



C.M.A.No.2743 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2025

CORAM:

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.2743 of 2024

and

C.M.P.No.22151 of 2024

R.Durairaj @ Babu

... Appellant

-vs-

1. A.Rathinavelu
2. R.Selvarani @ Jayam
3. Tamil Nadu Grama Bank,
S.C.No.1823, Anandur.

... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Order XLIII Rule 1(r) of CPC against the fair and decretal order dated 19.07.2024 passed in I.A.No.2 of 2023 in O.S.No.245 of 2023 passed by the learned Principal District Judge, Krishnagiri.

For Appellant : Mr.S.Kingston Jerold

For 1st Respondent : Mr.T.V.Sai Srujan

For Respondents 2 and 3 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the 1st defendant in the suit against the fair and decretal order dated 09.07.2024 passed in I.A.No.2 of 2023 in O.S.No.245 of 2023 by the Principal District



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Court, Krishnagiri.

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2. Parties are indicated herein as per their litigative status and ranking before the trial Court.

3. The plaintiffs 1 and 2 filed an application under Order 39 Rules 1 and 2 and Section 151 of C.P.C for an order of mandatory injunction to direct the 6th defendant to deposit rent amount into Court deposit from the date of suit.

4. Case of the petitioners 1 and 2 / Plaintiffs 1 and 2 is stated in brief:

Originally, Muruga Gounder and his son Rajamanicka Gounder constituted Hindu Joint Family. Rajamanicka Gounder's wife is Ranganayagiammal. Rajamanicka Gounder and Ranganayagiammal had 9 children - Kuppuraj, Gnana Soundariammal, Amsaveni, Durairaj, Kalyaniammal, Thilagam @ Rajeswari, Selvarani @ Jayam, Prabhavathi @ Prabha and Selvaraj. Partition was effected among the said persons by dividing their joint family properties as per partition deed dated 27.11.1974 in Doc.No.896 of 1976.

4.1. Muruga Gounder had a daughter by name A.Lakshmiammal



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who was given in marriage to Arunachala Gounder. The 1st petitioner/ 1st plaintiff Rathinavelu and deceased Prakasam are their sons. R.Selvarani @ Jayam / 2nd plaintiff is the wife of the said Prakasam. R.Selvarani @ Jayam, is the daughter of Rajamanicka Gounder. Arunachala Gounder died on 23.10.1997. His wife Lakshmiammal died on 27.10.2015 leaving behind the 1st petitioner and above said Prakasam as her legal heirs. Prakasam died on 01.04.2021 without issues. Since the date of partition (i.e.) on 27.11.1974, above said Muruga Gounder had been in possession and enjoyment of the properties described in A-schedule in the partition deed. Muruga Gounder occupied natham site and building was built in S.Nos.246/7 and 453/6. He died intestate in the year 1978 leaving behind him wife Unnamalaiammal, Son Rajamanicka Gounder and daughter Lakshmiammal as his legal heirs. They succeeded to the intestate properties of the deceased Muruga Gounder and all the three persons were in joint possession and enjoyment of the suit property. Unnamalaiammal died in 1981.

4.2. Rajamanicka Gounder died in the year 2010 leaving behind his legal heirs as mentioned supra. After the death of Muruga Gounder, Rajamanicka Gounder and Lakshmiammal were entitled to half share each in the intestate properties of Muruga Gounder. On the demise of



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Lakshmiammal, 1st petitioner and his brother Prakasam succeeded to the common half share in the suit property. As the 1st petitioner's brother Prakasam died on 01.04.2021, the 1st and the 2nd petitioner have succeeded to the said common half share in the suit property.

4.3. The 1st Defendant sold away all other properties. The 2nd plaintiff has got 1/6th share in the suit property in the half share of Rajamanicka Gounder. Therefore, the plaintiffs have got 7/12 share.

4.4. The 1st defendant has been trying to alienate and encumber the suit property. Suit property building is rented to 6th defendant/ Bank for a monthly rent of Rs.25,000/-. The petitioners and the defendants 1 to 5 have been in joint possession in respect of remaining portion. Hence, the 6th defendant is directed to deposit the rent amount into Court by granting an order of mandatory injunction.

5. Despite receipt of summons, the sole respondent/ 6th defendant neither appeared nor entered appearance through its Counsel and the sole respondent was set ex-parte.

6. Upon consideration of the affidavit, the case records and after hearing the arguments advanced by the counsel for the petitioner, the trial



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Court granted mandatory injunction directing the 6th defendant to deposit the rent into Court from the date of petition.

7. The 1st defendant R.Durairaj @ Babu has filed the Civil Miscellaneous Appeal on the following grounds:

i) Defendants 1 to 5 who are the co-owners of the suit property were added as respondents in the said petition.

ii) Defendants 1 to 5 were not heard and therefore the order is illegal and against the principles of natural justice.

8. The petitioners in I.A.No.2 of 2023 on the file of Principal District Court, Krishnagiri are the plaintiffs. They have filed the suit against five persons, R.Durairaj @ Babu, Gnana Soundariammal, Kalyaniammal, R.Prabhavathi @ Prabha and R.Amsaveni and Tamil Nadu Grama Bank, Anandur.

