



AS No. 680 of 2024

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED : 03-03-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 680 of 2024
and
C.M.P. No. 21956 of 2024

K. Dharmalingam

.. Appellant

Versus

K.Kamalam (died)

1. Parasakthi
2. Smt. Lakshmi Devi

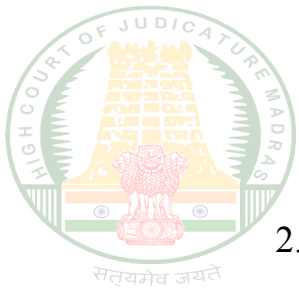
.. Respondents

Appeal Suit filed under Section 96 of Code of Civil Procedure to set aside the Judgment and Decree dated 24.01.2024 passed in O.S. No. 64 of 2021 on the file of the III Additional District Judge, Coimbatore.

For Appellant : Mr. S. Udayakumar
For Respondents : Mr. K. Sudhakar

JUDGMENT

This Appeal Suit has been filed by the sole Defendant in O.S. No. 64 of 2021 praying to set aside the Judgment and Decree dated 24.01.2024 passed therein by partially decreeing the suit filed by the deceased first Respondent in this Appeal.



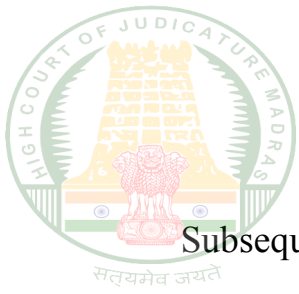
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2. The Plaintiff and the Defendant are sister and brother respectively.

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Both are children of late. Krishnasamy Gounder. The suit in O.S. No. 64 of 2021 was filed by the daughter of Krishnasamy Gounder, as Plaintiff, seeking the relief of partition. The Suit property, according to the Plaintiff, is the ancestral property of the father of the Plaintiff and Defendant, Krishnasamy Gounder. There was a partition took place in the family of Krishnasamy Gounder with his brothers, through a registered partition deed registered as document No.555/1968 on the file of Kinathukadavu Sub Registrar Office. As per the partition, 'A' schedule property was allotted to Krishnasamy Gounder, father of Plaintiff and Defendant. The Suit property is a portion of 'A' Schedule property. The said Krishnasamy Gounder and his wife Poovathal died intestate in the year 1973 to 1975. The Plaintiff and the Defendant had succeeded to their estate as legal heirs of Krishnasamy Gounder. The Plaintiff and Defendant were in common enjoyment of the suit scheduled properties.

3. According to the Plaintiff, in the year 2009, the Defendant requested the Plaintiff to join him as co-mortgagor to mortgage the suit property to avail a loan for his urgent necessity. The Plaintiff helped the Defendant to execute a mortgage deed along with the Defendant in favour of Canara Bank, Nachipalayam Branch, Coimbatore vide Doc. No.4412/2009.



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Subsequently in the year 2015, the Defendant with the help of the Plaintiff redeemed the said mortgage with Canara Bank vide Doc. No.4742/2020.

Apart from the mortgage loan with the Canara Bank, the Defendant on his own, obtained several loans without the consent and knowledge of the Plaintiff by showing the suit property as security. According to the Plaintiff, the Defendant habitually mortgaging the suit property and therefore, the Plaintiff apprehend that her share in the property may also be alienated by the Defendant, whereby, she will be deprived without any share. At this juncture, the Plaintiff requested for a partition of the plaint described property, which was denied by the Defendant. Therefore, the Plaintiff has filed the Suit in O.S. No. 64 of 2021 seeking the relief of partition of half share in the Suit property.

4. The Defendant filed a written statement and disputed the claim of the Plaintiff by stating that the Plaintiff is not entitled to any share in the suit property. The mere fact that the Plaintiff executed for mortgage along with the Plaintiff will not confer her any right or share to the Plaintiff. The Plaintiff had not claimed partition immediately after the death of the father in the year 1973. The Defendant developed the property by spending huge amount and he has planted about 300 coconut trees, he dug about 12 bore-wells. The Defendant also raised a pucca tiled house in the Suit property in the year 2011



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and has been residing there. The Plaintiff is not at all in joint possession and common enjoyment of the property. Hence, the Suit is barred by limitation and seeks to dismiss the Suit.

