



A.S.No.520 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :16.07.2025

Pronounced on :.24.07.2025

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.520 of 2022

and

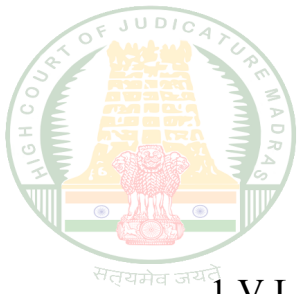
C.M.P.No.19118 of 2022

- 1.Gowthami, W/o not known, aged about 40 years,
- 2.V.Ruthrapathi, S/o Late Valarmathi, aged about 18 years,
- 3.V.Pavithra, aged about 17 years,
- 4.V.Durairaj, aged about 16 years,

Defendants 3 and 4 represented by first defendant guardian
and next friend, all are residing at No.18,
J.J.Street, Dhoby Colony,
Ambattur, Chennai 600 053.

..Defendants/Appellants

/versus/



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1.V.Lakshmi, W/o Late Valarmathi, aged about 51 years,

2.V.Ramu, S/o Valarmathi, aged about 24 years

Both are residing at No.3,
Bhavani Nagar, Ayyapakkam,
Chennai 600 077.

..Plaintiffs/Respondents

Appeal Suit has been filed under Section 96 r/w Order XLI, Rule 1 f C.P.C., to allow the above appeal and set aside the judgment and decree passed in O.S.No.59 of 2017 on the file of learned III Additional District and Sessions Judge, Tiruvallur @ Ponnammallee (previously on the file learned Sub Judge, Poonammallee O.S.No.171 of 2011).

For Appellants :Mr.S.Vijayaganesh

For Respondents :Mr.Manoharan Shanmuga Sundaran
for R1 and R2

JUDGMENT

Suit for partition and separate possession filed by V.Lakshmi and her son Ramu, stating that Valarmathi married the first plaintiff on 09.09.1983 in accordance with the Hindu Rites and Custom at Thirverkadu Karumariamman Temple. Two children born to them and one of them by name V.Bhavani died on 07.03.2003.. The other child is the second plaintiff.



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2. The suit schedule property was occupied by Varlarmathi during his life time and he from his income constructed a house. In the said house, along with Valarmathi the first plaintiff was living up to 1991. Whereas the defendants 2 to 4 are the children born to Valarmathi through his concubine Gowthami the first defendant. While so, after the demise of Valarmathi on 22.10.1995, the first plaintiff was badly beaten up by the first defendant and her brother Ravi. The plaintiff and her children were forcible thrown out from the house. Police complaint was given in this regard. Panchayat held during July 2007 at the instance of the plaintiffs. The defendants agreed to settle the dispute, but failed. Hence, notice was issued for amicable settlement. However, the defendants refused to settle the dispute. Hence, the suit for partition.

3. The defendants case is that, the suit was earlier filed in Sub-Court, Poonamallee as O.S.No.171 of 2011. The suit was dismissed for default.



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Later, restoration petition was filed and allowed. The suit was transferred to Sessions Court at Poonamallee. Thereafter, the plaintiffs filed an application to amend the prayer and included the prayer to declare the release deed executed by defendants 2 to 4 in favour of the first defendant. The application to amend the prayer after more than 5 years from the date of suit, despite demur of the defendants, was allowed. The relief to declare a valid release deed as null and void is barred by limitation.

4. The first plaintiff is not the wedded wife of Valarmathi. The first defendant is the legally wedded wife of Valarmathi. She married Valarmathi at Lakshmi Murugaiyan Kalyana Mandapam, Thirumullaivoil on 07.06.1991. She is living in the suit property with her husband Valarmathi and had developed the property through her income derived in tailoring. After the death of Valarmathi, she continues to be in occupation of the house along with her children. The revenue documents and amenities stands in the name of the first defendant. The suit filed without any piece of evidence to show that the property belongs to Valarmathi or any document to show, the first plaintiff got married to Valarmathi legally, prior to his solemnisation of



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marriage with the first defendant on 07.06.1991. For more than 24 years, the first defendant is living in the suit property. Recognising her continuous possession of the property, patta has been given in her name exclusively. The sons and daughter of Valarmathi, who are the defendants 2 to 4 had relinquished their right in the property and executed a release deed dated 19.10.2012 in favour of the first defendant.

5. The Trial Court, based on the pleadings, framed the following

Issues:-

1. Whether the suit filed by the plaintiffs is maintainable?
2. Whether the valuation of suit and Court fee paid by the plaintiffs are not proper?
3. Whether the suit is barred by limitation?
4. Whether the plaintiffs are entitled to 3/6 share in the suit property?
5. Whether the plaintiffs are entitled to declaration as prayed for?
6. Whether the plaintiffs are entitled to permanent injunction as prayed for?
7. To what other relief?