9. The below said Genealogical tree would indicate the details of family members of Muruga Gounder and Unnamalaiammal.

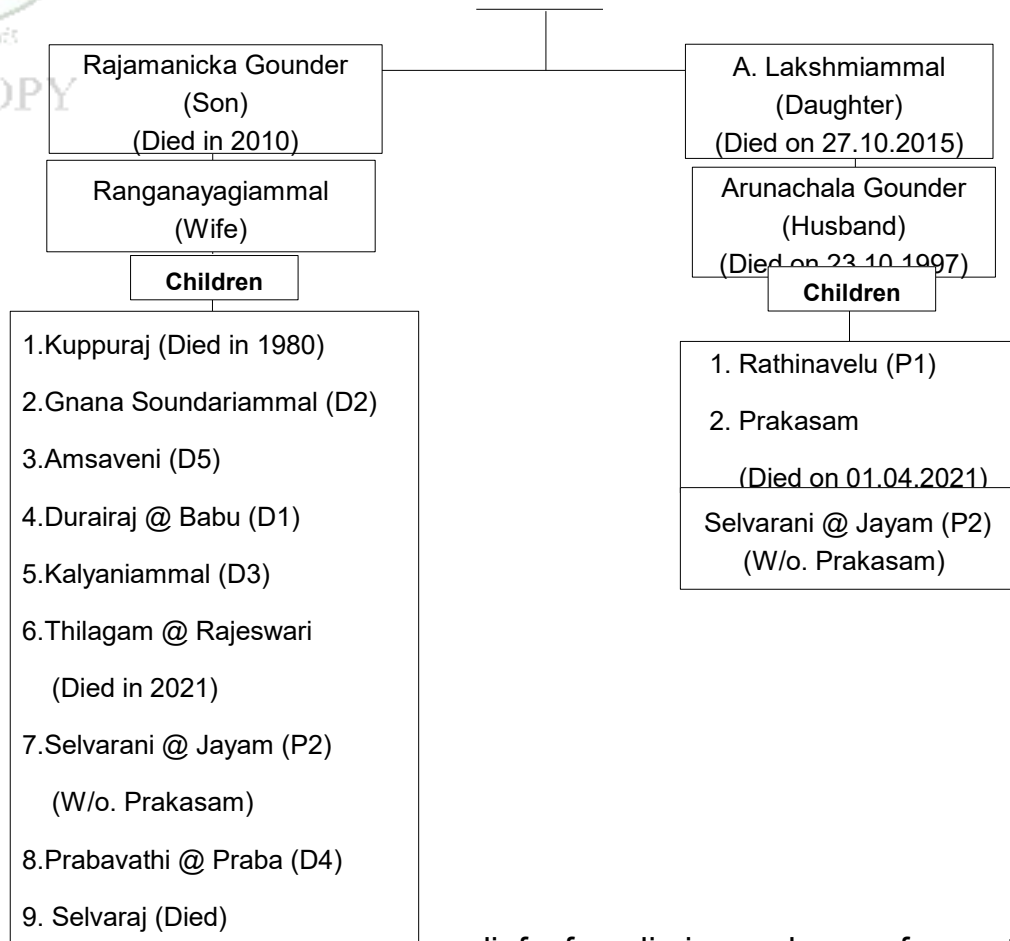
Muruga Gounder
(Died in 1978)

Unnamalaiammal
(Died in 1981)



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10. Suit is laid for the relief of preliminary decree for partition in respect of their 7/12 share in the suit schedule of property, for permanent injunction not to alienate or to encumber the suit property and for mandatory injunction directing the 6th defendant to deposit the rent into Court deposit from the date of the suit. Suit property is the land and building situated at Anandur village in Natham Survey No.453/6, in which 6th defendant Bank is functioning.

11. The above said application was filed by plaintiffs 1 and 2 against



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6th respondent for grant of mandatory injunction to direct the 6th defendant to deposit the rent into Court deposit from the date of suit. In which, 6th respondent alone is shown as respondent. The defendants No.1 to 5 have not been shown as respondents in the said application.

12. Admittedly they are co-sharers of the suit property. As the defendants No.1 to 5 are not arrayed as respondents without hearing them orders have been passed.

13. In such circumstances, no doubt defendants No.1 to 5 are necessary parties to decide the above said application. As the impugned order is passed without arraying the defendants 1 to 5 as respondents in the said application, the orders passed in I.A.No.2 of 2023 stands set aside.

14. In the given circumstances, defendants 1 to 5 are suo-motu arrayed as respondents No.2 to 6 in the said I.A., and the trial Court to issue notice to the respondents 2 to 6 /defendants No.1 to 5 affording them opportunity for enabling them to receive their counter if any and thereafter to pass orders.

15. The rents deposited by the 6th defendant into Court shall be left as such. The trial Court to dispose of the said application (I.A.No.2 of



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2023) at the earliest point of time preferably within six weeks from the date of receipt of copy of this judgment.

16. With the above said observations, this Civil Miscellaneous Appeal stands allowed. Sequel to this, fair and decretal order passed in I.A.No.2 of 2023 in O.S.No.245 of 2023 on the file of Principal District Court, Krishnagiri stands set aside, There is no order as to the costs. Consequently, connected miscellaneous petition is closed.

17.10.2025

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
ssn

To
The Principal District Judge,
Krishnagiri.



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R.KALAIMATHI , J.

ssn

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