



A.S.No.522 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.06.2025

Pronounced on : 25.06.2025

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.522 of 2024

and

C.M.P.No.15929 of 2024

1.Manickam

2.Srinivasan

.. Appellants/Defendants 1 & 2

Vs.

1.Amsaveni

2.Munusamy

3.Sumathi

4.Yuvaraj

5.Elamparuthi

6.Jothi

.. Respondents/Plaintiffs

PRAYER: Appeal Suit is filed under Section 96 of C.P.C, to set aside the judgment and decree dated 06.01.2024 made in O.S.No.84 of 2018 passed by the learned Principal District Judge, Dharmapuri, allow the appeal.

For Appellants : Mr.S.Ganesh
Asst.by Mr.G.Dhyaneswar

For R1 to R4 : Mr.P.Vijendran

For R5 : Mr.V.Nicholas



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For R6 : MJ.Ravikumar

JUDGMENT

The suit for partition was filed by the sister and her children against her brother, another sister, the brother's son, and a purchaser who had bought part of the property from the brother and his son.

2. According to the 1st plaintiff, her father Narasimha Naidu died in the year 1969, leaving behind two sons and two daughters. One of his sons, Sampath, passed away in 1974. Narasimha Naidu had ancestral property at the time of his death, which, according to the 1st plaintiff, is to be inherited equally by the 1st plaintiff, the 1st defendant, and the 4th defendant.

3. The 1st defendant, being the elder son in the family, allegedly took advantage of his position and changed the patta to his name, enjoying the property exclusively. However, the suit property was jointly enjoyed by the 1st plaintiff, 1st defendant, and 4th defendant without any division by metes and bounds. Due to recent



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misunderstandings regarding joint enjoyment of the property, the 1st plaintiff sought partition and claimed her 1/3rd share. Her demand, made on 11.03.2018, was refused by the 1st defendant. A panchayat was convened for an amicable partition, but it failed due to the antagonistic attitude of the 1st defendant.

4. On Enquiry at the Sub-Registrar's Office in Karimangalam, the 1st plaintiff came to know that the 1st defendant had sold a portion of the suit property, specifically 33 cents in S.No. 60/1 and 2.77 cents in S.No. 60/3, to the 3rd defendant for a sale consideration of Rs. 3,54,000/-. A registered sale deed was executed on 30.11.2005. This sale was made without any right, as the property was joint family property held in common and not partitioned. The sale was also made without the knowledge or consent of the 1st plaintiff and 4th defendants. The plaintiffs contend that the sale is illegal and has no binding effect on the co-owners. Therefore, the sale deed ought to be declared null and void.

5. Being the legal heirs of Narasimha Naidu and the property



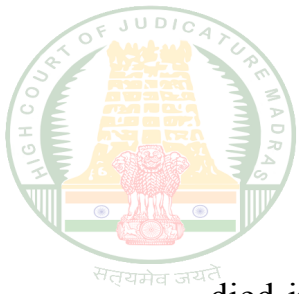
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being ancestral in nature, on his demise, his children, namely the 1st plaintiff, 1st defendant, and 4th defendant, became entitled to 1/3rd share each in the suit property. The suit was contested by the 1st defendant, who filed a written statement, which was adopted by his son, the 2nd defendant, and by the 4th defendant, who is the second sister. In the written statement, the defendants denied the averments made in the plaint, stating that they are false and unsustainable.

6. It was further stated that Item Nos.1 and 2 refer to the same property, which originally belonged to Narasimha Naidu, S/o Govindasamy, who did not acquire any property independently during his lifetime. He had no occupation other than agriculture. He had sold a portion of the property inherited from his father Govindasamy and also incurred debts, obtaining loans from persons such as Nallappan, Ramachandran, Gopal, and Duraisami, executing promissory notes to meet agricultural and family expenses.

7. Before repaying these debts, Narasimha Naidu unfortunately

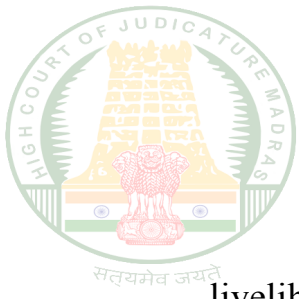


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died in a motor accident. His wife, Nagarathinammal, also passed away in the same year (1969), leaving behind their four minor children: the 1st defendant (aged 14 years), the 1st plaintiff (aged 13 years), their deceased brother Sampath (aged 7 years), and the 4th defendant Jothi (an infant aged 1½ years).

