



AS.No.543 of 2019

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2025

PRONOUNCED ON : 26.02.2025

CORAM:

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

A.S.No.543 of 2019

1. Elumalai
2. Rajavelu

... Appellants

-Vs-

1. Arumugam
2. Pazhani
Muthu (died)
3. Smt.Malliga
4. Smt.Chithra
5. Smt.Bhuvaneswari
6. Selvan Rohit Kumar
(R5 & R6 are impleaded Lrs of the
deceased Muthu 4th defendant in I.A.No.109/2011
as per order dated 27.11.2011)

... Respondents

PRAYER: First Appeals filed under Section 96 of the Code of Civil Procedure praying to set aside the Judgment of the learned I Additional District and Sessions Judge, Vellore District in O.S.No.9 of 2012 dated 31.01.2019 on the file of the learned Additional District Judge, Vellore District.



WEB COPY



AS.No.543 of 2019

For Appellants : Ms.R.T.Sundari

For Respondents : Mr.R.Murali for R1

J U D G M E N T

The appellants are the 1st and 3rd defendants before the Trial Court. The first respondent is the plaintiff, and the other respondents are the remaining defendants before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The fundamental facts, which are require for the effective disposal of the instant appeal is as follows:-

According to the plaintiff, the suit “A” schedule property originally belongs to the paternal grandfather of the plaintiff and the defendants qua Chinnaiah Goundar. During his lifetime, he executed a Will dated 16.02.1960 giving life interest to his wife “Thanji Ammal” and vested remainders to the male descendants of his two sons. His sons are Muruga Goundar and Lakshmana Gounder and also he has 5 daughters. The present suit is among



AS.No.543 of 2019

WEB COPY

the legal heirs of one son Muruga Goundar. The “B” Schedule property is the self acquired property of Muruga Goundar. The “C” Schedule property stands in the name of the 3rd defendant, which according to the plaintiff was purchased through the income derived from the Schedule “A” property. While so, Muruga Goundar died on 22.08.1996. After his demise, his wife Muthammal also died on 25.02.2006. As such, his property devolved upon his legal heirs. It is the further submission of the plaintiff that in spite of the request, the defendants did not come forward to divide the property. Hence, filed the suit for partition to divide A Schedule property into 5 equal shares and seeking for an allotment of one such share, similarly, in “B” and “C” Schedule property, praying to divide the suit property into 7 equal shares and for an allotment of one such share to the plaintiff.

4. The said suit was resisted by the 1st defendant by contending that already a partition was effected between the plaintiff and the defendants, and that in the said partition, each of them was allotted 0.38 ½ cents, and 0.07 cents. After the allotment, the parties have also put up construction thereon. The above statement was reiterated by the defendants 7 and 8 too. Accordingly, the defendants 1, 7 and 8 prayed to dismiss the suit.



AS.No.543 of 2019

WEB COPY

5. The 3rd defendant, though adopted the statement of the 1st defendant, had stated that “C” schedule property is his absolute property purchased through his income. Hence, he also prayed to dismiss the suit.

6. The 5th defendant accepted the plaint claim in respect of “B” schedule property and sought for an allotment of 2/7 shares to her and 6th defendant viz., her sister.

7. Before the Trial Court, the plaintiff himself was examined as PW1 and relied 15 documents to support her case. On behalf of the defendants, defendants 1, 2, 3 and 5 were examined as DW1, DW2, DW5 and DW4 respectively. Apart from that, one Mr.Ramesh Kumar was also examined as DW3. Also, they relied upon 30 documents, and as a Court document, summon dated 04.09.2018 was marked as Ex.C1.

8. The Trial Court, after having considered the submissions made by either side, has framed the following issues:-

1. Whether the plaintiff is entitled to 4/8 share in the suit



AS.No.543 of 2019

WEB COPY

properties?

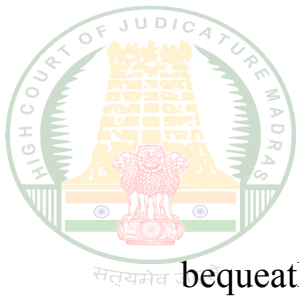
2. Whether the suit properties are liable for partition?
3. Whether the plaintiff is entitled for permanent injunction against the defendant from encumbering and alienating the suit properties?
4. To what other relief the plaintiff is entitled to?

(Extracted as it is)

9. While answering the above issues, the Trial Court found that the plaintiff is entitled to 1/5 share in the A schedule property, and 1/7 share in the “B” schedule property. As far as “C” schedule property is concerned, the suit was dismissed. Aggrieved with the said order, the defendants 1 and 3 preferred the instant First Appeal.

10. Heard Ms.R.T.Sundari, learned counsel for the appellants/defendants 1 and 3 and Mr.R.Murali, learned counsel for the first respondent/plaintiff.

