



A.S.No.372 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 04.07.2025

Pronounced on: 14.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.372 of 2022

R.Jayajothi.

W/o. Radhakrishnan

D/o. P.T. Govindarajulu,

Old D.No.5-B

New Door No.3-B

Vivekananda Road,

Ram Nagar Coimbatore 641 009.

... Appellant/Plaintiff

/versus/

1. Duraisamy @ P.T.Ramasamy Naidu,

S/o. late Thirumalaisamy Naidu,

No.2/268, Pannimadai,

K. Vadamadurai Post,

Coimbatore 641 017.

2. P.T. Ramakrishnan,

S/o.Late.Thirumalaisamy Naidu,

No.4/505, Aruna Nagar,

17th street K. Vadamadurai Post,

Coimbatore 641 017.

3. G.Thamburaj,

S/o.P.T. Govindarajulu,

39/40, Rajagopal Naidu Layout,

Avarampalayam Road,

Peelamedu, Coimbatore – 4.

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Now residing at
Door No.21, Subiksha Gardens,
Chengalipalayam Post,
Coimbatore-641 022.

4. G.Kalavathi,
W/o.Manoharan,
No.63, Sivananda Colony,
Tatabad. 1st Street,
Coimbatore 641 012.

5. G.Velumani
S/o. Late P.T.Govindarajulu,
2/267, Pannimadai K. Vadamadurai Post,
Coimbatore 641 017.

6. J.Jayanthi,
W/o.V.Jayachandran
D/o.late P.T.Sundaram,
15, Sriram Garden Kalapatti Road,
Coimbatore 641 028.

7. N.Suganthi
W/o. K. Nandakumar,
D/o. Late P.T.Sundaram,
No.1, Ramalingam Layout,
Udyampalayam, Coimbatore - 641 028.

8. P.Vasanthi
W/o.K.Pathiraj,
D/o. Late P.T.Sundaram,
211-A, V.K.Road, Peelamedu,
Coimbatore - 641 004.

... Defendants 1 & 4 to 10/Respondents



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Prayer:- Appeal Suit has been filed under Section 96 of the Civil Procedure Code, pleaded to set aside the judgment and decree passed in OS No.109/2012 dated 18.04.2022 on the file of the Court of IV Additional District and Sessions Judge, Coimbatore and pass a preliminary decree for partition for the Appellants 5/12 share in the suit item 1 and 3, and 5/48 share in the suits items 2 and 4 by allowing this appeal.

For Appellant : Mr.A.Muthukumar.

For Respondents : Mrs.M.Sneha, for R3
: *Exparte*, for R1, R2, R4 to R8

J U D G M E N T

The suit for partition has been filed by the daughters of the 2nd defendant, born through his second wife. The defendants are the brothers and son of the 2nd defendant, born through his first wife.

2. The brief facts of the case are as follows:

The plaintiff, Jayajothi, claims to be the daughter of P.T.Govindarajulu (the 2nd defendant), born through his second wife, Velumani. The 1st wife of P.T.Govindarajulu was Rajamani, who died in the year 1963 and



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through her, he had a son, Thamburaj, who is arrayed as the 5th defendant. The defendants 1, 3, and 4 namely, Duraisamy @ P.T.Ramasamy Naidu, P.T.Sundaram, and P.T.Ramakrishnan are the brothers of P.T.Govindarajulu, the father of the plaintiff.

3. According to the plaintiff:-

(i) Item No.1 is ancestral property that devolved on P.T.Ramasamy Naidu through a partition that took place on 14.04.1949 among the six sons of Thirumalaisamy Naidu. Though partition was effected, as far as this property four of the brothers hold it jointly. Out of the income derived from this property, Items Nos. 2, 3, and 4 were purchased jointly in the names of the four brothers.

(ii) Item No.2, measuring a larger extent of 18.70 acres, was purchased on 14.01.1960. Since portion of the land was under cultivating tenant, the said portion is excluded and the remaining extent of 16.98 acres is shown as item No.2 of the property with a well and pump set.



