



A.S.No.151 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 02.06.2025

CORAM:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No.151 of 2014

1. Kamatchi
2. A.Marappa
3. Naveen
4. Udyanandhini

.. Appellants

Versus

1. Suseela
2. Latha
3. Mahendran
4. Kannammal
5. Thangammal
6. Nallammal
7. Thangammal

.. Respondents

Appeal Suit is filed under Section 96 r/w. Order 41 Rule 2 of C.P.C against the Judgment and decree dated 03.10.2013 made in O.S.No.137 of 2012 on the file of the learned Principal District Judge, Namakkal.

For Appellants : Mr. T. Dhanya Kumar

For Respondents : Mr. Abrar Mohammed Abdullah for RR1 & 2

No appearance for RR3 to 6
R7 notice not served



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JUDGMENT

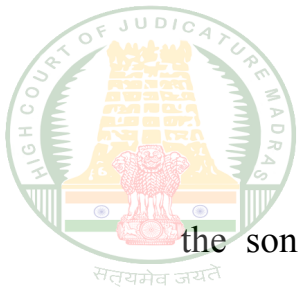
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The Defendants 4, 6, 8 and 9 in O.S. No. 137 of 2012 are on appeal praying to set aside the Judgment and decree dated 03.10.2013 made in O.S. No. 137 of 2012 on the file of the learned Principal District Judge, Namakkal.

2. The Respondents 1 and 2 in this appeal, as Plaintiffs, have filed the suit in O.S. No. 137 of 2012 for the relief of partition of the suit properties into 24 equal shares, by metes and bounds and to allot 7 such shares to them.

3. For the sake of convenience, the parties to this appeal shall be referred to as per their rank in the suit as 'Plaintiffs' and 'Defendants' as the case may be.

4. As per the plaint averments, the first Plaintiff is the second wife of Late. Kaliannan. The second Plaintiff is the daughter born to the first Plaintiff through the said Kaliannan. The first Defendant is the son of Late. Kaliannan born through his first wife. The second and third Defendants are daughters born through the first wife of Late. Kaliannan. The fourth and fifth Defendants in the suit are sisters of late. Kaliannan. The sixth Defendant is the husband of Kaliammal, pre-deceased sister of Kaliannan. The 7th Defendant is



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the son of the pre-deceased sister of Kaliannan namely Kaliasammal. The Defendants 8 and 9 are the children born to one Subramani, who is the pre-deceased son of Kaliasammal, sister of Kaliannan.

5. According to the Plaintiffs, Kaliannan married his first wife and after the death of his first wife, he married the first Plaintiff herein as his second wife. Out of such wedlock, the second Plaintiff was born on 27.03.1991. It was further stated that the marriage of the Defendants 2 and 3, who are daughters born to Kaliannan and his first wife was solemnised much before 1989.

6. The Plaintiff further proceeds to state that the suit properties were owned, possessed and enjoyed by Periyanna Gounder, grand father of Kaliannan. The suit properties were in joint possession of Kaliannan and his father late. Ramasamy Gounder. Mr. Ramasamy Gounder, father of Kaliannan died *intestate* on 04.11.1994 leaving behind (i) Kaliannan, father of the second Plaintiff (ii) fourth Defendant (iii) fifth Defendant and (iv) Marappan, husband of pre-deceased sister Kaliasammal. On the death of Ramasamy Gounder, the above said Kaliannan and three others have acquired co-parcenary rights in the property in which Kaliannan have got 1/4 equal share. Subsequently,



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Kaliyannan died on 17.12.2003 leaving behind the Plaintiffs and the Defendants 1 to 3, children born to first wife of Kaliyannan. Since the plaintiff described property had not been divided by metes and bounds, the Plaintiffs sought for partition and to divide the suit property into 24 equal share and to give to the Plaintiffs 7 such shares. However, the Defendants did not come forward to effect an amicable partition and therefore, the suit was filed.