8. Following the deaths of their parents, the responsibility of managing the household and repaying debts fell on the 1st defendant. He engaged in agriculture, took care of the family, and repaid debts incurred by his father. He also cared for his younger brother Sampath, who was ill, and spent approximately Rs.10,000/- for medical treatment by borrowing from third parties. Despite efforts, Sampath passed away at the age of 8. In 1973, the 1st plaintiff was married to one Madheswaran. The 1st defendant spent Rs.25,000/- on the marriage and provided 10 sovereigns of gold jewellery and 1 sovereign gold ring to her husband as *Sridhana*. To meet these expenses, he incurred additional debt of Rs.50,000/-. Since Madheswaran did not have adequate income, the 1st defendant also helped him secure a loan of Rs.50,000/- to purchase a lorry for

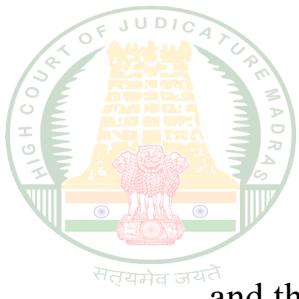


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livelihood.
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9. At the request of the 1st plaintiff, the 1st defendant further assisted her in purchasing a house site worth Rs.20,000/- and constructed a house by arranging an additional loan of Rs.60,000/-. After the death of the 1st plaintiff's husband in 1990, the 1st defendant continued to support her family, helped in operating the lorry business, and provided monetary assistance for the marriages of her children.

10. The 1st defendant also arranged the marriage of his other sister, the 4th defendant, in 1983, spending Rs.50,000/- on the marriage and gifting jewels and household articles worth Rs. 24,000/- as *Sridhana*. The ancestral house situated on the suit property was altered and reconstructed by the 1st defendant at an expense of Rs.1,00,000/-. He also repaid a loan of Rs.30,000/- borrowed by their father during his lifetime for family expenses. To repay the loans incurred for the marriages of his sisters and to settle other family debts, the 1st defendant sold Item 2 of the suit property to the 3rd defendant on 30.11.2005 for valid consideration,



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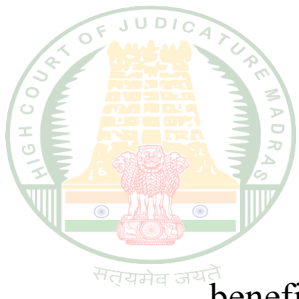
and the sale proceeds were used to discharge the said loans.

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11. At the time of Narasimha Naidu's death in 1969, there was no joint family in existence. Therefore, the 1st plaintiff and the 4th defendant cannot claim any right over the property. The property left by late Narasimha Naidu belongs absolutely to the 1st defendant, who is the sole surviving male descendant of Narasimha Naidu.

12. The 1st plaintiff, who was married in 1973, and the 4th defendant, who was married in 1983, are not entitled to claim any right, title, or interest in the suit property. Consequently, they are not entitled to seek a declaration to declare the sale deed dated 30.11.2005 as null and void. Since her marriage, the 1st plaintiff has never been in joint possession of the suit property with the 1st defendant. Hence, the suit is also barred by limitation and liable to be dismissed for failure to properly value the suit under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, which requires payment of *ad valorem* court fees.

13. This defendant has already spent over Rs.10 lakhs for the



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benefit of the 1st plaintiff. She has sold the house that was constructed with the financial assistance provided by this defendant. Therefore, she is not entitled to any share in the suit property.

14. The written statement filed by the 1st defendant has been adopted by the 2nd defendant and the 4th defendant (one of the sisters). The 3rd defendant, who purchased the property, also filed a written statement stating that he purchased the property only after due enquiry into the title and rights of the 1st defendant. He further stated that he was aware that the 1st defendant had incurred debts to the extent of Rs.5 lakhs, including amounts spent on the marriage expenses of the 1st plaintiff and the 4th defendant, as well as for the discharge of debts left by his father. Thus, the sale of Item 2 of the property was for valid consideration and is legally valid. Hence, the sale of the property by the 1st defendant, claiming under his father, cannot be declared void. In any event, the relief of declaration sought is barred by limitation. Accordingly, the suit is liable to be dismissed.

