



A.S.No.469 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :08.07.2025

Pronounced on :15.07.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.469 of 2022

and

C.M.P.No.17183 of 2022

1.Mrs.S.Gunasundari

W/o late M.Sekar, Plot No.9,

7th Cross Street, Kumaraguru Avenue,

Neelangarai, Chennai 600 115.

..1st Appellant/6th Defendant

Mrs.D.Rani,(deceased)

W/o Dilli alias Murugesan

No.164, 47th Street Sidco Nagar,

Villivakkam, Chennai 600 049.

..5th Defendant

2.Mr.Dilli @ Murugesan

3.Mr.Anand

4.Mrs.Usha

Appellants 2 to 4

at No.164, 47th Street, Sidco Nagar,

Villivakkam, Chennai 600 049.

..Appellants 2 to 4/

8 to 10 Defendants (LR of the

5th Defendant)

/versus/



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1.Mrs.S.Dhakchayani

W/o Subramani, No.101, Kulakarai Street,
Adikathur, Kadampathur Post,
Tiruvallur.

..1st Respondent/Plaintiff

2.Mrs.Chithra, W/o Late Ramalingam,
New No.30, Old No.27, Kavarai Street,
West Mambalam, Chennai 600 033.

3.Mr.R.Gopinath,
S/o Late K.Ramalinga, New No.30,
Old No.27, Kavarai Street, West,
Mambalam, Chennai 600 033.

4.Mrs.Geethamala
D/o Late K.Ramalingam
Plot No.5/3, Door No.3, Selvavinayagar
Koil Street, Sekar Nagar,
Jafferkhanpet, Chennai 600 083.

5.Mrs.Lavanya,
D/o Late K.Ramalingam,
New No.30, Old No.27, Kavarai Street,
West Mambalam,
Chennai 600 033.

6.Mrs.V.Seethalakshmi
W/o Vanadas, No.31 Dr.Mu.
Varatharasanar Street, Manavalanagar,
Thiruvallur, Pincode 602 002.

..2 to 6 respondents/1 to 4 and 7
defendants



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Prayer: Appeal Suit has been filed under Section 96 of C.P.C., read with Order XLI, Rule 1 of the Civil Procedure Code, to allow the above First Appeal by setting aside the judgment and decree passed by the Court IV Additional City Civil Court, in O.S.No.3596 of 2018, dated 11.07.2022 with exemplary Cost.

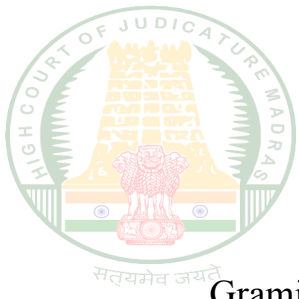
For Appellant :Mr.S.Namasivayam

For Respondent :Mr.B.Ullasavelan, for R2 to R5
No appearance for R1 and R6

JUDGMENT

The appeal suit is against the dismissal of the partition suit filed by one of the daughter of Kanniappa Gramini in respect of the property which devolved on him in the partition between him and his brothers in the year 1957.

2. A larger extent of land measuring 7800 sq.ft. was purchased by one Vanchi Gramini on 13.07.1936 and during his life time, he sold a portion of it measuring 1950 sq.ft to one Athilakshmi and left the balance land for his three sons to inherit it. On his death, his three sons namely Kanniappa



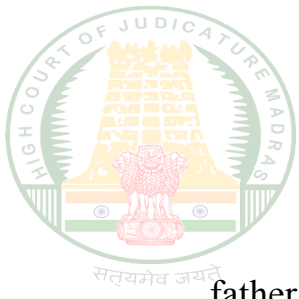
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Gramini, Kaliappa Gramini and Arumuga Gramini inherited it and got divided under a partition deed dated 22.11.1957. In the said partition, 1950 sq.ft of land was allotted to Kanniappa Gramini and he took possession of the land and constructed a house.

3. Kanniappa Gramini and his wife Parvathiammal had one son and 4 daughters. The suit for partition filed by Dhakchayani, daughter of Kanniappa Gramini. The first appellant Gunasundari, the first respondent Dhakchayani, Rani (who is the mother of appellants 2 to 4), and Seethalakshmi (the 6th respondent) are the four daughters of Kanniappa Gramini. Ramalingam is the only son of Kanniappa Gramini. He died leaving behind his wife (the 2nd respondent) and son and two daughters, who are the respondents 3 to 5.