7. On notice, the first Defendant filed a written statement contending that Ramasamy Gounder died intestate and on his death, the suit properties devolved upon his only son Kaliyanna Gounder and three daughters namely Kaliammal, Kamakshi and Nallammal and each one of them have acquired 1/4 equal share. Kaliyanna Gounder died and his 1/4 share devolved upon his only son Mahendran, the first Defendant and three daughters Kannammal (second Defendant), Thangammal (third Defendant) and Latha (second Plaintiff) and Suseela (first Plaintiff). However, the first Defendant contended that there was no occasion for the first Defendant to effect partition of the suit properties by metes and bounds, but the Plaintiffs demanded higher share than what they are entitled to and therefore, partition could not be effected. According to the first Defendant, the second Plaintiff, Defendants 1 to 3 are entitled to 6/100 shares each, while the first Plaintiff is only entitled to 1/100



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share. In other words, the Plaintiffs 1 and 2 are entitled to 7/100 share and the Defendants 1 to 3 are entitled to 18/100 share. Further, the Defendants 7, 8 and 9 are entitled to the entire share of Kaliammal viz., 25/100 share in common and the Defendants 4 and 5 are entitled to the remaining 25/100 share. This share is worked out on the basis that deceased Kaliammal, Kamatchi (fourth Defendant) and Nallammal (fifth Defendant) possess 1/4 share in common while Kaliannan possessed 1/4 share. When Ramasamy Gounder died in the year 1994, there was no division of family properties during his life time. Therefore, Kaliannan Gounder enjoyed the entire properties till his death without the properties being partitioned. As per the Central Act amending Hindu Succession Act, the heirs of Ramasamy Gounder are entitled to only 1/4 shares in common. Accordingly, the first Defendant prayed for dismissal of the suit.

8. During trial in the suit, the first Plaintiff examined herself as P.W-1 and marked Ex. A-1 to Ex.A-5 documents. On behalf of the Defendants, the first Defendant examined himself as D.W-1 but has not marked any document. The trial Court, on analysing the oral and documentary evidence, concluded that the Plaintiffs are entitled for the relief of partition of 7/24 share in the plaint described property and accordingly passed a preliminary decree.



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WEB COPY9. Assailing the Judgment and Preliminary Decree dated 03.10.2013 passed in O.S. No. 137 of 2012, the instant appeal is filed by the Defendants 4, 6, 8 and 9.

10. The learned Counsel for the Appellants submitted that the deceased Periyanna Gounder had a son by name of Ramasamy Gounder and daughter by name Pappayi Ammal and both of them died. The said Ramasamy had one son namely Kaliannan and daughters viz., Kamatchi (fourth Defendant), Nallammal (fifth Defendant) and Kaliasammal (pre-deceased). The said Kaliasammal's husband was arrayed as sixth Defendant in the suit. It is further stated that Kaliannan married one Angammal and through such wedlock, he had a son by name Mahendran (first Defendant) and daughters namely Kannammal (second Defendant), Thangammal (third Defendant). According to the learned counsel after the death of his first wife, Kaliannan married the first Plaintiff as his second wife through whom, the second Plaintiff was born.

11. The learned Counsel for the Appellants/Defendants submitted that in the suit the first Defendant disputed the quantum of share claimed by the



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Plaintiffs by filing a written statement. It was clearly narrated that the claim for 7/24 share for the Plaintiff's is legally untenable as it would result in very lesser share to the other legal heirs of Late. Kaliannan in the suit. The first Defendant is the only son born to Kaliannan and his first wife Angammal. The first Defendant is legally entitled to a larger extent of share. The first Plaintiff, being the second wife of Kaliammal is not entitled to any share at all and if at all only the second Plaintiff can be given a share. It is further contended that the trial court erred in passing the preliminary decree by granting equal shares to the Plaintiffs by treating them as co-parceners along with the male co-parcener.