15. Based on the pleadings, the Trial



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Court framed the following issues:

“1. Whether the first plaintiff is entitled for 1/3 share partition in suit schedule properties?

2. Whether the plaintiffs are entitled permanent injunction against defendants?

3. Whether the plaintiff is entitled for declaration of null and void in respect of sale deed dated 30.11.2005?

4. To what any other relief the plaintiff is entitled to?”

Subsequently, the following Additional issues were also framed:-

“1. Whether the suit properties are ancestral properties of the 1st plaintiff's father Late Narasimha Naidu?

2. Whether suit properties are in joint possession and enjoyment of 1st plaintiff, 1st defendant and 4th defendant?

3. Whether 1st defendant has got no right to sell a portion of suit property to the 3rd defendant through sale deed dated 30.11.2005?

4. Whether suit properties absolutely



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belonged to the 1st defendant?

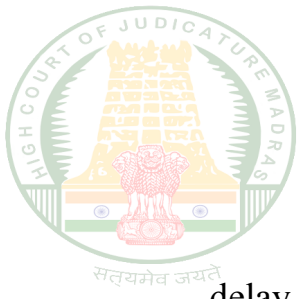
5.Whether relief No.3 in the suit is barred by the limitation?

6.Whether the Court fee paid under Section 37(2) of TNCF Act, is correct and proper?

7.Whether plaintiffs are entitled for the relief of partition as prayed for? ”

16. Before the Trial Court, on the side of the plaintiffs, three witnesses were examined as PW.1 to PW3 and two documents were marked as Ex.A1 and Ex.A2. On the side of the defendants, four witnesses were examined as DW.1 to DW.4 and eighteen documents were marked as Ex.B1 to ExB18.

17. The Trial Court, taking note of the fact that the 1st plaintiff had sufficient knowledge about the execution of Ex.A2, the sale deed dated 30.11.2005 executed by the 1st and 2nd defendants in favour of the 3rd defendant, found that the plaintiffs had challenged the validity of the said transaction belatedly, after 13 years. Therefore, the relief of declaration against the sale deed could not be granted on account of



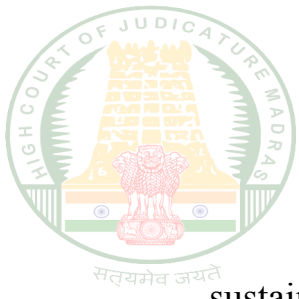
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delay and limitation.

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18. However, while admitting that the property was sold to discharge family debts, the Trial Court held that the value of the 1st plaintiff's share, which was sold to the 3rd defendant, must be adjusted at the time of passing the final decree. On the issue of joint possession, the Trial Court observed that, as a member of the family, the 1st plaintiff is deemed to be in joint possession and enjoyment of the ancestral property. Holding that the suit properties are ancestral in nature, the Trial Court concluded that at the time of Narasimha Naidu's death, his wife, two sons, and two daughters were alive, and therefore, the character of the suit properties as joint family ancestral property stands established.

19. Aggrieved by the judgment, defendants 1 and 2 have preferred this appeal before this Court, contending that the Trial Court failed to properly consider the fact that the 1st defendant, being the eldest son in the family, was only 14 years old at the time of the sudden demise of both parents, while his siblings, including his brother and sisters, were much younger. It was through his efforts and labour that the family was



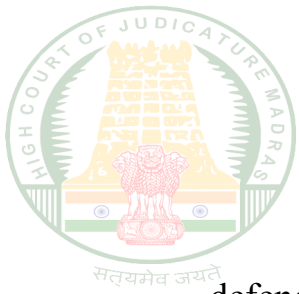
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sustained, and he secured the welfare of the 1st plaintiff and the 4th defendant by performing their marriages, incurring expenses and borrowing money for the same.

20. The Trial Court, having accepted that a portion of the property was sold to the 3rd defendant for discharging family debts and meeting family expenses, and that such sale was made with the knowledge of the 1st plaintiff, ought not to have entertained the challenge to the sale after a delay of 13 years. It is further submitted that the property currently in the hands of the 1st defendant/1st appellant includes the ancestral house, which he reconstructed from his own income. The 1st plaintiff, who was married in the year 1973 and has been living separately ever since, cannot now claim to be in joint possession and enjoyment of the property. In the absence of any evidence of joint possession, the suit for partition is liable to be dismissed both on the grounds of deficiency in court fee under the Tamil Nadu Court Fees and Suit Valuation Act and the bar of limitation.

