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A.S.No.1058 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 02.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.1058 of 2024 & CMP.No.27386 of 2024

Selvaraj

... Appellant

Versus

1. Parvathy
2. Kanniga Parameswari
3. Chinnappan
4. Parimala Sundari
5. Unnamalai Ammal
6. Selvi
7. Sumathi
8. Sathish

... Respondents

PRAYER : Appeal Suit filed under section 96 of Code of Civil Procedure read with Order XLI Rule 1 of Code of Civil Procedure to set aside the decree and judgment dated 30.11.2018 in O.S.No.56 of 2011 on the file of the Additional District Judge, Chengalpet.



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For Appellants : Mr.G.Palani

For Respondent : Mr.N.Sivaprakash – R1 & R2

R3 – R8 – No appearance

JUDGMENT

Challenge has been made to the preliminary decree passed by the trial Court granting half share to the plaintiffs, the present appeal has been filed by the unsuccessful defendants.

2. The parties are arrayed as per their own ranking before the trial Court.

3. The suit has been filed by the plaintiffs claiming half share in the suit properties. It is the case of the plaintiffs that the 'A' schedule property originally owned by one Kandapaa Naicker, who had three sons namely Kanniappan Naicker, Ramasamy Naicker and Mariappa Naicker. During the year 1974, there was a family partition among them on 24.01.1974 in which



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Kanniappa Naicker had taken his share separately and left the joint family. Other sons namely Ramasamy Naicker and Mariappa Naicker continued in possession of the joint family properties in survey No.249 and 250 together. They also jointly purchased 'B' schedule property in the year 1975 and enjoying the property as joint family property. Hence, the plaintiffs being legal heirs of Mariappa Naicker laid the suit for partition.

4. The defendants are legal heirs of other son Ramasamy Naicker. The second defendant alone has contested the suit. Admitting the character of the properties, it is the stand of the second defendant in his written statement that his one of the uncle Kanniappa Naicker was already allotted a share in the property in the year 1974 and he left the family. It is also admitted by the second defendant that 'A' schedule property was in joint possession of his father and Mariappa Naicker. Thereafter, his father and his uncle Mariappa Naicker jointly purchased the 'B' schedule property. It is his further contention that after the sale of one acre in 'B' schedule property, the properties have been partitioned between the plaintiff and the defendants in a family arrangement in



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which 'A' schedule property was allotted to the defendants and 'B' schedule property was allotted to the plaintiffs. Hence, opposed the suit.

5. Based on the above pleadings, the following issues have been framed by the trial Court :

1. Whether the plaintiffs are entitled to a preliminary decree as prayed for?
2. Whether the plaintiffs are entitled to possession of the property?
3. To what relief?

6. On side of the plaintiffs, first plaintiff has been examined as P.W.1 and Ex.A1 to Ex.A.7 have been marked. On the side of the defendants, the second defendant has been examined as D.W.1 and no document has been marked on his side.



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7. Considering entire evidence, both oral and documentary, the trial Court has granted preliminary decree in favour of the plaintiffs. Challenging the same, the present appeal has been filed.

8. It is the contention of the appellant that in the plaint it was admitted that there was an oral partition in the year 1974. Further, other legal heirs of Kanniappa Naicker have not been made as party in the suit. It is his further contention that 'A' schedule property has been allotted to this defendant in an oral partition and 'B' schedule property has been allotted to the plaintiffs. Hence, it is his contention that the trial Court has not considered all these aspects.

9. Whereas, it is the contention of the learned counsel for the respondents that the plea of the oral partition has not been established and no evidence has been adduced in this regard. Hence, opposed the appeal.

10. In the light of the above submissions, now the points that arise for



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consideration are :

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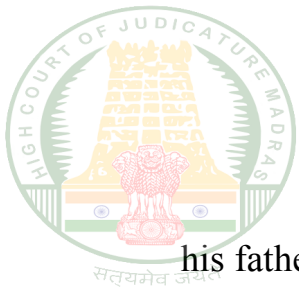
1. Whether the oral partition as pleaded has been established on record?

2. To what relief the parties are entitled?

11. Points 1 and 2 :

The relationship pleaded in the plaint is not in dispute. The plaintiffs are wife and daughter of Mariappa Nicker and he is one of the son of Kandappa Naicker. The defendants are the legal heirs of one Ramasamy Naicker, another son of Kandappa Naicker. The very pleadings of the plaintiffs indicate that other son of Kandappa Naicker one Kanniappa Naicker left the family in the year 1974 itself and certain properties have been allotted to him and remaining properties have been continued to be enjoyed as joint family properties consisting of two sons of Kandappa namely Ramasamy Naicker and Mariappa Naicker. The specific pleading in this regard in the plaint has not been disputed in the written statement. It is the admitted case of the defendants that his uncle one Kanniappa was allotted property in the year 1974 and he left the family in the year 1974 itself and remaining joint family properties have been enjoyed by

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his father and uncle. It is also pleaded in the written statement that the 'B'

schedule property has been jointly purchased by his father and his uncle.

Therefore, when the defendants have clearly admitted about the leaving of one of the co-owner from the joint family long back, remaining properties alone have to be treated as joint family properties.

12. The character of the property has not been disputed by the second defendant. His only contention is that in an oral partition, 'A' schedule property has been allotted to the legal heirs of Ramasamy Naicker and plaintiffs are allotted 'B' schedule property. To prove such contention, no material, whatsoever, has been placed. Except general pleading as to the oral partition, there are no details in the written statement as to when such partition took place and in whose presence such partition took place. When a person sets out a plea of oral partition, the burden lies on him to prove the same by concrete evidence. Whereas, no materials or any revenue records have been placed before this Court to prove the alleged oral partition. As long as the plea of oral partition has not been established, the defendant cannot deny the right of the plaintiffs. In such view of the matter, I do not find any merits in this appeal. The points



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are answered accordingly.

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13. In the result, this Appeal Suit is dismissed and the decree and judgment of the trial Court in O.S.No.56 of 2011 dated 30.11.2018 is confirmed. No costs. The trial Court shall proceed with passing of final decree expeditiously. Consequently, connected miscellaneous petition is closed.

02.04.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

1. The Additional District Judge, Chengalpet.

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



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N. SATHISH KUMAR, J.

VRC

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