11. The learned counsel for the appellants would vehemently contend that B schedule property also has to be dealt in accordance with the recitals of Ex.B1-Will, as the said property was originally a part of the Will [Ex.B1]



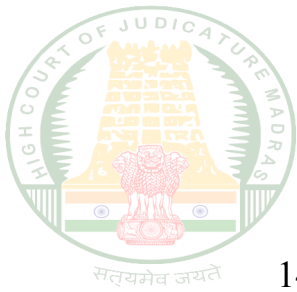
AS.No.543 of 2019

WEB COPY

bequeathed to Lakshmana Goundar, and he would also contend that, if the property is divided in accordance with the conditions stipulated in the Will, the female legal heirs viz. 4th and 7th defendants will have no right over the same. As such, it is the contention of the appellants that even in respect of B schedule property, a division should be only among the male descenders of late Muruga Goundar.

12. Per contra, the learned counsel for the plaintiff would vehemently contend that though Lakshmana Goundar derived the property by virtue of Ex.B1-Will, which contains the stipulation to devolve the property only to the male heirs of Lakshmana Goundar, since Lakshmana Goundar and his male heirs sold the same to Muruga Goundar qua father of the plaintiff and defendants, the same partakes the character of the self acquired property of Muruga Goundar. Therefore, the recitals found in the Will will have no impact in the purchase of Muruga Goundar. Hence, contended that the daughters are also entitled to have equal share. Hence, prayed to dismiss the appeal.

13. I have given my anxious consideration to either side submissions.



AS.No.543 of 2019

WEB COPY

14. From the submissions of either side, the following points arises for our consideration, for the effective determination of the appeal:-

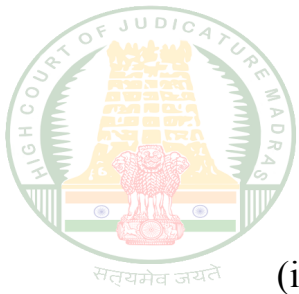
1. Whether the condition imposed in Ex.B1-Will to have any effect upon the property purchased by Muruga Goundar under Ex.B3-Will?
2. Whether the female legal heirs are having any right over the B schedule property?
3. Whether the plaintiff is entitled for partition as prayed for? and
4. To what other reliefs?

15. Before we delve into the merits of the matter, this Court deems it appropriate to record the admitted position of this case.

16 (i). It is an admitted fact that the plaintiff and the defendants are the legal heirs of Muruga Goundar and Muthammal.

(ii). It is equally admitted that Muruga Goundar derived “A” schedule property by virtue of Ex.B1-Will. Similarly, his brother Lakshmana Goundar derived B schedule property by virtue of Ex.B1-Will.

(iii) It is further admitted by both the parties that Lakshmana Goundar and his male legal heirs sold the B schedule property to Muruga Goundar.



AS.No.543 of 2019

(iv). There is also no dispute in respect of the condition stipulated in Ex.B1-Will, to the effect that the property would devolve only upon male legal heirs of Chinnaiah Goundar.

17. In view of crystallization of facts, the only issue to be considered is, whether Ex.B1-Will, will have any effect upon “B” schedule property purchased by Muruga Goundar under Ex.B3. Now, the argument of the defendants is that, though the property was purchased by Muruga Goundar from Lakshmana Goundar and his legal heirs, since the property was derived by them through Ex.B1-Will, to fulfill the testator's intention, the female legal heirs must be excluded from sharing this property. If this is a case of testamentary succession, it becomes the primordial duty to fulfill the desire of the testator. Here, admittedly, the testamentary succession had opened immediately, after the demise of Chinnaiah Goundar, and the “B” Schedule property becomes the absolute property of Lakshmana Goundar's male legal heirs.

18. Only from Lakshmana Goundar's legal heirs, the property was purchased by Muruga Goundar through Ex.B3. Therefore, once the property



AS.No.543 of 2019

WEB COPY

becomes absolute property, the condition mentioned in the Will ceases and will neither enure nor permeate to the subsequent purchaser. As such, the recitals in the Will [Ex.B1] will in no way affect Ex.B3-Sale Deed.

19. Accordingly, the devolution of the “B” schedule property will be taken care by Section 8 of the Hindu Succession Act, 1956 and the son and daughters being the Class 1 legal heirs of male a Hindu, dying intestate, are equally entitled to divide the same. Accordingly, the B schedule property has to be divided into 7 shares and the plaintiff is entitled for one such share. Hence, this Court does not find any infirmity in the order of the Trial Court.

20. In the result, the instant Appeal stands dismissed by confirming the order of the Trial Court. There shall be no order as to costs.

26.02.2025

kmi

Index : Yes/No

Speaking Order/Non Speaking order

NCC: Yes/No



WEB COPY

To
The I Additional District and Sessions Court,
Vellore District.



AS.No.543 of 2019

C.KUMARAPPAN, J

kmi

Pre-Delivery Judgment in
A.S.No.543 of 2019

26.02.2025