard, it is pertinent to refer to the landmark Judgment of Hon'ble Supreme Court in ***Vineeta Sharma -vs- Rakesh Sharma***, reported in **2020 9 SCC 1**, wherein it was held in Paragraph No.137 as follows:

“137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be



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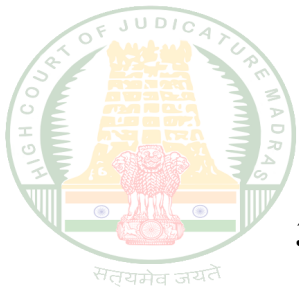
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living as on 9.9.2005.

137.4. The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.”

29. Hence, though the plaintiff became co-parcener by the antecedent incident of her birth, her enforcement of coparcenary rights is only possible from September 9, 2005. The Suit was filed on June 14, 2013 i.e., within 12 years from the date from when the plaintiff's coparcenary rights became enforceable. Hence, the Suit is not barred by Article 110 of the Limitation Act, 1963.

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30. Learned Counsel appearing for the respondent would vehemently contend that succession opened in the year 1976 when Nangoor Udaiyar passed away and the right to claim partition / right to sue accrued in the year 1976 itself. The plaintiff failed to exercise her right for more than the statutory period of 12 years and hence, the plaintiff's right if any, in the Suit Properties has been extinguished, and the plaintiff has clearly been ousted from the Suit Properties. Hence, the relief of partition is not available to the plaintiff and the Suit is barred by limitation. In support of the above contentions, he would rely on ***R.Rayapan's Case*** and ***Puniyavathi's Case*** [cited *supra*].

31. This Court has given its anxious consideration to the above arguments. It is true that succession opened in the year 1976 when Nangoor Udaiyar passed away, as per unamended Section 6 of the Hindu Succession Act, 1956. As per the proviso to unamended Section 6 of the Hindu Succession Act, 1956, plaintiff, first defendant, Vimala and Tamilarasan, through intestate succession, would jointly be entitled to $\frac{1}{2}$ interest of Nangoor Udaiyar in the coparcenary. But actual partition was never effected. The concept of notional partition enunciated in unamended Section 6 is only to identify the shares at the time of actual partition. In



this regard, reference may be made to the Judgment of Hon'ble Supreme

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Court in ***State of Maharashtra -vs- Narayan Rao Sham Rao Deshmukh,***

reported in ***(1985) 2 SCC 321***, wherein in Paragraph Nos.8 and 10, while

referring to ***Gurupad Khandappa Magdum -vs- Hirabai Khandappa***

Magdum, reported in ***(1978) 3 SCC 383***, it was held thus:

“8. A Hindu coparcenary is, however, a narrower body than the joint family. Only males who acquire by birth an interest in the joint or coparcenary property can be members of the coparcenary or coparceners. A male member of a joint family and his sons, grandsons and great grandsons constitute a coparcenary, A coparcener acquires right in the coparcenary property by birth but his right can be definitely ascertained only when a partition takes place. When the family is joint, the extent of the share of a coparcener cannot be definitely predicated since it is always capable of fluctuating. It increases by the death of a coparcener and decreases on the birth of a coparcener. A joint family, however, may consist of female members. It may consist of a male member, his wife, his mother and his unmarried daughters. The property of a joint family does not cease to belong to the family merely because there is only a single male member in the family. (See Gowli Buddanna v. CIT



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[(1966) 3 SCR 224 : AIR 1966 SC 1523 : (1966) 60 ITR 293] and Sitabai v. Ram Chandra [(1969) 2 SCC 544 : AIR 1970 SC 343 : (1970) 2 SCR 1] .) A joint family may consist of a single male member and his wife and daughters. It is not necessary that there should be two male members to constitute a joint family. (See N.V. Narendranath v. CWT [(1969) 1 SCC 748 : AIR 1970 SC 14 : (1969) 3 SCR 882 : (1969) 74 ITR 190]) While under the Mitakshara Hindu law there is community of ownership and unity of possession of joint family property with all the members of the coparcenary, in a coparcenary governed by the Dayabhaga law, there is no unity of ownership of coparcenary property with the members thereof. Every coparcener takes a defined share in the property and he is the owner of that share. But there is, however, unity of possession. The share does not fluctuate by births and deaths. Thus it is seen that the recognition of the right to a definite share does not militate against the owners of the property being treated as belonging to a family in the Dayabhaga law.

...

...

...

