



A.S.No.252 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 30.06.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.252 of 2022

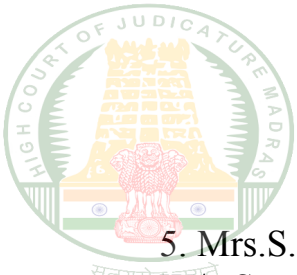
L.Rangasamy Gounder (Deceased)
L.Kandasamy (Deceased)

1.Mr.R.Sivasubramaniam,
S/o.L.Rangasamy Gounder,
Sri Ranga Electricals,
No.203 Trichy Raod,
Near Bus Stand, Sulur, Coimbatore

2. Mr.K.Subbulakshmi
W/o Late Kandasamy,
D.No 91 F Senthil Nagar, 2nd Street,
Somanur 641 668

3. S.Bagyalakshmi
D/o.Late.Kandasamy,
W/o Senthil Ganesh,
Ramasamy Nagar, 2nd Street, Near Amritha High School,
Nallampalayam, Ganapathi Coimbatore 640 006.

4. K.Anandakumar
S/o.Late Kandasamy,
D.No 91 F Senthil Nagar, 2nd Street,
Somanur 641 668.



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5. Mrs.S.Thangamani,
W/o.Soundarayarajan,
Chinnanallamal Thottam,
Kannampalayam Post,
Sulur Taluk 641 402.

6. Mrs.M.Rajeswari,
W/o P.Muthurathinam,
Eachangadu, No.94/1 Authumedu,
Kaniyapoondi Panchayath,
Avinash Taluk, Thirupur 641 663.

7. Mrs.S.Suganthi,
W/o.Maruthachalam,
Sedapalayathukarar Thottam,
Perumal Kovil Street, Karunya Post,
Coimbatore District.

... Appellants/4th, 6th to 11th defendants

/versus/

1. Mangayarkarasi,
Residing at D.No.19 at Thottipalayam Road,
Attikuttai Thottam, Chinnyampalayam,
Coimbatore 640 062.

2. Mrs.Saraswathi (died),
W/o.Eswaran,
Residing at D.No.14/14, Jayalakshmi Nagar,
Pappampatti Pirivu,
Chintamaniputhur, Irugur,
Coimbatore 641 103.

3. Mr.P.Nanjukutty,
Residing at D.No.19 at Thottipalayam Road,
Attikuttai Thottam,
Chinnyampalayam, Coimbatore 640 062.



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4. Chandra,
Wife of Ravichandran,
16C, Popular Garden,
Chinthamanipudur Post,
Coimbatore - 641 103.

5. Seenikutty
Son of Ramasamy,
residing at No.47, Vasantha Nagar,
Near Shanthi Gears,
Singanallur, Coimbatore - 641 005.

6. Akshaya,
Daughter of Seenikutty,
residing at No.47, Vasantha Nagar,
Near Shanthi Gears,
Singanallur, Coimbatore - 641 005.

7. Ishwariya,
Daughter of Seenikutty,
residing at No.47, Vasantha Nagar,
Near Shanthi Gears,
Singanallur, Coimbatore - 641 005.

... Respondents/Defendants

R2 Died, R4 to R7 are Impleaded as LR'S of the deceased R2 (Mrs.Saraswathi) vide court order dated 13.06.2025 made in CMP.Nos.13404,13405,13406 of 2025 in AS.No.252/2022(GJJ)

Appeal Suit has been filed under Section 96 of Code of Civil Procedure, pleaded to set aside the judgement and decree in O.S.No.95 of 2011 on the file of the IV Additional District and Sessions Judge, Coimbatore dated 23-07-2019 is even otherwise illegal incompetent and without jurisdiction.



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For Appellants : Mr.V.Raghavachari, Senior Counsel,
for Ms.V.Srimathi

For Respondents : Mr.N.Sridhar, for R1 to R3

: Mr.P.S.Prabu, for R4

: No appearance, for R5 to R7

J U D G M E N T

The appeal suit is directed against the judgment and decree passed by the trial Court in the suit filed by daughter of Lakshmana Gounder, who had inherited the property from his father, Subbanna Gounder.

2. According to the plaintiff, she being the daughter of Lakshmana Gounder, is entitled for 1/4th share in the property, to be shared along with her brothers and sisters.

3. The suit was contested by brother's of the plaintiff on the ground that the property of Subbanna Gounder, on his death in the year 1955, devolved on his son and two grandsons as coparcenary property. During the lifetime of Lakshmana Gounder, he himself has issued notice on 06.05.1996 seeking partition



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and thereafter voluntarily sold his 1/3rd share to one Nanjukutty on 28.07.1999.

Therefore, it was contended that the plaintiff, who is none other than wife of said Nanjukutty, knowing well about the division of the coparcenary property by conduct, cannot take advantage of the subsequent amendment to the law and seek for share in the grandfather's property, as if she is the coparcener and the property is available for division as a joint family coparcener.