12. On the above contentions of the learned counsel for the Appellants, this Court heard the submissions of the learned counsel for the contesting Respondents 1 and 2/Plaintiffs. The learned counsel for the Respondents 1 and 2 submitted that the first Plaintiff married Kaliannan only after the death of the first wife Angammal. It is also an admitted fact that the second Plaintiff born out of the wedlock between Kaliannan and the first Plaintiff. In such circumstances, the Plaintiffs has to be regarded as Class I legal heirs and are entitled to equal share as that of the first Defendant by virtue of the amended Section 6 of The Hindu Succession Act. While so, the



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trial Court is wholly justified in passing a preliminary decree for partition of the suit. It is not the case of the first Defendant/appellant that Plaintiffs are not entitled for any share at all. What is disputed is that the basis for arriving at 7/24 shares to the Plaintiffs is incorrect. The fact remains that after the amendments were brought to The Hindu Succession Act, the female heir of a co-parcener is entitled to equal share as that of the male heir. In such circumstances, the preliminary decree passed by the trial court is legally sustainable. The appeal lacks merits and it has to be dismissed.

Point for determination:

Whether the preliminary decree granted by the learned Principal District Judge to the Plaintiff as 7/24 by judgment dated 03.10.2013 passed in O.S.No.137 of 2012 is erroneous and is to be modified?

13. Heard the learned Counsel for the Defendants/Appellants as well as the Plaintiffs/Respondents 1 and 2 and perused the materials placed on record.

14. There is no dispute with respect to the relationship *inter se* between the parties. It is also an admitted fact that the Plaintiffs as well as the Defendants trace their right for a share in the plaint described property as a



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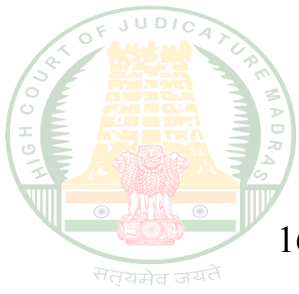
legal heir of deceased Kaliannan. The first Plaintiff is the second wife of Kaliannan and the second Plaintiff is the daughter born to the first Plaintiff and Kaliannan. The first Defendant is the only male heir born to Kaliannan out of the wedlock with his first wife Angammal. The Defendants 2 and 3 are daughters born to Kaliannan and his first wife Angammal. Thus, the Plaintiffs and Defendants 1 to 3 are the class I legal heir of Kaliannan. The fourth and fifth Defendants are sisters of Kaliannan and daughters born to Ramasamy Gounder. Yet another sister by name Kaliammal, pre-deceased Kaliannan and therefore her husband and daughter were brought on record as sixth and seventh Defendants. The grand children born to Kaliyammal through her pre-deceased son Subramani are brought on record as Defendants 8 and 9.

15. From the discussion of evidence by the learned Principal District Judge, it is found that the learned Principal District Judge had not considered the amendment to the Hindu Succession Act as amended in 2005 whereby the daughters are granted right to succeed to the coparcenary properties of a Hindu joint family as that of a son. In that case the son of Ramasamy Gounder Kaliannan Gounder along with his sisters Kamatchi, Nalammal and Kaliammal are each entitled to the same share as that of Kaliannan Gounder viz., 1/4th share each. Whereas the Plaintiff in the plaint stated that Kaliannan Gounder is