6. Testimony of two witnesses and 21 documents relied by the



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plaintiffs. On the side of the defendants, two witnesses and 21 documents relied.

7. The Suit property is about 231 sq.mts. land and the super structure on it. The land been in long occupation of one Valarmathi, who died on 22.10.1995. It is Gramanatham land, where the plaintiffs claim of partition and allotment of 2/6th share to first plaintiff and 1/6th share to the second plaintiff granted holding the first plaintiff marriage with Valarmathi is valid and proved.

8. Being aggrieved by the trial Court judgment which has rejected their plea that the first plaintiff is only a concubine of Valarmathi and the marriage of Valarmathi with the first defendant Gowthami alone was the legally wedded wife as per the Hindu Marriage Act, the present appeal is filed.

9. The Learned Counsel for the appellant submitted, that the respondents had not placed evidence to show the suit property in



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S.No:282/3 measuring 231 sq.mts. belongs to Valarmathi nor the respondents have produced document to show that they were in occupation of the suit property at any point of time during the life time of Valarmathi. The Land Survey records, as spoken by PW-2, clearly show that the first plaintiff Lakshmi is in enjoyment of 1400 sq.ft of land equal to 135 sq.mt in Town S.No.48 and the first appellant in possession of 2500 sq.ft of land in Town S.No. 47 which falls under old S.No:282/3. While so, the land being gramanatham and the first plaintiff and the first defendant are occupants of the respective portion, which already been assessed as early as 2006, the plaintiffs cannot claim partition in respect of the portion of the land in occupation of the defendants as if it belongs to Valarmathi. If the land in possession of Gowthami, as the land of Valarmathi is to be divided among his legal heirs, then on the same logic, the land in possession of Lakshmi in S.No:48 ought also be subjected to partition.

10. The Trial Court ought not to have given any credence to the oral evidence and the birth certificates of one Bhavani and the second plaintiff. Without any plausible acceptable evidence, the Court below had erroneously



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come to the conclusion that the first respondent/first plaintiff had married Valarmathi prior to the marriage of the first appellant/first defendant.

11. The learned Counsel for the appellants, referring Ex.A-1, the first notice dated 06.12.1995 calling upon for partition and Ex.B-12, the second notice dated 14.05.2017 sent before instituting the suit for the same purpose, submitted that the contradiction in these two notice about the facts and unexplained delay of 16 years for seeking partition not been considered by the trial Court.

12. Point for determination:

Whether the finding of the trial Court that the suit mentioned property is the property of Valarmathi, is correct and Whether the trial Court finding that the marriage of Valarmathi with the first plaintiff/first respondent was anterior to the marriage with the first appellant/first defendant is supported by evidence.

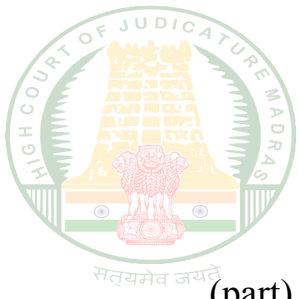


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13. The evidence of PW-2, an official from the office of Special Tahsildar, Ambattur, had deposed from the revenue records that, Ex.A-17 is the Town Survey Field extract. In it S.No.282/3, (part) is classified as Gramanatham. S.No.282/3, after town survey, assigned as T.S.Nos.48,49,49/1. The occupants of the respective portion and the extent in their occupation is mentioned in the records. According to the records, while T.S.No.47 is in the name of Gowthami (first defendant) measuring 2500 sq.ft. T.S.No.48 stands in the name of Lakshmi (first plaintiff) measuring 610 sq.ft. In the cross examination, the witness had deposed that the Town Survey extract is based on the survey conducted in the year 2006. No evidence to show, the said Valarmathi was at some point of time recognised as occupant of the grama natham land in S.No.282/3(part) T.S.No.47. While so, for a Gramanatham land before assignment of patta, the actual occupant, who is in the land, gets the right of occupation, but not title.

