



S.A. No. 91 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 91 of 2025
and
C.M.P.No. 2556 of 2025

1. Subramanian

2. Sivakumar

... Appellants

Vs.

1. S.Nirmala

2. Chellammal

3. Sivagami

4. Chellam

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.20 of 2016 on the file of Addl. Subordinate Court, Namakkal dated 05.02.2019 reversing the judgment and decree made in O.S.No.491 of 2008 on the file of Principal District Munsif Court, Namakkal dated 19.01.2016.



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For Appellants : Mr. Deepan Uday
For Respondents : Mr. S. Senthil for R1
R2 – No appearance
R3 – refused
R4 – Service awaited

JUDGMENT

Challenging the findings of the first appellate court, the defendants 1 and 2 have preferred this Second Appeal.

2. The appellants herein are the defendants 1 and 2 in the suit in O.S.No.491 of 2008 on the file of District Munsif Court, Namakkal and the same was filed by the 1st respondent/plaintiff Nirmala claiming 1/3rd share in the suit property by way of partition.

3. For the sake of convenience, the parties are denoted as per the ranking in the suit.

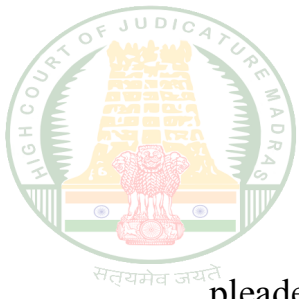
4. Pending proceedings, the respondents 2, 3 and 4 were added as respondents/defendants 3 to 5, but they remained exparte. Before the trial court, the appellants/defendants 1 and 2 contested the suit. On the side of



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plaintiff, both oral and documentary evidence were adduced. On the side of defendants, no oral and documentary evidence have been adduced. But, they have contested case. Considering both side submissions, trial judge has held that the suit property originally belongs to Veerappa Gounder by way of purchase and he died intestate leaving behind his son, 1st defendant and three daughters (D3, D4 and D4 one Chellam) and there is no proof for partition held in the family. Hence, the suit property was held as joint family property. Already the plaintiff's mother, first wife of 1st defendant got divorced. Thereafter, the 1st defendant married one Nerumathi and begotten 2nd defendant. Therefore, the plaintiff is not entitled to claim share of 1/3rd belong to her father/1st defendant and accordingly, she is entitled for 2/24. Accordingly, the suit was decreed. Against which, an appeal in A.S.No. 20 of 2016 filed by the plaintiff with regard to the demand of her share, wherein the first appellate judge analysed entire evidence and finally held that the contesting defendants contended that already mother of plaintiff released her right over the property for herself and on behalf of then minor plaintiff by executing release deed, but to prove the same, there is no oral and documentary evidence on the side of defendants. Therefore, the defence



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pleaded by the defendants has not been proved and also held that the suit property is an ancestral joint family property of the 1st defendant and his father and plaintiff, who got married in the year 1997 after new Amendment Act. When there was no partition held in the family, as per the Act 1 of 1990, the plaintiff is equally entitled to that of her share, thereby she is entitled for 1/3rd share in the suit property. Accordingly, appeal was allowed and the findings of trial judge is set aside and held that the plaintiff is entitled for 1/3rd share. Challenging the said findings of the courts below, the defendants 1 and 2 have preferred this appeal.

5. The learned counsel for appellants/defendants 1 and 2 would argue that already the release deed was executed by mother of plaintiff by receiving consideration for herself and on behalf of her minor daughter in the year 1983 itself, thereby the 1st respondent/plaintiff has no right and title over the suit property, but the first appellate court failed to appreciate those facts and erroneously granted share in the suit property as such is illegal and liable to be set aside. Further, he would also submit that the other sisters of 1st defendant already released their share and as on date, the first appellant is



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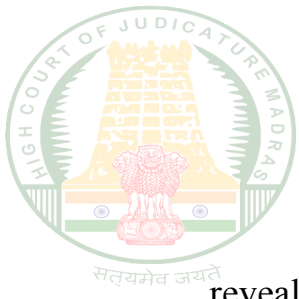
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absolute owner of suit property, but the same was not been properly appreciated. Due to his ailment, he has not contested the case before the trial court, however, the reason assigned by the court below as such is materially irregular and liable to be set aside. According to the appellants, the reversal findings rendered by first appellate court by allotting 1/3rd share in favour of plaintiff as such is incorrect and liable to be set aside.