21. Documents marked as Exs. B1 to B12 are crucial and it clearly establishes that the suit property vested absolutely with the 1st

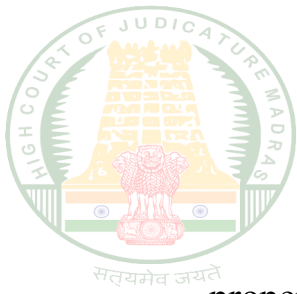


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defendant, who has been in exclusive possession and enjoyment thereof, to the exclusion of the 1st plaintiff and the 4th defendant. It is further argued that the Trial Court failed to appreciate that Narasimha Naidu had received the suit and other properties from his father Govindasamy, but had sold most of them during his lifetime. The remaining property was encumbered with debts, which the 1st defendant later cleared by selling part of the property and incurring further expenses, particularly for the marriages of his sisters. Therefore, the decree passed by the Trial Court is unsustainable and liable to be set aside.

22. The learned counsel appearing for the defendants submitted that it is a well-settled principle of law that the enjoyment of joint family property among family members is presumed unless the contrary is proved. In the present case, the 1st plaintiff has affirmatively stated that she had cordial relations with her brother and frequently visited the ancestral home. She claims to have jointly enjoyed the property until 2018, and only after her brother began to behave differently and refused to give her share did she probe further and found that a portion of the



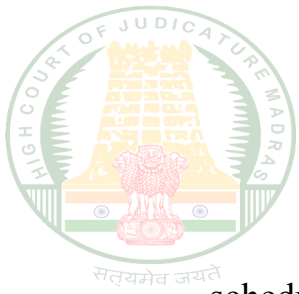
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property had been sold to the 3rd defendant without her knowledge. It is, therefore, contended that a female member of the family cannot be excluded from inheriting her father's property along with her brother and sister merely on the ground that she got married in 1973 and has been living separately since then.

23. Points for Consideration:

1. Whether the plaintiff can claim a share in the entire suit property, including the portion sold 13 years ago with her knowledge?
2. Whether the doctrine of ouster would apply to the 1st plaintiff, who was married in 1973 and has since been residing separately with her family elsewhere?

24. The 1st plaintiff, who got married in the year 1973 and has been living separately, claims that she, along with the 1st and 4th defendants, was in joint possession of the suit property. However, there is no evidence to support constructive possession or enjoyment of the suit

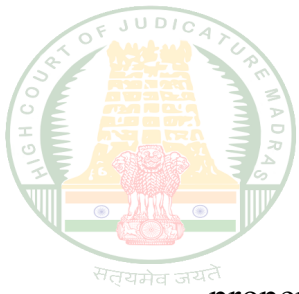


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schedule property, as more fully described in the plaint. The properties in question are agricultural lands, and no evidence has been adduced to show that the 1st plaintiff participated in any agricultural activities. She has admitted that the 1st defendant alone was engaged in cultivation. She further admitted that the 1st defendant mortgaged the property and raised a loan from Kaveripattinam Benefit Fund to facilitate the purchase of a lorry by her elder son, Munusamy. While the 1st defendant contends that he has discharged the loan, the 1st plaintiff denies this suggestion in her cross-examination.

25. Be that as it may, it is not the case that the 1st defendant had no concern for the family of the 1st plaintiff even after her marriage and after her children became adults. The said Munusamy, examined as PW.2, stated in his cross-examination that though his mother/the 1st plaintiff, was residing at Attur, she occasionally visited the village where the suit property is located and participated in agricultural activities. However, this claim was not even pleaded or stated by the 1st plaintiff in her evidence. Hence, it is an afterthought introduced to suggest that the

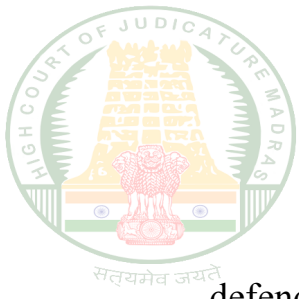


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properties were under joint enjoyment. In further cross-examination, he attempted to support his mother's version regarding the alleged panchayat held in 2018 for partition. However, there is no evidence to show that the 1st plaintiff ever made a request for partition or that any attempt at mediation by the villagers occurred.