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(iii) Item No.3 was purchased jointly in the names of the four brothers

from out of the joint family nucleus on 27.03.1967. Though the sale deed reflects an extent of 0.53½ cents, the actual measurement as per survey and revenue records is 0.50 cents. This property was divided among the four brothers and from out of it, an extent of 12.5 cents already allotted to the 2nd defendant, P.T.Govindarajulu.

(iv) Item No.4 was purchased jointly by the four brothers on 22.03.1970, measuring 6.20 acres, with a well and pump set.

4. Initially, the plaintiff claimed 1/3rd share in Item No.1 and 1/12th share in item Nos.2 to 4. Subsequently, she amended the prayer, seeking 5/12th share in item Nos.1 & 3 and 5/48th share in item Nos.2 & 4.

5. The 5th defendant, who is the son of P.T.Govindarajulu through his 2nd wife Rajamani, contested the suit stating that after the division of the joint family assets as per deed of partition dated 14.04.1949 between the sons of Thirumalaisamy Naidu, there is no joint family assets. The sons of

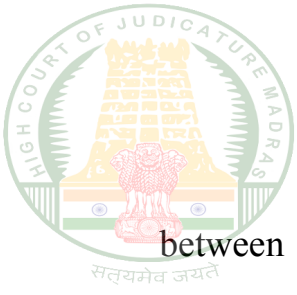


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Thirumalaisamy Naidu were living separately, each with separate income and enjoying the property allotted to them independently. Only meagre extents of land were allotted to each of them and it had no sufficient income. Subsequently, the properties in items 2 to 4 were purchased jointly by pooling their individual income. Hence, they were joint owners of the properties in item Nos.2 to 4, which were never held as joint family properties.

6. As far as item No.1 of the suit property is concerned, an extent of 0.61 cents was allotted to P.T.Govindarajulu and his son Thamburaj (the 5th defendant). The rest of the properties are the self-acquired properties of the four brothers, purchased from their self earnings. Among the father and son (2nd and 5th defendants), the properties were divided as per partition deed dated 07.07.1989.

7. Item No.3, which was purchased jointly by the four brothers in the year 1967, was later divided among the joint owners and 12.5 cents of land with a common pathway was allotted to 2nd defendant P.T.Govindarajulu. A few other properties purchased by P.T.Govindarajulu, during his lifetime were settled in favour of plaintiff's mother Velumani on 16.07.2007. Thus, after the partition



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between father and son on 07.07.1989 and the subsequent settlement in favour of his 2nd wife on 16.07.2007, no property left with P.T.Govindarajulu. The property settled in favour of Velumani (the mother of the plaintiff) is being enjoyed by the plaintiff.

8. The 9th defendant had filed written statement, same has been adopted by defendants 8 & 10. These defendants are the legal heirs of the deceased P.T.Sundaram (3rd defendant). While conceding the claim of the plaintiff's claim in respect of item No.1 to an extent of the share allotted to P.T.Govindarajulu under the partition deed dated 14.04.1949, they denied the plaintiff's claim in respect of items 2 to 4. In so far as item No.3 is concerned, it is stated that the property has already been divided among the defendants 1 to 3 and the 4th defendant (another brother) been compensated by given 0.25 cents of land in the other property. An extent of 12.50 cents of land, which had been allotted to P.T.Sundaram (the 3rd defendant and father of defendants 8 to 10) was sold it to third party and is no longer within the family.



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9. The trial Court, based on the pleadings, initially framed the issues

and later recast them as below:-

- 1) Whether the suit properties are the Hindu Joint family properties of the plaintiff and the defendants?
- 2) Whether the partition deed dated 07.06.1989 is binding on the plaintiff?
- 3) Whether the plaintiff is estopped from seeking partition, having accepted the settlement deed executed by her mother, who had received the properties through a settlement deed from the 2nd defendant?
- 4) Whether the plaintiff and the defendants 8 to 10 are entitled to claim partition in the suit property, if so to what share?
- 5) Whether the plaintiff and the defendants 8 to 10 are entitled to the preliminary decree for partition sought for?
- 6) Whether the plaintiff is entitled to the permanent injunction sought for?
- 7) To what other relief?

