



A.S.No.561 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 18.07.2025

Pronounced on: 30.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.561 of 2022

Soundiram
W/o Mohan,
D No.3/A, Ramadheertham Street,
Rasipuram Taluk,
Namakkal District.

... Appellant/Plaintiff

/versus/

1. Annapoornai
W/o Palanivel,
Venkattikadu, Kalyani Post,
Puduchathiram Via,
Namakkal Taluk,
Namakkal District.

2. Natarajan
S/o.Ramasamy,
Anna Salai, New Bus stand,
Kulandaivel Electrical Shop,
Rasipuram Taluk,
Namakkal District.

3. Corporation Bank
Rep.by its Branch Manager,
Singlandapuram Branch,
Singlandapuram Post,
Rasipuram Taluk.

... Defendant 2 to 4/Respondents.

Page No.1/14



A.S.No.561 of 2022

Prayer:- Appeal Suit has been filed under Section 96 read with Order XLI Rule 1 of C.P.C., pleaded to allow the appeal by setting aside the judgment and decree dated 10.01.2022 passed in O.S.No.160 of 2011, on the file of the Sessions (Fast Track Mahila) Court, Namakkal.

For Appellant : Mr.S.Senthil.
For Respondents : Mr.T.L.Thirumalaisamy, for R2
: No appearance, for R1 & R3.

J U D G M E N T

The suit for partition filed by the appellant against her father and brother was dismissed by the trial Court, holding that the suit properties are self acquired property of her father, the first defendant. Hence, the settlement of his self-acquired property in favour of his son, the second defendant is valid and cannot be assailed.

2. The appellant, challenging the dismissal of the suit, has preferred the appeal.

3. For the sake of convenience, the parties are described as per their status and ranking in the plaint.



A.S.No.561 of 2022

4. Case of the plaintiff:

WEB COPY

The first defendant is the plaintiff's father and the second defendant is her brother. The first defendant and one Illayappan are brothers. On 12.09.1977, there was partition among the coparceners in respect of the ancestral property held by their parents, Nallaiah Gounder and Perumayee. Even before this partition, the first defendant and his brother Illayappan went for partition on 06/02/1976 in respect of properties jointly purchased by them and enjoyed as joint family properties. In respect of the properties covered under this partition, the plaintiff, claiming share, has filed a partition suit and same is pending.

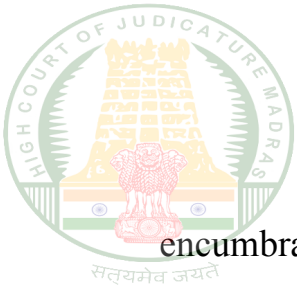
4. Insofar as the ancestral properties which is the subject matter of the partition dated 12.09.1977, the first defendant received a sum of Rs.30,000/- towards his share. The share retained by his father, Nallaiah Gounder, was sold during his lifetime and in the sale proceeds, both the first defendant and his brother got a share. Thus, using the money he got as share from the ancestral properties, the first defendant two items of property on 05.05.1992 and 31.05.1995 respectively. These two items of properties are morefully described in the plaint. In respect of properties covered under the earlier partition among the first



A.S.No.561 of 2022

defendant and his brother Illayappan, there is suit for partition initiated by the plaintiff and which is pending in O.S.No.97 of 2010 on the file of the Sub-Court, Rasipuram.

5. The plaintiff is joint owner of the property and in joint possession since the source to purchase the suit properties were the ancestral nucleus, she is in constructive possession of the properties. Due to misunderstanding with the co-owners, the plaintiff requested for amicable partition. Since the defendants refused to accede to her request. When the encumbrance certificate sought, the plaintiff came to know that the first defendant had executed a settlement deed in favour of his son, the third defendant on 17.04.2009 excluding the daughter, as if she had been adequately provided with *Stridhana*. Later, an amendment deed dated 09.02.2011 came to be registered. Neither the settlement deed nor the amendment deed bind the plaintiff. She ignores the settlement since it is not legally valid. As per the Amendment to the Hindu Succession Act, (Act 39/2005), the plaintiff is entitle for 1/3rd share in the suit property. Notice to the defendants was issued on 24.12.2009 demanding share in the property. The defendants replied to the notice denying share, which is untenable. Despite notice, the defendants had created



A.S.No.561 of 2022

encumbrance by “Memorandum of Agreement – Deposit of title deed”, dated 20.12.2010. The said encumbrance will not bind the plaintiff. On 30.10.2011, the plaintiff made an attempt for amicable settlement with the help of elders. The defendants refused to give share to the plaintiff, hence the suit.

6. Pending suit, the 1st defendant died. The 2nd and 4th defendant remind absent. The 3rd defendant alone filed written statement and contested the suit.