4. The suit by Dhakchayani seeking 1/5 share in the suit property got dismissed by the Trial Court on the ground of limitation and non-joinder of necessary parties. The Trial Court has found that Kanniappa Gramini, the



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father of the plaintiff had two wives. The first wife children by name Chittibabu and Kamal are not made parties in the suit for partition. The said Kanniappa Gramini died in the year 1995 and his wife Parvathi ammal died in the year 1996. The plaintiff got married 59 years ago and admits that she was not in joint possession of the property. Hence, suit for partition filed 23 years after the death of her father held as barred by limitation.

5. The plaintiff in the suit Dhakchayani had not filed any appeal against the dismissal of her suit for partition. Her sister Gunasundari, who as the 6th defendant in the suit is before this Court through this appeal contending that the limitation prescribed under Article 110 of the Limitation Act, will not apply to the facts of the case. The Trial Court miserably failed to consider the Central Amendment to the Hindu Succession Act, which came into force on 09.09.2005. The Court carried away by the fact that all the daughters of Kanniappa Gramini got married prior to 1990, when the State Amendment came into force, so they are not entitled for share in the property. The dictum laid by the Hon'ble Supreme Court in ***Vineeta Sharma***

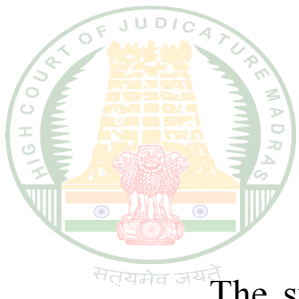


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case totally overlooked by the Trial Court. The whereabouts of other two legal heirs of Kanniappa Gramini not heard for several years. While so, non impleading them cannot be fatal for the other legal heirs to get share in the property of their father, who died intestate leaving behind the suit property, which he got from his father.

6. The learned Counsel for the respondents 2 to 5, who are the legal heirs of Ramalingam submitted that, the larger extent of land left by Vanchi Gramini on his death devolved on his 4 sons. By way of partition, in the year 1957, Kanniappa Gramini was put in exclusive possession and enjoyment of 1950 sq.ft of land. It has become his absolute property after the partition. The vacant land given to him was improved by putting up construction on it from his income. Ramalingam, who is the husband of the second respondent and father of the respondents 3 to 5, born prior to Hindu Succession Act, 1956, came into force. Hence, his right in the grand father property accrued by his birth. The female heirs of Kanniappa Gramini got married long back and they were provided with adequate seer and jewels.



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The suit property was in the exclusive possession of Ramalingam till his death in the year 2016 (01.10.2016). He during his life time renovated the house from out of his income and enjoying it in exclusion of others. Therefore, all the reasons given by the trial Court for dismissing the suit by Dhakchayini equally applies to the other daughter Gunasundari, who got married in the year 1982 and never been in joint possession.

7. Regarding the Central Amendment and the dictum of ***Vineeta Sharma*** case, the Learned Counsel for the respondents 2 to 5 submitted that, the suit property never carried the character of coparcenary to apply ***Vineeta Sharma*** case. The ouster of the appellants was long before the amendment, which has conferred right to the female heirs in the coparcenary property. These facts were rightly taken into consideration by the Trial Court for dismissing the suit beside the issue of non-joinder of necessary parties.

8. After due consideration of the facts, which are not in dispute and



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accepted by all the parties, the question remains is whether the suit for partition can be entertained excluding one branch of Kanniappa Gramini on the plea that they are not heard in the recent past and whether, the suit for partition apparently after long period of exclusion filed only in view of change in law of succession can be entertained without adequate proof for joint constructive possession.

9. In view of this Court, the answer is emphatic NO. If any member or all members of the other branch is not heard for more than 7 years, necessary legal action should have been taken for declaration to that effect and then the suit for partition should have been filed. Atleast in the pleadings, these facts ought to have been brought to the notice of the Court by the plaintiff. For suppression of the crucial fact and seeking partition among one branch omitting the other branch itself a ground sufficient to dismiss the suit.



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10. That apart, Article 110 of the Limitation Act is applicable to all partition suit. The law of limitation not excluded for suit for partition filed by Hindu Female, who claims right after the amendment. Those who claim partition, ought to plead joint possession either actual or constructive. Exclusion and ouster can always be a defence in any partition suit. In the case in hand, there is no evidence to infer the properties were constructively in joint possession and enjoyment of the appellant.

11. For the reasons stated, **the Appeal Suit stands dismissed.** The Judgment and decree passed by the Court of IV Additional City Civil Court in O.S.No.3596 of 2018, dated 11.07.2022 is hereby confirmed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

15.07.2025

Index:yes

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Speaking order/non speaking order

Neutral citation:yes/no

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To

- 1.The IV Additional City Civil Court, Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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delivery judgment made in
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