



A.S.No.451 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 18.07.2025

Pronounced on: 31.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.451 of 2022
& C.M.P.No.16278 of 2022

1. Rasammal
W/o.Shanmugham,
Door No.7, KannappanKinaru Street,
Anthiyur Town, Anthiyur Village and Taluk,
Erode District.

2. Prem Kumar
S/o.Late of Palanisamy,
Andithottam, Komarayanur Village,
Anthiyur Taluk,
Erode District.

3. Jeevajothi
S/o.Late of Palanisamy,
Andithottam,
Komarayanur Village,
Anthiyur Taluk, Erode District.

... Appellants/Defendants 1 to 3

/versus/

1. Athayammal,
W/o.S.K.Palanivel,
Karunakaradu,
Chennampatti Village,
Anthiyur Taluk,
Erode District.

... 1st Respondent/Plaintiff



A.S.No.451 of 2022

2. Raasammal
W/o.Thavasiappan,
Manjikal Thottam,
Chennampatti Village,
Anthiyur Taluk,
Erode District.

... .. 2nd Respondent/4th defendant

Prayer:- Appeal Suit has been filed under Section 96 read with Order 41 Rule 1 & 2 of C.P.C., pleaded to set aside the Judgment and Decree dated 22.06.2022 made in O.S.No.1 of 2017 on the file of the IV Additional District Judge, Erode District at Bhavani and to allow the Appeal suit.

For Appellant : Mr.A.E.Ravichandran,
for Mr.V.Anandhamoorthy

For Respondents : M/s.D.Sathya, for R1
: No appearance, for R2

J U D G M E N T

The appeal by the defendants against the judgment and decree passed in the suit for partition and separate possession of schedule mentioned property measuring about 18.36 acres in R.S.No.221/2 at Chennampatti Village, Anthiyur Taluk, Erode District.



A.S.No.451 of 2022

2. The plaintiff trace her right in the suit property from one Rasianna

Gounder (senior) and his wife Pavayammal. The case of the plaintiff is that, Rasianna Gounder (senior) had two sons and two daughters. Athayammal is the youngest daughter, who is the plaintiff in the suit. On the death of Rasianna Gounder (senior) in the year 1945, the succession opened. The two sons Periya Rasianna Gounder and Chinna Rasianna Gounder along with their mother got 1/3rd share each as per the law of inheritance prevailing prior to 1956. Chinna Rasianna Gounder a bachelor, settled his 1/3rd share to his mother Pavayammal *vide* settlement deed dated 19/12/2005. Thus, Pavayammal become 2/3rd share holder in the property i.e., 12.24 acres out of 18.36 acres.

3. On 06/12/2006, Pavayammal settled 9.18 acres of her land to her younger daughter the plaintiff (Athayammal). On 22/02/2013 settled the balance 3.06 acres to the plaintiff. Thus, by virtue of these two registered sale deeds, the plaintiff became the holder of 12.24 acres of land i.e., 2/3rd share in the entire extent. The remaining 1/3rd i.e., 6.12 acres of land with the three children of late Periya Rasianna Gounder, the other brother of the plaintiff.



A.S.No.451 of 2022

4. The plaintiff came to know about the suit O.S.No.393 of 2015 filed

by one Rajaram (late), son of Periya Rasianna Gounder, when she received a caveat notice from the defendants 1 to 3, who are the other children of her brother Periya Rasianna Gounder. Without impleading her as parties, in O.S.No.393 of 2015, partition decree by compromise in respect of 9.18 acres of the land been obtained, suppressing the fact that the plaintiff is in exclusive possession of the undivided 2/3rd share out of 18.36 acres in R.S.No.221/2. The plaint in O.S.No.393 of 2015 was presented before the District Munsif Court, Bhavani on 25.08.2015 in the name of Rajaram. A compromise decree was passed on 14.09.2015. Soon thereafter, the plaintiff (Rajaram) died on 25.10.2015. The decree obtained in O.S.No.393 of 2015 behind the plaintiff's back not binding on her.