5. Based on the averments in the Plaint and written statement, the learned III Additional District Judge, Coimbatore framed the following issues:-

(i) Whether the Plaintiff is entitled to a preliminary decree for partition for $\frac{1}{2}$ share in the Suit property?

(ii) Whether the Plaintiff is entitled to a permanent injunction as prayed for?

(iii) To what other relief and costs the Plaintiff is entitled to?

6. In continuation of the issues, trial was ordered. During trial, the Plaintiff examined herself as P.W-1 and marked documents under Ex.A-1 to Ex.A-6. The Defendant examined himself as D.W-1 and in support of his claim, marked documents under Ex.B-1 to Ex.B-7.

7. On appreciation of evidence available on record, the learned III Additional District Judge, by Judgment dated 24.01.2024 granted a



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preliminary decree for partition of half share for the Plaintiff and dismissed the
Suit for injunction.

8. Aggrieved by the grant of preliminary decree for partition of half share to the Plaintiff, the Defendant had preferred this Appeal.

9. The learned counsel for the Appellant submitted that the trial Court failed to note that the Plaintiff is the only sister of the Appellant and daughter of late Krishnasamy Gounder. At the time of her marriage, her father had given enormous Sreedhanam by way of gift out of love and affection which is more than the value of the property sought for partition. The trial Court, without considering the same, erroneously passed a preliminary decree for partition of half share. The trial Court also failed to note that only after Ex.A-1 partition deed between Plaintiff's and Defendant's father/Krishnasamy Gounder and Semba Gounder, the share was allotted to the father of the Plaintiff and the Defendant, therefore, the claim of the Plaintiff by way of partition, long after the demise of Krishnasamy Gounder, is not sustainable. The trial Court also failed to appreciate the fact that the Defendant had obtained loan by mortgaging the property. The Defendant has cultivated the land by borrowing loan from well-wishers. From and out of meagre income,



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the Appellant spent huge money for the Plaintiff before and after marriage but these aspects were not at all considered by the trial Court, while passing the impugned Judgment. The learned counsel further submitted that after the death of the father, the Plaintiff is entitled to a share from and out of the father's share. Therefore, if at all, the Plaintiff is entitled to 1/4th share and not half a share in the suit property.

10. The learned counsel for the Appellant also submitted that in an earlier occasion, the Appellant along with his father created a mortgage under Ex.B-1 dated 03.12.1970 over Suit schedule 1st item of property in favour of Peelamedu Co-operative Primary Land Development Bank and the same was later discharged. The borrowal was necessitated not only for the Appellant welfare but also for the welfare of the Respondent. All along the Plaintiff enjoyed the benefits derived thereof and ultimately turn around and seek to divide the property. The Appellant is all along enjoying the property as a exclusive owner after the demise of his parents in the year 1973 to 1975 and had pleaded the principle of ouster as against the Plaintiff, but the trial Court has not properly discussed the said aspect by framing an issue. Further, the trial Court failed to appreciate that the Plaintiff is not in possession of the Suit property. Therefore, the Judgment and decree of the learned III Additional



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District granting preliminary decree for partition is liable to be set aside by
allowing this appeal.

11. The learned Counsel for the Appellant invited the attention of this Court to the Judgment of the learned Judge of this Court dated 08.11.2024 in S.A. No. 527 of 2022 in the case of *Vasumathi and another Vs. R. Vasudevan and others*, wherein this Court analysed and considered as to whether a notional partition under Section 6 of the Hindu Succession Act, as it was then, effect both vertical as well as horizontal partition and destroy the entire coparcenery even as between the surviving coparceners. This Court held in para No.32 that what emerges out of ancestral property will necessarily be ancestral property in whose hands it should be ancestral property, and what remains after providing for female heirs will also remain as ancestral property.

12. The learned counsel for the Appellant also relied on the decision of the Hon'ble Supreme Court in the case reported in *Kalyani (died) through Lrs Vs. Narayanan and others ((1980) Supp. SCC 298* and contended that Section 6 of Hindu Succession Act only vest a share in the Class I female heir of a deceased coparcener having an interest in the ancestral property. It merely grants a right to seek for partition of share, but not equal share as claimed by



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the Plaintiff in this case. Further, the claim is belated since the father of the Plaintiff and Defendant died in the year 1975, but the suit was filed during the year 2021. There was no effective demand for partition made by the Respondent and therefore she is prohibited from filing the suit.