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the only son of Ramasamy Gounder and therefore half of the share in the property has to be devolved on Kaliannan Gounder and the other half share of the property has to be allotted to the daughters of Ramasamy Gounder. This is contrary to the amendments made to Section 6 of The Hindu Succession Act. The trial Court, on the aforesaid notion, divided the share of the Plaintiffs in such a way that the Plaintiffs and Defendants 1 to 3 are entitled to inherit the entire half share of the property devolved on Kaliannan Gounder and consequently, the Plaintiffs are entitled to 7/24 shares each. The learned Principal District Judge lost sight of the fact that in the written statement, the Defendant-1 to Defendant-9 have disputed the claim of the Plaintiffs. Such a defence of the first Defendant is well founded. This is more so that even during the life time of Ramasamy Gounder, father of the Defendants 5 and 6 and father-in-law of sixth Defendant, the suit property has not been divided by metes and bounds. There was no partition of the property when Ramasamy Gounder was alive. Even after the death of Ramasamy Gounder, the property remained undivided and therefore, Kaliannan Gounder, Defendants 5, 6 and 7 had co-parcenary rights to divide the property equally. In such event, if the Plaintiffs 1 and 2 are given 7/24 share in the plaint described property, it will considerably reduce the quantum of share to be given to the Defendants 1 to 9.



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16. Even in the plaint, the Plaintiffs claimed that the sisters of Kaliannan Gounder namely the Defendants 4 and 5 or the Defendants 6, 7, 8 9, who are the legal heirs of deceased Kaliammal have no right, share or interest in the property in question. The daughters born to Ramasamy Gounder cannot be left in the lurch and they have to be given equal share in the property on par with their brother Kaliannan in the light of the amendments brought to The Hindu Succession Act. The amendments brought into effect will apply to the instant case inasmuch as the suit itself was filed in the year 2012 and the amendments to The Hindu Succession Act, came into force with effect from 05.09.2005. This conclusion arrived at by this Court finds support from the judgement of the Honourable Supreme Court in the case of ***Vineetha Sharma v. Rakesh Sharma*** reported in ***AIR 2020 SUPREME COURT 3717***, particularly para 137 which is extracted as below:

“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 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 of the Act of 1956 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.

137.5 In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

17. The learned Principal Judge failed to take note of the ratio laid down by the Honourable Supreme Court in the above said case as well as the amendments brought to The Hindu Succession Act with effect from 05.09.2005. Therefore, it is essential for this Court to modify the Judgment and Decree dated 03.10.2013 passed in O.S.No. 137 of 2012.

18. In the light of the above rulings, the same is re-calculated as follows in such a way $\frac{1}{4}$ th share of Kaliannan Gounder is taken as the share of Plaintiff and Defendants and it is worked out as follows:-

The legal heirs of Ramasamy Gounder viz., Kaliannan Gounder and the Defendants 4, 5 and legal heirs of predeceased daughter Kaliammal viz., Defendants 6, 7, 8 and 8 together get $\frac{1}{4}$ th share each. The $\frac{1}{4}$ th share of Kaliannan Gounder have to be further divided among his legal heirs viz., the Plaintiffs 1 and 2, Defendants 1, 2 and 3. The $\frac{1}{4}$ th share of predeceased



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daughter Kaliasammal have to be divided among the Defendants 6, 7 and between heirs of predeceased son of Kaliasammal viz., Defendants 8 and 9.

Thus, Defendants 4 and 5 each take 30/120 share. Defendants 6 and 7 each take 10/120 share and the Defendants 8 and 9 each get 5/120 share. The Plaintiffs 1 and 2 and the Defendants 1, 2 and 3 each get 6/120 share.

19. In the light of the reported decision and in the light of the amendment to the Hindu Succession Act as amended in 2005, and particularly to the reported decision of the Hon'ble Supreme Court in para 137 of the *Vineetha Sharma v. Rakesh Sharma*, the Appeal Suit is to be allowed to the extent indicated above. The point for consideration is answered in favour of the Appellants.

In the result, **the Appeal Suit is allowed.** The Judgment and Preliminary Decree dated 03.10.2013 passed in O.S. No. 137 of 2012 by the learned Principal District Judge, Namakkal is modified as indicated above.
No costs.

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Index : Yes/No
Speaking/Non-speaking order

SATHI KUMAR SUKUMARA KURUP, J.,



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To:

1. The Principal District Judge,
Namakkal.
2. The Section Officer,
V.R.Section,
High Court of Madras.

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