7. The learned counsel for 1st respondent appeared and contested the case. He would submit that before the trial court, the defendants 1 and 2 have not produced any oral and documentary evidence to defend their claim, on the other hand the plaintiff proved that she is entitled for lawful share in the suit property. Accordingly, the first appellate court rightly granted 1/3rd share, which needs no interference.

8. Heard and considered rival submissions made by both learned counsel for appellants and 1st respondent and perused the materials available on record.

9. Considering both side submissions and on perusal of records, it



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reveals that the 1st respondent/plaintiff is daughter of 1st appellant/1st defendant. The 1st appellant through his first wife begotten the plaintiff as a daughter and thereafter he divorced and got second marriage, out of which, he got second appellant as his son. These facts are admitted one. According to plaintiff, the suit property was the joint family property belongs to her grandfather Veerappa gounder. After his demise, his father, as a joint family manager possessed and enjoyed the property and she is entitled for 1/3rd share as per new Amendment Act, since she got marriage only in the year 1997. Therefore, she is claiming 1/3rd share in the suit property. She produced the sale deed stands in the name of grandfather and issuance of notice before the trial court marked as Ex.A3 and Ex.A6, through which, the plaintiff is able to establish that the suit property belongs to her grandfather, who died in the year 1962 and thereafter, her father possessed and enjoyed as a manager in the joint family property. Therefore, she is claiming 1/3rd share. The 1st defendant/father of plaintiff contested the case stating that while divorcing first wife, she executed a release deed for herself and on behalf of minor by receiving consideration. Thereafter, he got second marriage and begotten the 2nd appellant/2nd defendant. After that, other

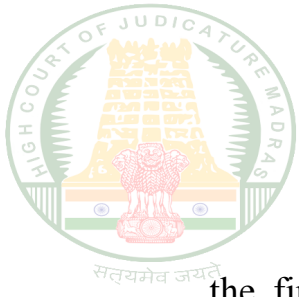


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sisters released their right. Therefore, as absolute owner, he enjoyed the property.

10. Admittedly, before the trial court, the appellants themselves have not adduced any oral and documentary evidence. Even in the appeal proceedings, they have not produced any documents to show that the plaintiff's mother released all her rights for herself and on behalf of minor daughter. Even assuming that there is a release deed, the mother has no right to act against the interest of minor, which is settled proposition of law. When there is no evidence with regard to the said relief, the court below rightly held that it is a joint family property. After the demise of Veerappa Gounder, his son/1st defendant possessed and enjoyed the same as joint family property, however, the other legal heirs of Veerappa Gounder also released their share in favour of 1st defendant. Furthermore, the plaintiff got married only in the year 1997 until then there was no partition effected in the family. Therefore, equally, she is entitled to 1/3rd share in the suit property along with appellants/defendants 1 and 2 by constructive possession. Therefore, the suit property held as a joint family property, in which plaintiff is entitled to 1/3rd share. Therefore, the findings rendered by



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the first appellate court is reasonable one, which needs no interference.

Accordingly, there is no substantial question of law is involved for consideration and the suit is decreed and the plaintiff is granted 1/3rd share.

This Second Appeal is dismissed as no merit. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

1. The Addl. Sub-Judge, Namakkal.
2. Principal District Munsif, Namakkal.
3. Section Officer, VR Section, Madras High Court.

T.V.THAMILSELVI, J.



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