



A.S.No.345 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

A.S.No.345 of 2022

Mr.Srinivasan,
Son of Late Balakrishna Naidu,
Hindu, aged 57 years, residing at,
7/13, Kadalaikara Lane, Near
G.D.School, Coimbatore – 18. ... Appellant/3rd defendant

/versus/

1. Mrs.Gokilam,
W/o.Gunasekaran, Hindu, aged 55 years,
Residing at No.52, Ramachandra Nagar,
Ondipudur Post,
Coimbatore – 16. ... 1st Respondent /Plaintiff

2. Mrs.Sakunthala,
W/o.Balasundaram, Hindu, aged 63 years,
Residing at No.16/3, 1st Cross Street,
Meena Estate, Puliakulam Post,
Coimbatore. ... 2nd Respondent/1st Defendant

3. Mrs.Chandrakanthi,
Wife of Venugopal, Hindu, aged 60 years,
Residing at 7/13, Kadalaikara Lane,
Near G.D.School, Coimbatore. ... 3rd Respondent/2nd Defendant



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Appeal Suit has been filed under Section 96 of the C.P.C., pleaded to set aside the Judgment and decree dated 13.04.2022 in O.S.No.189 of 2018 on the file of the I Additional District Judge, Coimbatore, thereby allowing the appeal by dismissing the suit.

For Petitioner : Ms.R.V.Rukmani,

For Respondents : Mr.A.Deivasigamani, for R1
: Mr.T.Nixon, for R2 & R3

J U D G M E N T

The suit filed for partition by one of the daughter of Kamalammal. Two of the defendants who are daughter of Kamalammal conceded for division, but was resisted by the third defendant, who is the son.

2. The trial Court, after considering the pleadings and evidence, allowed the suit for partition and passed a preliminary decree, declaring that the three daughters and one son of Kamalammal, who died intestate are entitled to suit schedule property left behind by her.



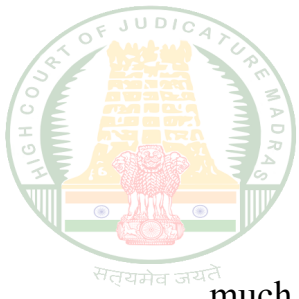
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3. The present appeal is filed by the son, being aggrieved by the preliminary decree of declaring the plaintiff entitled for 1/4th share in the suit property and the permanent injunction as against the defendants from alienating the property.

4. The Learned Counsel appearing for the appellant submitted that the trial Court failed to consider the admission of the plaintiff (P.W.1) that there was oral partition among the family members after the demise of their mother, Kamalammal.

5. The specific case of the appellant/3rd defendant is that the suit schedule property was purchased in the name of his mother Kamalammal, from the income and earnings of the father, who was working in the Clothing Company. Kamalammal had no independent income of her own and was only a name lender. Kamalammal died intestate on 02.10.2005. By that time, the plaintiff and the defendants 1 & 2 got married



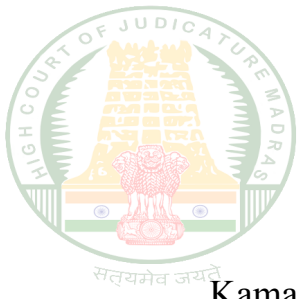
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much before 1989. Adequate Stridhana was given to them at the time of their marriage and they are well-settled. They gave up their right in the mother's property. That apart, during the lifetime of the father, there was oral partition, wherein it was agreed by the family members that the suit schedule property to be enjoyed by the 3rd defendant absolutely. Candid admission by the plaintiff regarding oral partition in the cross examination not been taking into account by the Lower Court, hence, the preliminary decree of partition need to be interfered.

6. The Learned Counsel appearing for the appellant submitted that, to substantiate the oral partition, one Venkata Narayana was examined as D.W.2. He is a closely associated to the family and he has deposed about the oral partition in respect of the properties held in the name of the family members.

7. The Learned Counsel appearing for the respondents submitted that admittedly the suit property stands in the name of



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Kamalammal and there is no evidence to prove that it was acquired from out of the income of the father. The properties were purchased in the year 1959 & 1961 and been continuously enjoyed by Kamalammal as her own property. Even otherwise, the plea of benami purchase not been raised and established by the 3rd respondent. That apart, it was contended that the properties of Kamalammal, who died intestate, naturally to be inherited by her husband and children as Class-I heirs and after demise of the father who died intestate, the properties has to be shared among the surviving four legal heirs. Hence, the trial Court, after considering the law and evidence, has rightly allowed the suit for partition.

Point for consideration:-

Whether the testimony of D.W.2 is sufficient proof for the alleged oral partition among the family members, whereby the suit schedule property allotted to the 3rd defendant exclusively?

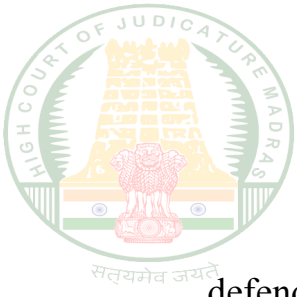


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8. The suit schedule property was admittedly purchased by Kamalammal under Ex.A.1 and Ex.A.2. Kamalammal died on 02.10.2005 and her husband Balakrishnan Naidu died on 04.01.2018. The succession for suit property which is subject matter held by Kamalammal, had opened on the demise of Kamalammal. Since she died intestate, it has to be succeeded by her legal heirs viz., Husband, son and three daughters. The plaintiff, who is one of the daughters of Kamalammal, had approached the Court, seeking partition by arraying her two sisters and brother as defendants.

9. The contention of the 3rd defendant that both the parents orally agreed to give the property to him being the sole male heir, does not carry any water, without any written document. The only support for the 3rd defendant's case comes from D.W.2 Venkata Narayana who claims to be close family friend. In the proof affidavit filed in lieu of chief examination, D.W.2 has stated that in the year 2008, there was oral partition between the family members in his presence and it was agreed by the parties that all the movables and immovables properties held by the family will be given to 3rd



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defendant, who is a sole male heir. In the cross examination, D.W.2 admits that the female heirs of the family cannot be excluded from getting the property on the ground that adequate Stridhana was given to them. His evidence fail to throw any light regarding the date and month on which the said oral partition took place and whether under the said oral partition any property was given to the female heirs and whether the said oral partition was acted upon. In the absence of proof for these facts, a mere assertion that there was oral partition excluding the right of the female heirs in the property of the mother who died intestate, cannot be legally accepted.

10. While the law of succession is very clear, the 3rd defendant merely on the ground that he is the male member of the family claim he is entitled to get the entire property of the mother contrary to law. After the Hindu Succession Act 1956 came into effect, more so after the subsequent amendment to the Act, his contention goes against the Public Policy of gender equality. In the absence of any evidence contrary, the right of the female heirs cannot be deprived or denied.



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11. Hence, the judgment and decree passed by the trial Court in O.S.No.189 of 2018 on the file of I Additional District Judge, Coimbatore is confirmed.

12. In the result, the Appeal Suit stands dismissed. There shall be no order as to costs.

12.06.2025

Index :Yes/No.
Neutral Citation :Yes/No.
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To:-

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



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Dr.G.JAYACHANDRAN,J.

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