5. For a long time, Pavayammal, her elder son Periya Rasianna Gounder and younger son Chinna Rasiyanna Gounder, for sake of convenience, orally divided their shares and cultivating the land with the help of two open wells and 5 HP motor pump. A year ago, a bore-well sunk by the plaintiff near the eastern side open well and has been exclusively drawing water using a 5 HP

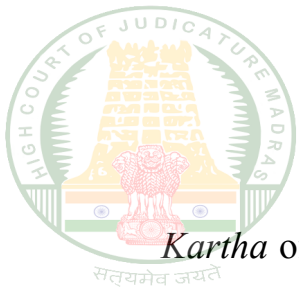


submersible electric motor pump-set with Service Connection No:221. In the open

well on the western side, she has 1/3rd right and drawing water once in every three days. The three sheds located on the eastern side of the suit property near the well are in the exclusive enjoyment of the plaintiff. During the month of September 2016, the plaintiff through elders tried for negotiation with the defendants for peaceful partition. Since her attempts failed, she filed the present suit.

6. The second defendant filed written statement which was adopted by defendants 1 and 3. Additional written statement was filed by the 3rd defendant and adopted by defendants 1 and 2.

7. According to defendants, the plaintiff has not disclosed the true facts about the genealogy of the family. They trace their title from Marappa Gounder, the father of Rasianna Gounder (senior). Besides Rasianna Gounder (senior), Marappa Gounder, had two daughters namely, Periya Rasammal and Chinna Rasammal. Rasianna Gounder (senior) predeceased his father Marappa Gounder. Therefore, the provisions of the Hindu Women's Right to Property Act, 1937, are not applicable to the case in hand. Marappa Gounder, who was the



A.S.No.451 of 2022

Kartha of the family died only in the year 1970. The family, even after the demise of Rasianna Gounder (senior), the coparcenary continued with Marappa Gounder as *Kartha* and two sons born to Rasianna Gounder (Senior). On the demise of Rasianna Gounder (Senior), no right accrued to his widow, Pavayammal. Hence, Marappa Gounder and his two grandsons, born through the predeceased son alone were entitled for share in the property equally. Marappa Gounder by a settlement deed dated 24/03/1964 settled his half share in the suit property in favour of his younger daughter, Chinna Rasammal. In respect of the remaining $\frac{1}{2}$ share in the property, O.S.No.137/1964 was filed for partition by Marappa Gounder and Chinna Rasammal. A preliminary decree was passed in the suit on 07/09/1966 and the final decree was passed on 17/01/1972. Thereafter, a petition for delivery of possession was filed in E.P.No.263/1973. At that time, the plaintiff Athayammal, along with the mother Pavayammal, filed O.S.No.124 of 1972 on the file of Sub Court, Erode, claiming rights in the property as legal heirs of late Rasianna Gounder (Senior).

8. The suit in O.S.No.124/1972 ended in a compromise and a compromise final decree dated 25/07/1974 came to be passed. The plaintiff, who



A.S.No.451 of 2022

was a party to the suit, accepted the terms of compromise and did not raise any

objection. Suppressing her participation in the earlier partition proceedings and the compromise arrived between parties, the present suit for partition is filed. Rasianna Gounder (Senior) was never the absolute owner of the entire property for the plaintiff to get 1/3rd share. Since Rasianna Gounder (senior) predeceased his father Marappa Gounder, only the defendants 1 to 3, who are the legal heirs of Periya Rasianna Gounder alone are entitled for the 1/2 share in the suit property i.e., 9.18 acres, which falls on the western side. The other half of the property on the eastern side, belongs to Chinna Rasianna Gounder, who is married to one Kanayal.