26. The 1st plaintiff's daughter also entered the witness box and was examined as PW.3, but she was unable to substantiate how the property was jointly enjoyed by them until 2018 or that there was any mediation by village elders for partition.

27. On perusal of the records, it is clear that after the demise of Narasimha Naidu in 1969, the suit property remained under the control of the 1st defendant, who toiled to raise the family, which includes the 1st plaintiff, the 4th defendant and the deceased brother Sampath. It is an admitted fact that the 1st defendant conducted the marriages of both the 1st plaintiff and the 4th defendant. Especially in light of the fact that the family's lack of financial resources, it is natural to infer that the 1st



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defendant borrowed money to meet these expenses.

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28. To substantiate the said plea that family debts existed at the time of their father's demise and that he incurred further debts for raising the family and conducting his sisters' marriages and his brother's medical expenses, the 1st defendant not only examined himself and subjected himself to cross examination, but also examined Venkatesan (DW.2) who testified about the debts incurred by the 1st defendant for family expenses, including the marriages of the 1st plaintiff and the 4th defendant, and the financial assistance given to the 1st plaintiff for purchasing a house site and constructing a house. Similarly, Ragunathan (DW.3) deposed about the assistance extended by the 1st defendant to the 1st plaintiff and her husband. Though this evidence is oral and lacks documentary support, the Court takes judicial notice of the fact that income derived from the ancestral property was substantially spent on the 1st plaintiff and the 4th defendant.



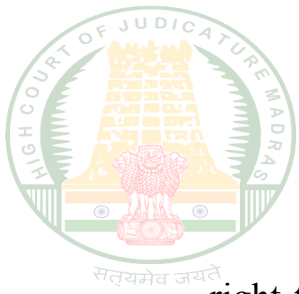
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29. The sale of a portion of the property to the 3rd defendant in 2005 was also done to discharge family debts and meet family expenses, and was carried out with the knowledge of the 1st plaintiff. Hence, she cannot now claim any right over the said portion of land sold to the 3rd defendant. It is contended by the plaintiffs that he constructed a house on the suit property by spending his own money and developed the agricultural land through his personal labour. This contention also remains unchallenged.

30. In such circumstances, the judgment and decree of the trial Court, holding that the 1st plaintiff is entitled to a 1/3rd share in the entire suit property, requires interference. The 1st plaintiff cannot claim partition of the entire property after having been ousted and remaining silent for more than 12 years, despite having knowledge that the 1st defendant was independently enjoying the property and had alienated a portion of it, and had transferred the revenue records into his name.

31. However, the 1st plaintiff cannot be entirely deprived of her



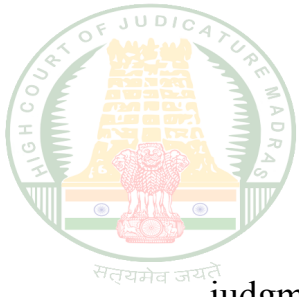
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right to a share in the property that are available in the hands of the 1st defendant and has not been alienated. The 1st plaintiff is entitled to claim a 1/3rd share in the remaining property that is still available for division. In particular, with respect to the land in S.No.60/1 and S.No.60/3, which was sold to the 3rd defendant in 2005, the plaintiff cannot now claim a share.

32. As for the remaining properties in Survey Nos.51/4, 43/1, 55/3, 55/4 and 93/4, the division by value be made and each branch to get 1/3rd share. The residential house and the land appurtenant to it, currently in the possession of the 1st and 2nd defendants shall remain with the 1st defendant while deciding the share in the S.No.93/4 at Pachinampati village, is dealt with in the final decree proceedings. In other words, insofar as the land in S.No.93/4, where the residence and appurtenant land are located (measuring 95 Ares), when same shall be allotted to the 1st defendant and if any difference in value shall be compensated by the 1st defendant to the 1st plaintiff and 4th defendant either by land or money.

33. Accordingly, this *Appeal Suit is partly allowed*, and the



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judgment and decree of the trial Court is modified as above.

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Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

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Index: Yes/No

Speaking/Non Speaking order

Internet: Yes

Neutral Citation: Yes/No

rpl

To

1.The Principal District Judge, Dharmapuri .

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

DR.G.JAYACHANDRAN, J.

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delivery Judgment made in

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