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S.A.No.550 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2025

PRESENT:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

S.A. No. 550 of 2014

1. Veliammal

2. Sivakumar

3. Kalaivani

4. Sumathi

5. Lalitha

6. Minor Vinothini

7. Minor Vimalraj

... Appellants

Vs.

1. Chinnakulandai

2. Chinnappu

3. Poongavanammal (died)

... Respondents

R3 died. R1 and R2 are recorded as legal heirs of the deceased R3 vide order of Court dated 13.03.2020 made in S.A.No.550 of 2014 as per memo dated 12.03.2020 are recorded (RSMJ)

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 02.09.2013 passed in A.S.No.22 of 2012



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passed by the Subordinate Judge, Gingee, confirming the judgment and decree dated 23.12.2011 in O.S.No.161 of 2006 on the file of the Principal District Munsif, Gingee.

For Appellant : Mr. T. Dhanasekaran.

For Respondents : Mr. G. Raja for R1
R2 – served - no appearance
R3 – Died.

J U D G M E N T

Heard.

2.This Second Appeal is directed against the judgment and decree dated 02.09.2013 passed by the learned Subordinate Judge, Gingee in A.S.No.22 of 2012, confirming the judgment and decree dated 23.12.2011 of the Principal District Munsif Court, Gingee in O.S.No.161 of 2006, wherein the suit for partition was partly decreed declaring that the plaintiff/daughter is entitled to 1/12th share in the suit properties.

3.This Second Appeal has been preferred by the defendants mainly challenging the concurrent findings recorded by the Courts below on the grounds



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of alleged oral partition, ouster, and limitation under Article 110 of the Limitation

Act. For the sake of convenience, the parties are referred to as arrayed in the suit.

4. The brief facts of the case necessary to dispose of this appeal are as follows: The plaintiff filed the suit for partition claiming 5/16 share in the suit properties. The suit properties originally belonged to one Arya Gounder, father of the plaintiff and defendants 1 and 2 and husband of the 3rd defendant. The plaintiff contended that the suit properties are ancestral in nature and that no partition had ever taken place. It was also pleaded that certain properties though standing in the name of the father and one of the defendants were acquired from joint family income.

5. The defence was that an oral partition had already taken place during the lifetime of Arya Gounder, by which the sons alone were allotted properties and that the plaintiff was excluded decades ago. It was also pleaded that as the plaintiff was married prior to the Tamil Nadu Amendment Act of 1989 and since the father died in 1991, she is not entitled to claim the status of a coparcener. The defendants further pleaded ouster by long exclusion and limitation.



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6. Both the Trial Court and the First Appellate Court concurrently held that the suit properties are ancestral in nature; The alleged oral partition pleaded by the defendant has not been proved; The plea of ouster is not substantiated by evidence; The suit is not barred by limitation; and the plaintiff is entitled only to 1/12th share being her share out of her father's notional share under the unamended Section 6 of the Hindu Succession Act. The plaintiff can not claim benefit under the 2005 Amendment Act since succession opened on the demise of her father in the year 1991.

7. This Court finds that the grounds urged in the memorandum of Second Appeal relate entirely to factual findings already decided concurrently by both Courts below. The so-called admissions relied upon by the defendants only demonstrate a loose arrangement for convenience of enjoyment and not a legal partition. In view of Explanation to Section 6(5) of the Hindu Succession (Amendment) Act, 2005, partition must be either under a registered instrument or decree of Court. Hence the alleged oral partition is legally unsustainable. No perversity, illegality or misapplication of law has been established.



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8.While parting with the appeal, this Court takes judicial notice of the subsequent authoritative pronouncement of the Hon'ble Supreme Court in: **Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1 : 2020 (5) CTC 302** wherein it is categorically held that the right of a daughter as a coparcener is by birth and does not depend upon, the father being alive on the date of amendment, or the stage of opening of succession. This judgment overruled the earlier decisions in **Prakash v. Phulavati, [(2016) 2 SCC 36]** and **Mangammal v. T.B. Raju, [(2018) 15 SCC 662]** and has now settled the law.

9.Though in view of **Vineeta Sharma's case (cited supra)**, the plaintiff would now be legally entitled to parity with sons in coparcenary share, this Court is constrained from granting such relief in the present proceedings because, the Second Appeal is filed only by the defendants. This Court cannot convert the defendant's appeal into a beneficial appeal for a non-appealing party. Order 41 Rule 33 CPC cannot be pressed into service to create jurisdiction where Section 100 CPC bars admission. Power under Order 41 Rule 33 CPC can be exercised



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only after a valid appeal is admitted, not for enabling admission in the absence of a substantial question of law.

10.It is also noticed that during the pendency of this appeal, the 3rd defendant (mother of the plaintiff and 1st and 2nd defendants) died. Whether she died intestate or left any testamentary disposition is not before this Court.If she died intestate, her interest would devolve under Section 15 of the Hindu Succession Act and the share may alter by operation of law.It is well-settled that multiple preliminary decrees can be passed before final decree. Hence, the parties are at liberty to work out their remedies before the appropriate Court, in accordance with law.

11.This Second Appeal does not raise any substantial question of law. The appeal is an attempt to re-appreciate evidence.Invoke subsequent declaration of law for the benefit of a non-appealing party, is not impermissible in Second Appeal.



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No costs. Consequently, connected miscellaneous petition, if any, is closed.

04.12.2025

dpq/ay

Index : Yes/No

NCC : Yes/No

Speaking Order / Non-Speaking Order

To

1. The learned Subordinate Judge, Gingee
2. The Principal District Munsif Court,
Gingee.
3. The Section Officer,
VR Section,
High Court of Madras
Chennai.



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DR. A.D. MARIA CLETE, J

ay

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