10. We have carefully considered the above

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decision and we feel that this case has to be treated as an authority for the position that when a female member who inherits an interest in the joint family property under Section 6 of the Act files a suit for partition expressing her willingness to go out of the family she would be entitled to get both the interest she has inherited and the share which would have been notionally allotted to her, as stated in Explanation I to Section 6 of the Act. But it cannot be an authority for the proposition that she ceases to be a member of the family on the death of a male member of the family whose interest in the family property devolves on her without her volition to separate herself from the family. A legal fiction should no doubt ordinarily be carried to its logical end to carry out the purposes for which it is enacted but it cannot be carried beyond that. It is no doubt true that the right of a female heir to the interest inherited by her in the family property gets fixed on the death of a male member under Section 6 of the Act but she cannot be treated as having ceased to be a member of the family without her volition as otherwise it will lead to strange results which could not have been in the contemplation of Parliament when it enacted that provision and which might also not be in the interest of such female heirs. To illustrate, if what is being

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asserted is accepted as correct it may result in the wife automatically being separated from her husband when one of her sons dies leaving her behind as his heir. Such a result does not follow from the language of the statute. In such an event she should have the option to separate herself or to continue in the family as long as she wishes as its member though she has acquired an indefeasible interest in a specific share of the family property which would remain undiminished whatever may be the subsequent changes in the composition of the membership of the family. As already observed the ownership of a definite share in the family property by a person need not be treated as a factor which would militate against his being a member of a family. We have already noticed that in the case of a Dayabhaga family, which recognises unity of possession but not community of interest in the family properties amongst its members, the members thereof do constitute a family. That might also be the case of families of persons who are not Hindus. In the instant case the theory that there was a family settlement is not pressed before us. There was no action taken by either of the two females concerned in the case to become divided from the remaining members of the family. It should, therefore, be held that notwithstanding the death of Sham Rao

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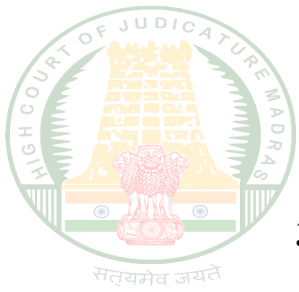


the remaining members of the family continued to hold the family properties together though the individual interest of the female members thereof in the family properties had become fixed.”

32. Further reference shall also be made to ***Vineeta Sharma’s Case*** (cited *supra*) wherein, in Paragraph No.103, it has been held thus:

“The only question involved in the aforesaid matter was with respect to the Explanation of section 6 and the determination of the widow's share. In that case, the question was not of fluctuation in the coparcenary body by a legal provision or otherwise. Everything remained static. No doubt about it, the share of the deceased has to be worked out as per the statutory fiction of partition created. However, in case of change of body of the coparceners by a legal provision or otherwise, unless and until the actual partition is finally worked out, rights have to be recognised as they exist at the time of the final decree. It is only the share of the deceased coparcener, and his heirs are ascertained under the Explanation to section 6 and not that of other coparceners, which keep on changing with birth and death.”

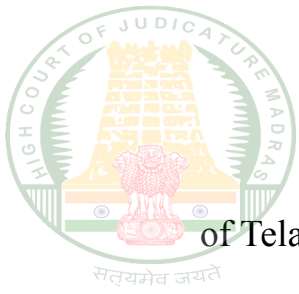
[Emphasis supplied by this Court]



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33. From the above, it is clear that the concept of notional partition should be employed only to ascertain the shares of the deceased coparceners and their heirs, at the time of actual partition. The said concept of notional partition cannot be the basis to contend that joint family had already been disrupted. Fluctuations in the coparcenary with birth and death of co-parceners or by law, and the corresponding fluctuation in the shares of each coparceners would continue to exist until actual partition has been taken and the said concept of notional partition cannot be held as a bar against the same.

34. Further, the plaintiff is claiming under the amended Section 6 of the Hindu Succession Act, 1956 which came into effect from September 9, 2005 and not under the proviso to unamended Section 6. Hence, only two conditions needs to be satisfied in this case. The coparcenary property ought to be existent and there ought not to be any alienations, disposition or actual partition of coparcenary property before December 20, 2004. Ex-B.20 – Will is dated April 17, 2005 and Tamilarasan passed away on July 12, 2005. Ex-B.20 – Will would have come into effect only upon the demise of Tamilarasan and hence, the only the latter date should be considered as the date of disposition [See Judgment of Hon'ble High Court