13. The learned Counsel for the Appellant further submits that after marriage and after the demise of the father, the Respondent/Plaintiff abandoned her claim since she has been sufficiently provided with all Sreedhanas during the life time of her father .

14. The learned Counsel for the Appellant submits that the Respondent/Plaintiff is not entitled half or equal share in the property and is entitled only for 1/4th share. The Appellant's share has got augmented to 3/4th share in the Plaint schedule properties and hence the impugned Judgment is liable to be modified to the above extent and the preliminary decree passed by the trial Court is to be set aside in the facts and circumstances of the case.

15. Per contra, the learned Counsel for the Respondent/Plaintiff submitted that the parents of the Appellant and the Respondent died in the year 1973 and 1975. In the year 2009, the Appellant and the Respondent



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mortgaged the suit property and obtained loan from Canara Bank.

Subsequently, the same was redeemed in the year 2015 and the Respondent sought for partition, but it was denied by the Appellant. Therefore, the Suit was filed against the Appellant in the year 2021. After analysing the evidence, the learned III Additional District Judge decreed the Suit by granting half share to the Plaintiff. The learned Counsel for the Respondent invited the attention of this Court to Section 6 (I) of Hindu Succession Act, 1956 which was amended in the year 2005 and it reads as follows:-

Devolution of interest in coparcenary property:-

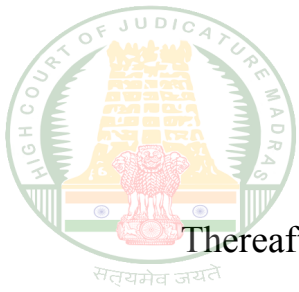
(1) On and from the commencement of the Hindu Succession (Amendment Act 2005) in a joint Hindu Family governed by the Mitakshara Law, the daughter of a coparcener shall:-

(a) by birth become a coparcener in her own right in the same manner as the son.

(b) have the same rights in the coparcenary property as she would have had if she had been a son

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.

16. As per Section 6 of the Act, the daughters ought to have been treated on par with male heirs. If the Appellant gets anything from his father the Plaintiff/Respondent is also entitled for the same, on par with Appellant. The right of Plaintiff/Respondent is by birth, irrespective of nature of property. Here admittedly the Suit property was allotted to the father of the Appellant and Respondent through partition deed registered as Doc.No.555 of 1968.



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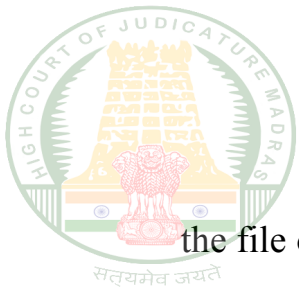
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Thereafter, during the life time of the Appellant's father he has not made any alienation. The Appellant and the Respondent/Plaintiff also executed mortgage deed in favour of Canara Bank in the year 2009 to enable the Appellant to obtain a loan and the same was redeemed in the year 2015. The Appellant also admitted the execution of the mortgage jointly with the Respondent. Considering these aspects and the evidence let in by both parties, the trial Court had decreed the Suit by granting half share to the Respondent/Plaintiff. During the pendency of the present appeal, the sole Plaintiff died and her legal heirs are brought on record as Respondents 2 and 3. Even though women's property right was recognised by bringing an amendment in the year 2005 on par with male, in reality to get their shares, all sorts of barricades are put to enable them to get those benefits and only through Court they could get their legitimate shares. The learned Counsel for the Respondent therefore seeks for dismissal of this Appeal. In support of his contention, the learned Counsel for the Respondent relied on the reported ruling in *(2020) 9 SCC 1 in the case of Vineeta Sharma Vs. Rakesh Sharma and others*.

Point for determination:

Whether the preliminary decree for partition granted to the Plaintiff by holding she is entitled to half share in the Suit schedule property is erroneous?