7. The case of the Third Defendant:-

The suit properties are the self-acquired properties of first defendant. The first defendant was a motor mechanic by profession. From 1968, he was having his own income. He started electrical motor business on 01.03.1977 in the name of “Kulandaivel Electricals” at Rasipuram Town. He was Authorised Agent for Texmo Motors. He had a flourishing business in the Rasipuram Town. The first defendant from out of Rs.30,000/-, which he got as share from the partition of the ancestral property conducted the marriage of his elder daughter, the second defendant on 11.03.1979. To his younger daughter, the plaintiff, he conducted



A.S.No.561 of 2022

marriage in the year 1981. He gave 60 sovereigns of jewels and utensils as *Stridhana* to her. The marriage of the third defendant was conducted in the year 1985. All the three marriages were celebrated in a grand manner by the first defendant spending lavishly from out of the share he got from the partition dated 12/09/1977. The share of Nallaiah Gounder which was reserved till his life time, sold to meet out his medical expenses. Nothing from the ancestral nucleus left with the first defendant. The properties purchased jointly by the first defendant and his brother Illayappan also got divided under a partition deed dated 06/02/1976.

8. This defendant along with the first defendant was taking care of the business since 1970. The suit properties were purchased from out of the income derived in the business. For the improvement of the business, the properties been mortgaged for loan by deposit of title deed. The suit properties being the self acquired property of the first defendant, was settled in favour of the 3rd defendant and thereafter in exclusive possession and enjoyment of the 3rd defendant by creating charge over it. During his lifetime, the first defendant had executed a *Will* on 23/04/2010 bequeathing all his properties to the 3rd defendant. The first



A.S.No.561 of 2022

defendant died on 31.05.2012.

WEB COPY

9. Based on the pleadings, the following issues were framed:-

1. Is it true that the suit property is the self-acquired property of the 1st defendant?
2. Whether it is true that the settlement deed executed by 1st defendant in favour of the 3rd defendant is not valid and not binding upon the plaintiff?
3. Whether the plaintiff is entitled to 1/3 share in the suit properties?
4. To what relief the plaintiff is entitled into?

10. On behalf of the plaintiff, two witnesses and 15 documents ExA1 to Ex.A15 were marked. On the side defendants, Four witnesses and 6 documents (Ex.B1 to Ex.B6) were marked.

11. The trial Court held that the suit schedule properties are self-acquired properties of the 1st defendant. He has executed the settlement deed in favour of the 3rd defendant. The said settlement deed is valid and binds the plaintiff. Accordingly, the suit was dismissed.

Page No.7/14



A.S.No.561 of 2022

12. Being aggrieved, the appellant has filed the present appeal on the ground that the properties purchased under the sale deeds marked as Ex.A3 and Ex.A4 were acquired from the family nucleus is proved by the plaintiff through evidence. A sum of Rs.30,000/-, given to the 1st defendant during the partition held on 12.09.1977 is the source for the business and the properties acquired subsequently including the suit property. The trial Court failed to consider that the 3rd defendant had not produced any document to show income from the business. Except the certificate given by the Commercial Tax Department, marked as Ex.B5, no other evidence placed by the defendants to show adequate income from the business for purchase of the suit schedule property.

13. The presumption of the trial Court that the suit property was purchased 15 years after the date of partition and therefore, has no relevance is not correct. The trial Court ought not to have selectively relied upon the legal notice marked as Ex.A9, issued by the plaintiff, in which he had stated about the settlement deed dated 22.10.2003, which was never given effect to. Having held that there was family nucleus and ancestral property, the trial Court ought not to have disbelieved the case of the plaintiff that the suit properties were purchased



A.S.No.561 of 2022

from out of family nucleus.

WEB COPY

14. Point for determination:-

Whether the document placed by the plaintiff indicate that the properties covered under Ex.A3 & Ex.A4 were purchased from the joint family nucleus?

15. P.W.1, Mohan, is the husband of plaintiff and P.W.2, Palanivel, is and independent third party witness. This witness admits that the 1st defendant had experience in motor mechanic and running business under the name and style of “Kulandaivel Electricals” at Rasipuram, earning as an agent for electrical motors. He admits that the 1st defendant was carrying on his vocation even prior to his marriage and his son, the 3rd defendant, is taking care of the business and assisting the 1st defendant. In this context, Ex.B5, which is Certificate of Registration in the name of 1st defendant, which says that he is the proprietor of “Kulandaivel Electricals” since 28.02.1977 gains significance. It is evident that from 1977 to 2011, K.N.Ramasamy was running the business in Electrical Motors. The two suit properties were purchased in the year 1992 & 1995. Though, it is admitted that the 1st defendant received some cash as share of the ancestral property, that was as



A.S.No.561 of 2022

early as 1977. It is contended by the 3rd defendant that 1st defendant had conducted the marriages of all his three children from out of the money he got as his share from the ancestral property. P.W.1 who is son-in-law of the 1st defendant, admits that the 1st defendant conducted the marriages of all his three children at his own expense and the marriage was conducted in a grand manner.