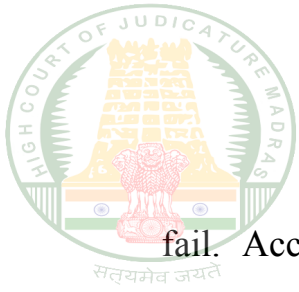
10. To prove her case, the plaintiff examined as P.W.1 and marked 17 documents as exhibits (Ex.A1 to Ex.A17). The 5th defendant, Thamburaj was examined as D.W.1. Ex.B1 is the partition deed dated 07.07.1989 executed between the 2nd and 5th defendants. The remaining defendants remained absent and were set *ex parte*.



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11. The Trial Court, on considering the evidence, held that the properties purchased by the 2nd defendant, whether jointly with his brothers or individually in his own name, had been dealt by him independently as self-acquired properties. In fact, the 2nd defendant has settled certain properties in favour of G.Velumani, the mother of the petitioner, on 16.07.2007 under Ex.A.15. If the properties held by 2nd defendant either jointly or individually had been purchased from the ancestral nucleus, then the plaintiff ought to have included, in the present suit, those properties which were settled in favour of her mother. By excluding the property settled in her favour of her mother, the plaintiff is estopped from making a claim for partition in respect of the other properties as if it is joint family properties.

12. The trial Court has observed that the plaintiff cannot chose to contend that the two properties mentioned in the settlement deed (Ex.A15) alone are the self-acquired properties of her father and remaining properties are his joint family properties. In the absence of evidence to show that the 2nd defendant had independent source of income other than the properties jointly held along with his brothers and the ancestral property (item No.1), the suit for partition is liable to



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fail. Accordingly, the trial Court held that the partition dated 07.07.1989 between the 2nd and 5th defendants, marked as Ex.A79, is to be upheld.

13. Being aggrieved by the judgment of the trial Court, the present appeal is filed on the ground that, having held that the suit properties are ancestral properties of the 2nd defendant, the trial Court ought to have passed a preliminary decree for partition and allotted the plaintiff share as per law.

14. The trial Court, having acknowledged that the plaintiff got married only after the amendment of the Hindu Succession Act by the Tamil Nadu Act 1 of 1990, ought not to have deprived her right in the coparcenary property. If the trial Court has thought fit that the properties covered under the settlement deed (Ex.A15) executed by 2nd defendant in favour of G.Velumani (the 7th defendant), is also acquired from the ancestral property income, then it should have included those two properties and granted decree for partition. The mere exclusion of those two properties from the suit cannot be a ground to dismiss the suit for partition.



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15. The Learned Counsel appearing for the 5th defendant submitted that, except to show around 0.61 cents of land that came into the hands of P.T.Govindarajulu from his father, Thirumalaisamy Naidu, there is no evidence to show that the income from out of that property item Nos.2 to 4 were purchased. In fact item No.2 to 4 were purchased jointly by four members of the family from out of their individual income and were never blended with the ancestral property. There was no ancestral property and all the properties were jointly purchased, after division in the year 1949. Subsequently, there was no blending of the newly acquired properties with the ancestral nucleus nor there was any unification of the already divided properties under the partition dated 14.04.1949. The share of P.T.Govindarajulu in item Nos.2 to 4 are his absolute property. Item No.3 was divided among the four owners. Subsequently, P.T.Govindarajulu and his son entered into a partition and divided the properties as per Ex.A7.

16. Point for determination:-

Whether the suit schedule item No.1 carry the character of ancestral property after the division on



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14.04.1949 and whether the properties in item Nos.2 to 4 were purchased subsequently, were acquired from out of the joint family and blended with the joint family property?

17. The case of the plaintiff is that she got married after 1990 and therefore, her right in the coparcenary property had enlarged, pursuant to the State amendment to the Hindu Succession Act. Further, it is her case that item No.1 is nucleus of the joint family property and from the income derived from item Nos.2 to 4 were purchased by her father along with his brothers.