9. Periya Rasianna Gounder had improved the western portion of the land at his cost and in enjoyment of the same. Pavayammal had no right in the suit property. Kanayal, the wife of Chinna Rasianna Gounder is still alive. The alleged settlement deed dated 19/12/2005 executed by Chinna Rasianna Gounder in favour of his mother Pavayammal, transferring his 1/3rd share is false. Pavayammal, who is above 100 years old and still alive. She is incapable of understanding what is a happening around. She is suffering physical infirmity for more than 15 years. Therefore, the alleged settlement deeds dated 06/12/2006 and



A.S.No.451 of 2022

22/03/2013 executed by Pavayammal in favour of the plaintiff, is a manipulated document. The deal with common undivided family property, hence invalid and unenforceable in law.

10. The plaintiff has no right to challenge the compromise decree passed in O.S.No.393 of 2015 as collusive. Out of the total extent of 18.36 acres, the Western portion measuring 9.18 acres absolutely belongs to the defendant 1 to 3, who are the legal heirs of Periya Rasianna Gounder. The Eastern portion, measuring 9.18 acres, belongs to Kanayal, the wife of Chinna Rasianna Gounder. Neither the plaintiff nor Pavayammal have no right or share in the suit property. The suit is bad for non- joinder of necessary party, namely, Kanayal, the wife of Chinna Rasianna Gounder. It also suffers from suffers material suppression of facts. Hence, the suit is not maintainable and liable to be dismissed.

11. In the additional written statement filed by the second defendant and adopted by the defendants 1 and 3, it was reiterated that the plaintiff has no right in the suit property and that the settlement deeds relied by the plaintiff are not valid. It was further contended that, as per the amendment to the Hindu



A.S.No.451 of 2022

Succession Act and the judicial pronouncements interpreting the law, the suit property has to be divided into 18 equal parts. Out of these, the plaintiff and 4th defendant are entitled for 4 shares each, while the defendants 1 to 3 are entitled for 10 shares. Since the defendants 1 to 3 have spend for the improvement of the land on the western side, their shares of the defendants 1 to 3 to be allotted on the western portion.

12. Based on the pleadings, the trial Court framed issues as under:-

1. Whether the settlement deeds said to have been executed by the Chinna Rasianna Gounder dated 19.12.2005 in favour of his; mother Pavayammal is true and valid?
2. Whether the settlement deeds dated 06.12.2006 and 22.02.2013 said to have been executed by Pavayammal in favour of the plaintiff are true, valid and genuine documents or manipulated?
3. Whether the plaintiff is entitled to a preliminary decree for partition and separate possession of 2/3 share in the suit property?
4. Whether the plaintiff is estopped from claiming that Pavayammal and her sons were entitled to 1/3 share each in the suit properties?
5. Whether the plaintiff is entitled for a declaration?
6. To what relief?



A.S.No.451 of 2022

WEB COPY

13. The plaintiff examined as P.W.1, adduced oral evidence and marked 31 documents as Ex.A-1 to Ex.A-31. The defendants did not adduce any oral or documentary evidence.

14. The trial Court, on considering the evidence placed before it, held that the settlement deeds Ex.A1 dated 19.12.2005, Ex.A2 dated 06.12.2006 and Ex.A3 dated 22.02.2013 are valid and bind on the defendants. As per the decree in O.S.No.124 of 1972, the total extent of property available is 17.62 acres, out of which the plaintiff is entitled for 2/3rd share and the branch of Periya Rasianna Gounder is entitled for remaining 1/3rd share. The judgment and decree in O.S.No.393 of 2015 will not bind on the plaintiff.

15. The appeal is preferred on the ground that the trial Court failed to consider the fact that the suit property has devolved from Marappa Gounder and not from his son, Rasianna Gounder (Senior), who predeceased his father. Marappa Gounder who was the *Kartha* of the joint family, died in the year 1970. Therefore, the succession to the property opened as per section 6 of the Hindu

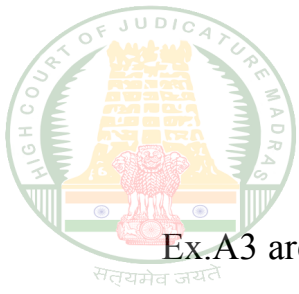


A.S.No.451 of 2022

Succession Act and not as per Section 8 of the Act. The defendants 1 to 3, in their additional written statement, had paid the necessary court fees for seeking a decree of partition as per section 6 of the Act, applying the principle of notational partition.