4. The trial Court, after considering the evidence, allowed the suit granting decree of partition in respect of 'C' schedule property, which is the remaining land of the Lakshmana Gounder, after he alienating his 1/3rd share in favour of Nanjukutty.

5. The present appeal suit is filed on the ground that on the death of Subbanna Gounder, the property devolves upon his coparceners, namely, Lakshmana Gounder (son), Rangasamy and Kandasamy (grandsons). Lakshmana Gounder, during his lifetime, had sold his 1/3rd share in the property *vide* Ex.A.3. Therefore, on the death of Lakshmana Gounder, no estate left behind for the plaintiff to seek partition.



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6. The Court below having held that the property is an ancestral property and that Lakshmana Gounder sold his share on 28.07.1999 in favour of third party, ought to have concluded that the coparcenary has broken prior to the 2005 Amendment and the parties have dealt with the property as their individual property.

7. Per contra, the Learned Counsel appearing for the respondents submitted that the Subbanna Gounder, died on 07.01.1957 and the same is proved through Ex.B.4. By that time, the Hindu Succession Act, 1956, had come into force and hence, the property of Subbanna Gounder ought to have been devolved to his sole Class-I legal heir, Lakshmana Gounder, as per Section 8 of the Hindu Succession Act. The alleged notice issued in the name of Lakshmana Gounder, which is marked as Ex.B.1 is not a genuine document and not admitted by the plaintiffs. Even otherwise, the content of the notice cannot be considered as an admission by Lakshmana Gounder, since the document could not be confronted about the genuineness, by cross-examining the witness who had marked the document, since after recording of his chief examination. The witness died before he could be cross examined.



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8. Point for determination:-

Whether the daughters of Lakshmana Gounder have a right in the property inherited by him from his father Subbanna Gounder as a coparcener, after implicit division of the property by Lakshmana Gounder, through sale deed dated 28.07.1999, in respect of his 1/3rd share?

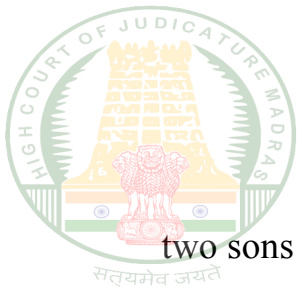
9. The short point involved in this case, as capsulized above is whether the property of Subbanna Gounder is to be treated as coparcenary property to devolve upon the survivorship or by intestate succession. This point can be answered based on which date the Subbanna Gounder died, which will be the date of opening of the Succession.

10. Though, it is contended by the appellants that Subbanna Gounder died, prior to the Hindu Succession Act, 1956 came into force and admittedly, it was considered and treated as a coparcenary property by both Lakshmana Gounder and defendants 1 & 2, the facts on records in otherwise.



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11. Ex.B.4 is the death certificate of Subbanna Gounder. This certificate proves that, he died on 07.01.1957. By that time, the Hindu Succession Act, 1956 had come into force. It is uncontroverted fact that the 'A' schedule property includes 'C' schedule property, was purchased by Subbanna Gounder under two sale deeds, marked as Ex.A.1, dated 12.07.1933 and Ex.A.2 dated 13.12.1950. Therefore, the property in question, being the self-acquired property of Subbanna Gounder, on his death intestate, the property has to devolve upon, as per Section 8 of Hindu Succession Act. Accordingly, Lakshmana Gounder, being the sole Class-I heirs of Subbanna Gounder, he, in entirety succeeds to the property. Ex.B.1 is a document (Advocate notice) to indicate that Lakshmana Gounder had restricted his right in the property only to an extent of 1/3rd and acknowledged the rights of defendants 1 & 2, who are his sons for the remaining 2/3rd share. This document (Ex.B.1) is not a reliable document nor admissible to prove relinquishment of right in an immovable property. Therefore, the property is his absolute property, being Class-I heirs of deceased Subbanna Gounder. While so, Lakshmana Gounder has every right to deal with the property as he wish. Lakshmana Gounder, during his lifetime, had sold 1/3rd of the property under Sale deed Ex.A.3. The remaining 2/3rd share left intestate, to be inherited by



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two sons and two daughters.

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12. The plaintiff, being one of the daughters of Lakshmana Gounder.

She is entitled for 1/4th share in the property shown under schedule 'C' which was left behind by her father, Lakshmana Gounder.

13. The trial Court has rightly allowed the suit by granting decree in the partition in respect of 'C' schedule property.

14. Therefore, the Appeal Suit is dismissed. The judgment and decree passed by IV Additional District and Sessions Judge, Coimbatore, in O.S.No.95 of 2011 is confirmed. There shall be no orders as to costs.

30.06.2025

Index :Yes/No.

Neutral citation :Yes/No.

bsm

To,

1.The IV Additional District and Sessions Judge, Coimbatore.

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

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Dr.G.JAYACHANDRAN, J.

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