18. Even according to the plaintiff, Thirumalaisamy Naidu had six sons and item No.1 of the property was held by him. She admits that there was partition took place among the sons of Thirumalaisamy Naidu on 14.04.1949, under which item No.1 was allotted to her father P.T.Govindarajulu. The other sons of Thirumalaisamy Naidu, as per the plaintiff's own pleadings, are not only defendants 1, 3 and 4 but also one Raju Naidu and Mathadam Naidu, who were not shown as parties in the present suit for partition. If really, item No.1 remain as ancestral property even after the division, then the other two sons of



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Thirumalaisamy Naidu were necessary parties to the suit. Even assuming that after the partition, item No.1 came into the hands of P.T.Govindarajulu and from out of that income, P.T.Govindarajulu purchased from the income derived from item Nos.2 to 4 along with his three brothers, the plaintiff ought to have proved those three properties got blended with item No.1 property.

19. In the sale deeds of item Nos.2, 3 & 4 marked as Ex.A3 dated 14.01.1960, Ex.A4 dated 27.03.1967 and Ex.A5 dated 22.03.1970 respectively, nowhere indicate that the properties were purchased from out of the ancestral nucleus. The recitals in these documents show that the properties purchased by the four brothers from out of their respective contributions. It is clearly a joint purchase by defendants 1 to 4 and the source for purchase is not one and the same. Therefore, item Nos. 2 to 4 by no stretch of imagination, can be considered as properties purchased from out of income derived from item No.1. There is also no evidence to show that the lands allotted to the other three brothers, namely defendants 1, 3 & 4 under the partition dated 14.04.1949 were amalgamated and the income from those lands was pooled together for the purpose of purchasing item Nos.2 to 4.



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20. As far as item No.1 is concerned, since it has been inherited from Thirumalaisamy Naidu, it has the trapping of ancestral property. However, under Ex.A7 dated 07.06.1989, there had been a partition between P.T.Govindarajulu and his son Thamburaj (5th defendant) and the said partition has been acted upon.

21. From the materials placed on record by the parties, it is obvious that item No.1 is an ancestral property but it does not carry the trapping of coparcenary property. As per the Central Amendment to the Hindu Succession Act, which came into force on 09.09.2005, a female heir can have right in the coparcenary property, provided that there was no alienation, transfer or partition of the property prior to 20th December 2004, as clarified in *Vineeta Sharma v. Rakesh Sharma* reported in **CDJ 2020 SC 658**.

22. Regarding the theory of blending, there is no evidence adduced by the plaintiff to show that the three properties purchased jointly by the defendants 1 to 4 were either purchased from the ancestral nucleus or blended with the ancestral nucleus.



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23. In *Angadi Chandranna v. Shankar and others* reported in [2025

***INSC 532*],** the Hon'ble Supreme Court regarding doctrine of blending of self acquired property with joint family property, relying upon the earlier judgments of the Hon'ble Supreme Court in *Lakkireddi Chinna Venkata Reddy and Others v. Lakkireddi Lakshamama* reported in [1964 (2) SCR 172] and *K.V. Narayanan v. K.V.Ranganandhan and Others* reported in [(1977) 1SCC 244], has observed as below:-

"20.Regarding the doctrine of blending of self-acquired property with joint family, it is settled law that property separate or self-acquired of a member of joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilized out of generosity to support persons whom the holder was either bound or not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness, will not ordinarily be regarded as an admission of a legal obligation."



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24. On considering the latest judgment of the Hon'ble Supreme Court in *Angadi Chandranna* case cited supra, this Court finds that the partition suit filed by the appellant herein is liable to be dismissed. Though the trial Court had dismissed the suit on the ground of suppressing the material facts and seeking partial partition excluding the two properties which had been settled in favour of plaintiff's mother and she, in turn, settled in favour of the plaintiff, this Court holds that the suit for partition suffers fundamental legal defect. Accordingly, uphold the dismissal of the partition suit for reasons stated above.

25. In fine, the *Appeal Suit No.372 of 2022 is dismissed*. There shall be no orders as to costs.

14.07.2025

Index :Yes/No.

Neutral citation :Yes/No.

bsm

To,

1. The IV Additional District and Sessions Judge, Coimbatore.

2.The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

bsm

Pre-delivery judgment made in
Appeal Suit No.372 of 2022

14.07.2025