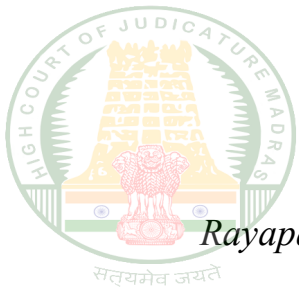


of Telangana in ***Seethama -vs- Thimma Reddy***, reported in ***AIR 2017 Hyd***

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125] As the date of disposition under Ex-B.20 – Will viz., July 12, 2005 is past December 20, 2004, the same is not saved under amended Section 6. Thus, coparcenary property is existent and there is no valid alienation, disposition or actual partition qua suit properties before December 20, 2004. Hence, the plaintiff is a coparcener by birth entitled to coparcenary property and Ex-B.20 - Will is not binding on her share. Her right in the coparcenary is enforceable only from September 9, 2005 and hence, even while assuming that her right to sue first accrue as early as on September 9, 2005, the Suit filed in 2013 is well within the limitation under Article 110 of the Limitation Act, 1963.

35. In ***Rayapan's Case*** [cited *supra*], sister and her legal heirs filed the Suit against brother and his children. Succession opened upon father's demise in 1966-67 and the brother and his sons entered into partition vide registered Partition Deed dated February 15, 1995. Revenue records were mutated by 1970. Further, large scale improvements were effected over the Suit Property therein. Suit was filed in 2012. It was in these facts and circumstances, a learned Division Bench of this Court held that the plaintiff therein / sister was ousted from the Suit Property. The facts of



Rayapan's Case are deviant from the case on hand and hence, not applicable.

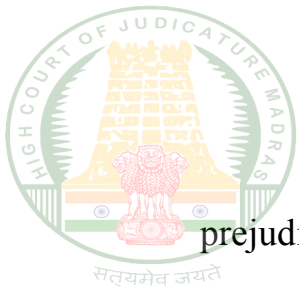
36. In *Punniyavathi's Case* [cited *supra*], case of the plaintiffs is that the Suit Property is a separate property of father, who passed in 1978 leaving behind wife, four sons and three daughters. Wife passed away in 2004. Two among the four daughters filed the Suit for partition against the rest of their siblings. Defence was that a registered partition took place on July 25, 1991 among the sons and further, on February 20, 2008, a registered partition took place among a branch of one among the two sons. In these circumstances, a learned Single Judge of this Court held that the plaintiff's approached the Court 31 years after the succession became open and 18 years after the partition of properties among brothers, and the very fact leads to an inference that the plaintiffs have been ousted and the possession of the defendants was adverse to that of the plaintiffs and the plaintiffs' rights got extinguished under Section 27 of the Limitation Act, 1963. Whereas, in the case on hand, even while assuming that right to sue first accrue as early as on September 9, 2005 and the Suit was filed in 2013, well within 12 years. Hence, *Punniyavathi's Case* is distinguishable from the instant case on facts and hence not applicable.



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37. Hence, the contention of learned Counsel appearing for the respondent that limitation began the moment succession opened upon the demise of Nangoor Udaiyar deserves to be rejected.

38. From the facts and circumstances of the case, it could be inferred that Ex-B.20 - Will was executed in anticipation of the plaintiff's claim with a view to defeat her rights. As stated *supra*, Ex-B.20 - Will is not binding on her share. It is apposite to state that the Suit was filed on June 14, 2013. Though summon was duly served, first defendant who is the competent person to deny Ex-B.20 - Will did not appear and contest the case. To be noted, the plaintiff is not a class I legal heir of the testator. Hence, in the presence of class I legal heirs, namely defendants 1 to 3, she has no right to deny Ex-B.20 - Will. It is hereby clarified that the plaintiff can question Ex-B.20 - Will if it had come into effect before December 20, 2004. However, as stated *supra*, Ex-B.20 - Will was executed to defeat the plaintiff's legitimate rights of the plaintiff over the Suit Properties and hence, she has every right to question its contents which may cause

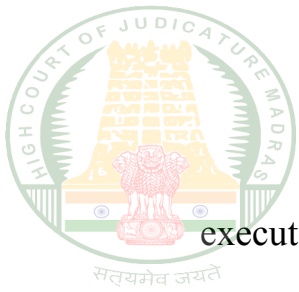


prejudice to her right over the Suit Properties. In these circumstances, Ex-

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B.20 - Will requires only formal proof in this case. Nonetheless, the second defendant has proved the Will by examining D.W.2 and D.W.3, who are the attesting witnesses thereto. Their evidence proves the execution of the Will by Tamilarasan voluntarily and in a fit state of mind. Hence, though the Will is not binding on the plaintiff's share, it is valid in respect of Tamilarasan's share.