16. The trial Court ought not to have upheld the settlement deeds Ex.A1 to Ex.A3 as valid. Neither Chinna Rasianna Gounder nor Pavayammal had right to deal with the undivided joint family coparcenary property. The trial Court failed to consider that the judgement and decree in O.S.No.124 of 1972 filed by Pavayammal and her two daughters viz., Rasammal and Athayammal, was only intended to defeat the earlier decree passed in O.S.No.137 of 1964 as confirmed in A.S.No.87 of 1966.

17. Apart from the fact that Pavayammal had no right in the suit property and her settlement deeds, Ex.A2 and Ex.A3, executed in favour of the plaintiff are not valid, the settlement deeds marked as Ex.A1 to Ex.A3 were not proved in the manner known to law. Hence, the judgement of the trial Court granting preliminary decree for partition based on the settlement deeds Ex.A1 to



A.S.No.451 of 2022

Ex.A3 are contrary to the law laid by the Hon'ble Supreme Court in *Narbada Devi*

Gupta vs. Birendra Kumar Jaiswal and Madhanlal Sindhu vs. Asian Assurance Co Ltd.

18. The learned counsel for the appellants also contended that Chinna Rasianna Gounder, the wife of Kanayal, is a necessary party in the suit. Non impleading her was a deliberate suppression. The execution of Ex.A1 executed by Chinna Rasianna Gounder, gifting his 1/3rd share in the property to his mother Pavayammal, is highly doubtful and not proved in the manner known to law. Chinna Rasianna died only in the year 2016, therefore, his widow, gets the share of Chinna Rasianna Gounder. The exclusion of a necessary party who has right in the property is bad in law. The trial Court has miserably failed to frame an issue or take into consideration the plea of non-joinder of necessary party.

19. Per contra, the learned counsel for the respondents submitted that the plaintiff had taken all steps to prove her case by adducing evidence. Ex.A29 is the certified copy of the final decree passed in O.S.No.124 of 1972 on the file of Sub Court, Erode. The settlement deeds are registered documents and their



A.S.No.451 of 2022

validity was not challenged by way of separate prayer for declaration. Hence, their validity is presumed under law and it is the burden of the plaintiff to prove the contrary. Further, the defendants having failed to adduce evidence to prove that Chinna Rasianna Gounder left behind his wife by name Kanayal, therefore, the trial Court judgment cannot be assailed for not framing an issue about the non-joinder of a necessary party.

Point for determination:-

Whether the division of the suit property to be based on the decree passed in O.S.No.124 of 1972 (Ex.A29) and the registered settlement deeds marked as Ex.A1 to Ex.A3, or to take Marappan as the *Kartha* of the family and divide the property under Section 6 of the Hindu Succession Act, 1956, by invoking the principle of notional partition ?

20. In respect of the suit property, there were already three rounds of earlier litigations: O.S.No.137 of 1964, O.S.No.124 of 1972, and O.S.No.393 of 2015. In the plaint, the plaintiff has referred only the subsequent suit in O.S.No.393 of 2015.



A.S.No.451 of 2022

The first suit, O.S.No.137 of 1964, on the file of Sub-Court, Erode, was filed by Marappa Gounder and his daughter Rasammal against Periya Rasianna Gounder, Chinna Rasianna Gounder and others.

The second partition suit in O.S.No.124 of 1972 was filed by Pavayammal and her daughters Rasammal and Athayammal (the present plaintiff). The final decree in O.S.No.124 of 1972 was passed on 25.07.1974. The suit for partition pertains two items of properties located in Chennampatti Village and Anthiyur.