16. The suit property obviously been purchased from the income derived from the business and not from any ancestral source. As rightly pointed out by the trial Court, the plaintiff herself conceded that there was a settlement deed on 22.10.2003, which was subsequently cancelled. This only show that the parties were never in joint possession of the suit property and the property does not fall within the scope of coparcenary or ancestral property.

17. In the present case, there are three sets of properties:

(i) The first set of properties in which the 1st defendant K.N.Ramasamy and his brother Illayappan got through their parents Nallaiah Gounder. These properties are the subject matter of the 2nd partition dated 12.09.1977.



A.S.No.561 of 2022

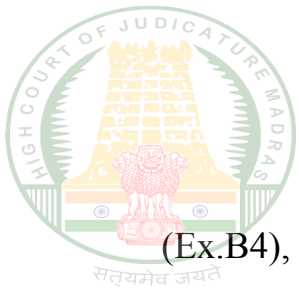
(ii) The second set of properties are the properties purchased by

K.N.Ramasamy and his brother Illayappan jointly from out of their earnings.

These properties were divided among two brothers under a partition deed dated 06.02.1976. The plaintiff has already instituted a suit in respect of the properties in O.S.No.97 of 2010.

(iii) The third set of properties, which are the subject matter of the present suit were purchased solely by K.N.Ramasamy in the years 1992 and 1995 under Ex.A3 & Ex.A4 dated 05.05.1992 and 31.05.1995 respectively. The plaintiff had excluded the properties already under dispute in O.S.NO.97 of 2010.

18. The 3rd defendant, through documentary evidence, had proved that K.N.Ramasamy had an independent source of income through his business since 1977 and that the properties mentioned in the schedule were purchased by him on 05.05.1992 and 31.05.1995, long after the partition. In the absence of any proof that the 1st defendant had property which are ancestral in nature, the properties covered under Ex.A3 & Ex.A4 ought to be considered as a self-acquired property of K.N.Ramasmy and not ancestral property. Further, by Will dated 23.04.2010



A.S.No.561 of 2022

(Ex.B4), K.N.Ramasamy has bequeathed the suit property in favour of the 3rd

defendant. The due execution of the *Will* dated 23.04.2010 has been proved through D.W.2 Singaravelu, one of the attestor to the Will. He has deposed in compliance with the requirement under Section 67 of *Bharatiya Nagarik Suraksha Sanhita* (corresponding to Section 68 of the Indian Evidence Act).

19. D.W.3 a long-time associate of 1st defendant. He had deposed that he know K.N.Ramasamy for more than 42 years and he was carrying on business for more than 30 years, dealing in Electrical Motors. His evidence proves separate income for K.N.Ramasamy adequate to purchase under Ex.A3 and Ex.A4.

20. The suit for partition is filed on the premise that the suit schedule properties were purchased from the joint family nucleus. However, even according to the plaintiff, the joint family nucleus got dissolved in the year 1977 when the family members entered into partition. K.N.Ramasamy had purchased the suit schedule property under Ex.A3 & Ex.A4 much after the partition among the family members and after family got separated. It is unimaginable that the share of Rs.30,000/- received by K.N.Ramasamy under Ex.A2 dated 12.09.1977 was



A.S.No.561 of 2022

utilised for the purchase of the properties under Ex.A3 and Ex.A4 in the years 1992 & 1995 respectively. K.N.Ramasamy had executed a settlement deed in favour of his son Natarajan, under Ex.A5 followed by the rectification deed marked as Ex.A6. He has also executed a *Will* dated 23.04.2010 marked as Ex.B4. Both the settlement deed and Will been duly proved through the examination of attesting witnesses and the same have been acted upon.

21. In such circumstances, the trial Court has rightly dismissed the suit for partition as frivolous. In view of the above evidence and findings, this Court confirms the judgment and decree passed by the trial Court and according dismisses the appeal.

22. In fine, the Appeal Suit is dismissed. There shall be no order as to costs.

30.07.2025

Index :Yes/No.
Neutral citation :Yes/No.
bsm



WEB COPY



A.S.No.561 of 2022

Dr.G.JAYACHANDRAN,J.

bsm

To,

1. The Sessions (Fast Track Mahila) Court, Namakkal.
2. The Section Officer, V.R.Section, High Court, Madras.

Pre-delivery judgment made in
Appeal Suit No.561 of 2022

30.07.2025

Page No.14/14