39. This Court shall now determine the plaintiff's share in the coparcenary property. Being a co-parcener on equal footing with the son, the plaintiff along with Nangoor Udaiyar and Tamilarasan would each be entitled to equal share in the Suit Properties i.e., each of them would be entitled to 1/3 share. Upon the demise of Nangoor Udaiyar intestate, his 1/3 share would devolve upon the plaintiff, Tamilarasan and first defendant as per Section 8 of the Hindu Succession Act, 1956. Thus, the plaintiff would be entitled to $1/3 + 1/9 = 4/9$ share, similarly Tamilarasan would be entitled to 4/9 share, and first defendant 1/9 share. Tamilarasan



executed Ex-B.20 - Will valid in respect of his share and passed away.

Hence, his share in his branch's total 4/9 share [third defendant became a co-parcener by birth] will devolve as per the Will.

40. As regards Ex-A.1 - Gift Settlement Deed allegedly executed by first defendant, it is void for the following reasons:

- (i) As stated *supra*, Vimala's interest in the coparcenary devolved upon Tamilarasan *qua* the only surviving member of the coparcenary under Section 29 B of the Hindu Succession Act, 1956. While so, Ex-A.1 -Gift Settlement Deed is executed as if Vimala's share fell into the hands of first defendant.
- (ii) There can be no Gift in respect of undivided shares of joint family property without the consent of other joint family members [See Judgment of Hon'ble Supreme Court in ***Pavitri Devi -vs- Darbari Singh***, reported in (1993) 4 SCC 392 and].
- (iii) Thirdly, suppression of material fact. Ex-A.1 - Gift Settlement Deed reads as if the plaintiff and the first defendant alone are the legal heirs of Nangoor Udaiyar, Vimala and Tamilarasan without



mentioning the legal heirs of Tamilarasan.

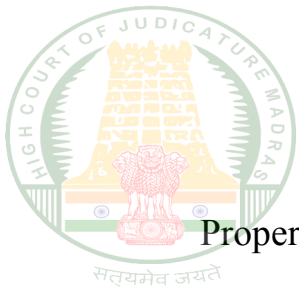
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(iv) It is apparent on the face of record that Ex-A.1 - Gift Settlement Deed was executed only with a view to defeat and defraud the rights of the defendants 2 and 3 in the Suit Properties.

41. Hence, Ex-A.1 - Gift Settlement Deed is void. Upon the demise of first defendant intestate, her $\frac{1}{9}$ share would devolve upon the plaintiff and third defendant equally as per Section 15 (1) (a) of the Hindu Succession Act, 1956. Thus, plaintiff share will be $\frac{4}{9} + \frac{1}{18} = \frac{9}{18} = \frac{1}{2}$ share. Therefore, the plaintiff is entitled to seek partition of her $\frac{1}{2}$ share in the joint family properties. As stated *supra*, as Suit Item Nos.13, 14, 20 and 31 are self-acquired properties of Tamilarasan, the plaintiff is entitled to $\frac{1}{2}$ share in all the Suit Properties except Suit Item Nos. 13, 14, 20 and 31. **Point Nos.(iii), (iv) and (v) are answered accordingly.**

Point Nos.(vi) and (vii)

42. Ex-A.3 - Sale Deed has been executed by defendants 2 and 3 in favour of fourth defendant in respect of a major portion of the Suit Properties. As held *supra*, the plaintiff is entitled to $\frac{1}{2}$ share in the Suit



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Properties except Suit Item Nos. 13, 14, 20 and 31. Hence, Ex-A.3 - Sale

Deed is not binding on the share of the plaintiff. Similarly, the Sale Deed dated September 17, 2012 executed by the plaintiff is valid only in respect of the plaintiff's share and will not bind the shares of defendants 2 and 3.

Point Nos.(vi) and (vii) are answered accordingly.

CONCLUSION:

43. Resultantly, the Appeal Suit stands partly-allowed. The Judgment and Decree of the Trial Court is hereby set aside. The plaintiff is entitled to $\frac{1}{2}$ share in the Suit Properties except Suit Item Nos.13, 14, 20 and 31 and to that effect, a Preliminary Decree is passed. Taking into consideration the relationship between the parties, there shall be no order as to costs.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK/pam

To

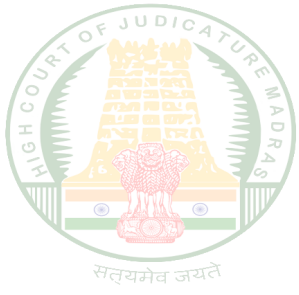
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The III Additional District Judge
III Additional District Court
Kallakurichi.

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R. SAKTHIVEL, J.

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