14. Valarmathi died on 22.10.1995. There is no evidence to show that he was recognised as the occupant of the Gramanatham land in S.No.282/3



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(part) new T.S.No:48, which is the subject matter of the suit. The revenue records as well as the pleadings read with oral evidence, it is apparently clear that there is no evidence to show that Valarmathi had any possessory right or title over the suit property. As per the plaint, the land in dispute is Government porambokku. As per the pleadings of the defendants, it is Gramanatham. The revenue records show the suit property as Gramanatham. The settlement register shows the first defendant and her children, who are the defendants 2 to 4 as the occupants. They are in T.S.No:47. Whereas the first plaintiff/first respondent is the occupant in T.S.No:48. Only if the suit property is proved to be a property of Valarmathi, who had possessory right or title or both, the next question, who are the legal heirs to share the property under partition will arise. For a property, which was not proved to be the property in possession of Valarmathi, division of it among the legal heirs is not legally sustainable. If it is assumed to be held by Valarmathi during his lifetime, then both T.S.Nos.47 as well as 48 should have been sought for partition. The plaintiffs conveniently had omitted the land in her possession and filed the suit for partition only in respect of the land in possession of the first defendant.

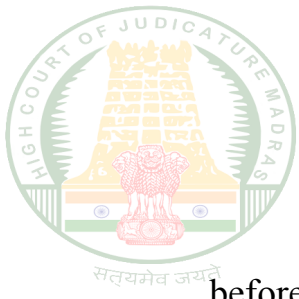


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15. Even regarding the legitimacy of the marriage alleged to have been solemnized between the first respondent/first plaintiff, the plaintiffs/appellants in the legal notice dated 06.12.1995 marked as Ex.A-1 had shown her address as No:5/5, 13th Street, Menambedu, Ambattur. In this notice, it is averred that, Valarmathi out of his earning acquired two houses situated in S.No:213 in the Channel Porambokku land Dobi Colony, Ambattur. Due to the illegitimate intimacy with the first defendant Gowthami, she was forced to leave her husband Valarmathi during the month of September, 1990. This is contrary to the plaint averment which says she was in the suit properties till 1995.

16. Twelve years later, on 14.05.2007, the plaintiffs through another counsel had sent a legal notice to the defendants giving her address as No.21 Church Street, Ayyambakkam, Chennai. In this notice Ex.B-12, the plaintiffs had reiterated what said in the earlier notice dated 06.12.1995 but had not referred about prior notice and why action not taken thereafter. Instead had referred yet another notice dated 29.03.2006, which is not placed



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before the Court. To the notice Ex.B-12, the defendant had replied on 15.06.2007 which is marked as Ex.A-4. In this reply, the first defendant admits about the pre- marital affair of Valarmathi with Lakshmi (first plaintiff). However, had pleaded that the affair with the Lakshmi for a short period and that cannot be given sanctity of a marriage. Whereas her marriage with Valrmathi was a valid wedding solemnised as per the Hindu Marriage Act. In support of her claim, the marriage invitation and photos album of the marriage are marked.

17. The learned counsel for the respondents/plaintiffs submitted that, the birth certificates Ex.A-6 and Ex.A-7 are sufficient to show, that two children were born to Valarmathi through Lakshmi and their birth is prior to the alleged marriage with Gowthami on 07.06.1991. Long cohabitation is a proof of marriage. Therefore, the trial Court is right in holding that, the marriage of Lakshmi with Valarmathi is prior in point of time and subsequent, marriage with Gowthami is not a valid marriage.

18. In this case, birth certificates Ex.A6 and Ex.A7 are the clear proof



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for paternity, but not a proof for long cohabitation. Ex.A-2-a single photo of the first plaintiff with Valarmathi is relied for a proof of marriage. The case of the first Respondent/first plaintiff is, she married Valarmathi as per Hindu Customs and Rites in a temple. No proof for solemnisation of marriage either through document or through oral evidence witnessing tying of thali and saptapathi is proceeded by the plaintiffs. To invalidate a validly solemnised marriage, there must a strong proof of earlier marriage and the spouse living. The first plaintiff admits that she was forced to leave Valarmathi in the month of September 1990 itself. This is contrary to her pleadings. In the cross examination, she admits she came to know about the marriage of Valarmathi with Gowthami in the year 1995. The suit is filed on 06.09.2011 before the Sub-Ordinate Court, Poonamallee, without sufficient proof about her marriage prior to the marriage of the first defendant. Without sufficient proof to show, the suit property owned and possessed by Valarmathi during his life time.

19. Without legally sustainable proof, the Trial Court on surmises and conjectures had passed preliminary decree of partition, even though the



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plaintiffs could not establish the right of Valarmathi through whom they claim right nor her marriage with Valarmathi.

20. Therefore, for the reasons stated, **the Appeal Suit is allowed.** The judgment and decree passed in O.S.No:171 of 2011, dated 29.07.2022 stands dismissed. Consequently, connected Miscellaneous Petition is closed. Considering the facts, no order as to costs.

24.07.2025

Index:yes/no
Internet:yes
Speaking order/Non speaking order
Neutral citation:yes/no
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To

- 1.The III Additional District and Sessions Judge, Tiruvallur @ Poonamallee.
- 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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