17. The Appellant herein is the Defendant in O.S.No.64 of 2021 on



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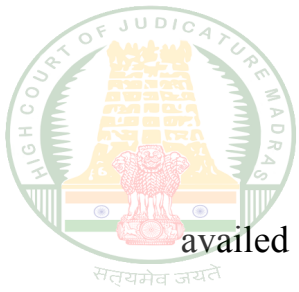
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the file of the learned II Additional District Judge, Coimbatore. The parties to the Appeal are referred with respect to their status before the trial Court as Plaintiff and Defendant in this discussion hereafterwards.

18. The Plaintiff and the Defendant are sister and brother. They are the legal heirs of the deceased Krishnasamy Gounder. The father of the Plaintiff and Defendant died in the year 1975. Thereafter, in the year 2009, to facilitate the Defendant to obtain a loan, a mortgage deed was entered into with the Bank jointly by the Plaintiff and Defendant and it was redeemed during the year 2015. These facts are not in dispute.

19. The claim of the Defendant is that the marriage of the Plaintiff was performed by granting jewels and expenses by the mother and brother and she did not claim any share for more than 45 years. Therefore, the principles of ouster will come into play and consequently, the Plaintiff is not entitled to a partition. Furthermore, the father died in the year 1975, but the suit was filed only in the year 2021.

20. On the contrary, the Plaintiff contended that the principle of Ouster is not applicable in this case since the Plaintiff and Defendant are co-owners entered into a mortgage deed with the Canara Bank whereby loan was



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availed by the Defendant and it was redeemed in the year 2015. Thus, the right of the Plaintiff's share in the suit property was indirectly admitted by the Defendant. Having admitted the right of the Plaintiff, it is no longer open to the Plaintiff to deny a share to the Plaintiff.

21. As rightly contended by the learned Counsel for the Plaintiff, the claim of the Defendant that the suit was belatedly filed after 45 years of death of the father is not acceptable. The Defendant and the Plaintiff are brother and sister. The right to get partition opens up after the death of the elder of the family, the father. Here, the Defendant is the only son and he was under the impression that he is the successor to the immovable property left by his father. Such an assumption of the Defendant cannot be accepted. The Plaintiff, as a daughter, is equally entitled to a partition in the suit property and the Defendant is not right in excluding the Plaintiff from getting a share. In the Judgment in the case of *Vineetha Sharma vs. Rakesh Sharma and others reported in (2020) 9 SCC 1*, the female heirs are to be treated as co-parcener equal to that of a male heir. After the amendment to The Hindu Succession Act, 2005 new boundaries have been created to the married daughters on par with their brothers.

22. In all cases of this nature, the brothers of the married woman takes
<https://www.mhc.tn.gov.in/judis>



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the defence that the sister was given in marriage with lot of jewels and money so they will not have any claim in the immovable property. Such a plea will no longer hold good in the light of the *Vineetha Sharma's case*. Therefore, the claim of the Defendant that after the death of the father, the Plaintiff kept quiet for all these years and claimed partition only after 45 years from the date of death of father will not hold good or it will not disentitle the Plaintiff from getting a share on par with the Defendant.

23. If there had been partition between father and son/Defendant during the life time of the father by which time or in which case the Plaintiff was also a witness to such partition, then the Plaintiff will be precluded from claiming any right in the property. In this case, no such partition had taken place. Therefore, what was inherited by the father in his family partition is a self-acquired property which is to be treated as self-acquired property for the purpose of partition among the Plaintiff and Defendant.

24. In the light of the above discussions, the Point for determination is answered in favour of the Plaintiff and against the Defendant. The Judgment and Decree passed by the learned III Additional District Judge, Coimbatore in O.S. No. 64 of 2021 dated 24.01.2024 is not perverse and therefore it is hereby



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confirmed.

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25. In the light of the above discussion, this Appeal lacks merits and is to be dismissed as having no merits. Accordingly, the Judgment and Decree passed by the learned III Additional District Judge, Coimbatore in O.S. No. 64 of 2021 dated 24.01.2024 is confirmed.

In the result, **this Appeal Suit is dismissed.** Considering the relationship between the parties, there shall be no order as to Costs. Consequently connected Miscellaneous Petition No. 21956 of 2024 is closed.

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

dh



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To

1. The III Additional District Judge,
Coimbatore.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh

Judgment made in
A.S.No.680 of 2024

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