21. The appeal preferred against the preliminary decree for partition dismissed on 22.03.1973 in A.S.No.897 of 1966. In O.S.No.124 of 1972, was filed by Pavayammal and her two daughters, Rasammal and Athayammal (the present plaintiff) against Periya Rasammal and Chinna Rasammal. In that suit, Athayammal, the plaintiff in the present suit, was arrayed as the third plaintiff. In this suit O.S.No.124 of 1972, Pavayammal and her two daughters were the plaintiffs, while her sons and the sisters of Rasianna Gounder (Senior), who are Periya Rasammal and Chinna Rasammal were defendants. In the said partition suit, the plaintiff, namely Pavayammal, the wife of Rasianna Gounder (Senior)



A.S.No.451 of 2022

along with her two daughters Rasammal and Athayammal claimed share in the suit schedule properties, claiming rights through Marappa Gounder. On several other properties, the property which is now sought for partition in the present suit was also included. A final decree in O.S.No.124 of 1972 was passed on 25.07.1974.

22. In the plaint, except O.S.No.393 of 2015 is the third partition suit filed by one Rajaram, son of Periya Rasianna Gounder alone is mentioned. It is alleged that it is a collusive suit and later entered into a compromise decree dated 14.09.2015.

23. The Court below, after considering the earlier rounds of litigations between the sharers, held that the compromise decree passed in O.S.No.393 of 2015 will not bind the plaintiff, since it is obtained without including her, even though she is a necessary party. However, the Court accepted the judgment and decree passed in O.S.No.124 of 1972, marked as Ex.A29, since the plaintiff, Athayammal, was the 3rd plaintiff in the earlier partition suit in O.S.No.124 of 1972 and the 1st defendant and predecessors of defendants 2 to 4 were arrayed as



A.S.No.451 of 2022

the defendants 1 to 4 in the previous suit. Accordingly, the judgment and decree passed in O.S.No.124 of 1972 bind all the parties in the present suit and therefore, there cannot be yet another partition. Taking into consideration the final decree in O.S.No.124 of 1972, dated 25.07.1974, which is marked as Ex.A29, the trial Court has held that Pavayammal, Periya Rasianna and Chinna Rasianna are each entitled to 1/3rd share in the suit property. The settlement deed executed by Chinna Rasianna in favour of his mother Pavayammal under Ex.A1 is held to be valid. Though, it is contended by the defendants that Chinna Rasianna had a wife by name Kanayal, there is no evidence to prove the same. Therefore, the defendants plea that the suit is bad for non-joinder of necessary party to be rejected outright for want of evidence.

24. Ex.A2 & Ex.A3 are the registered settlement deeds executed by Pavayammal in favour of the plaintiff in respect of 2/3rd share in the suit property. Earlier, she has settled an extent of 9.18 acres and subsequently, 3.06 acres under Ex.A3. However, the description and measurement of the suit property in the present suit are not the same as found in Ex.A29, which is the final decree passed in O.S.No.124 of 1972. The actual measurement in R.S.No.221/2 being only 17.62



A.S.No.451 of 2022

Acres, not 18.36 acres. Accordingly, the plaintiff is entitled for 2/3rd share in 17.62

Acres and the remaining 1/3rd to be shared among the descendants of Periya Rasianna Gounder. Since the joint family properties have already suffered three partition suits earlier, the defendants cannot still take Marappa Gounder as *Kartha* and attempt to rework the division, more particularly when all the parties who have rights in the property had participated in the earlier partition suit in O.S.No.124 of 1972, which has reached finality with the passing final decree on 25.07.1974.

25. Therefore, this Court finds that the judgment of the trial Court and the preliminary decree has to be sustained. In the result, the *Appeal Suit stands dismissed*. The preliminary decree is confirmed. The parties are directed to work out their division in the final decree proceedings. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

31.07.2025

Index :Yes.
Neutral citation :Yes/No.
bsm



WEB COPY



A.S.No.451 of 2022

Dr.G.JAYACHANDRAN,J.

bsm

To,

1. The Learned IV Additional District Judge, Erode District, Bhavani.
2. The Section Officer, V.R.Section, High Court, Madras.

Pre-delivery judgment made in
Appeal Suit No.451 of 2022

31.07.2025