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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.07.2025

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THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

A.S.No.837 of 2019

Shanmugapriya

... Plaintiff/Appellant

Vs.

1. Kandasamy
2. Arulmurugan
3. Chitra

... Defendants/Respondents

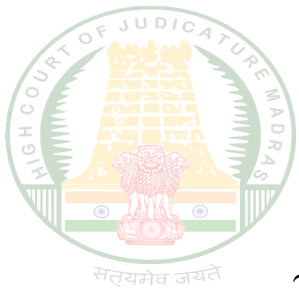
Prayer: Appeal Suit has been filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, against the judgment & decree dated 14.06.2018 on the file of the Principal District Judge, Namakkal passed in O.S.No.46 of 2014.

For Appellant : Mr. S.Saravanakumar

For Respondents : Mr. K.Selvakumar
for M/s.Veena Suresh R2
No appearance – R1 & R3

JUDGMENT

Unsuccessful plaintiff has preferred the appeal. The suit is filed for partition. The trial Court dismissed the suit. The parties are referred as per their ranking in the trial Court.



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2. The brief case of the plaintiff is as follows:

The plaintiff is the daughter of the first defendant. The first defendant has married one Pavayee as second wife, since the first wife died without any issues. The defendants 2 & 3 are the children of the defendant and the said Pavayee. After death of the said Pavayee, the first defendant has married one Shanthi as third wife. The plaintiff is the daughter of the said Shanthi and the first defendant. Hence, the plaintiff, defendants 2 & 3 are the legal heirs of the first defendant. One portion of the suit schedule property is ancestral property of the first defendant's family. With regard to the said property, on 26.11.1983, partition effected between the first defendant, his parents, brothers and sister. Through that partition, 'A' schedule property was allotted to the first defendant. The first defendant had purchased one of the suit property on 25.04.1984 out of income derived from the 'A' schedule property which was allotted to the first defendant. Hence, the suit properties are ancestral property of the parties. The first defendant has executed a settlement deed in favour of



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the second defendant with regard to the entire suit properties on 05.02.2014. The above said settlement deed would not bind the plaintiff.

The plaintiff came to know the above said fact and then she pressurized the defendants 1 & 2 for partition on 02.03.2014. Hence, the parties are each entitled 1/4th share. Hence, this suit.

3. The defendants 1 & 3 were set ex-parte before the trial Court.

4. The brief case of the second defendant is as follows:

The suit property in S.No.177/1 to an extent of 3.36 cents land was acquired by the first defendant in the partition effected between him with his parents and his brothers. In the said partition, 'A' schedule property was allotted to the first defendant. At that time of partition, no marriage was held between the first defendant and the mother of the plaintiff. At that time of partition, the defendants 2 & 3 are only the legal heirs of the first defendant has borrowed a sum of Rs.20,000/- from one Subramani



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and purchased the land in S.No.177/1 having 3.36 cents on 24.09.1984 and constructed a house in the said suit property and also digging well for irrigation and he is in possession of the same. The plaintiff was born on 10.05.1990. The land acquired through partition deed in the year 1983 and one of the sale deed registered in the year 1984 are the self acquired property of the first defendant. The first defendant has executed the settlement deed on 05.02.2014 in favour of the second defendant. Since then, the second defendant is in possession and enjoyment of the same and the revenue records have also transferred in his name. The plaintiff have no right to seek any claim over the suit property. There is no cause of action to file the suit and the same is liable to be dismissed.

5. Based the above pleadings, the trial Court has framed the following issues:

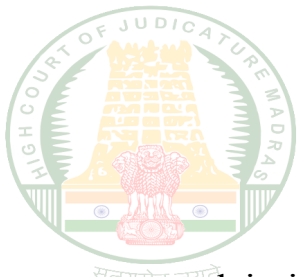
1. Whether the plaintiff is entitled for the relief of partition and separate possession as prayed for?



2. To what other relief the plaintiff is entitled to?

During the trial, before the trial Court, the plaintiff herself has examined as PW1 and Ex.A1 to Ex.A3 were marked. On the side of the defendants, no witnesses was examined and no document was marked.

6. The findings of the trial Court: As per Ex.A1 partition deed dated 26.11.1983 shows that the property was divided among the first defendant and his family members. Once it is partitioned, then it become self-acquired property. Hence, the first defendant have every right to deal with. The partition cannot be demanded by one more than four decrees removed from the acquired or the original owner of the property sought to be divided. After joint family property has been distributed under Section 8 of Hindu Succession Act, 1956 on the principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons. The suit schedule property not being joint family property, the suit for partition of such property filed by the



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plaintiff/daughter would not be maintainable.

7. The point for determination arises in this appeal is that (i) whether the suit schedule property is ancestral property or self acquired property of the first defendant / Kanthasamy and (ii) whether the plaintiff is entitled for the relief of partition and separate possession?

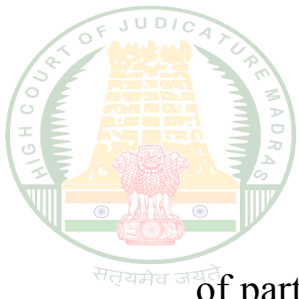
8. The learned counsel for the appellant/plaintiff would submit that the trial Court erred in hold that the plaintiff will not be entitled to the benefit of Section 6 of Hindu Succession Act, 1956 (herein after referred to as "the Act") as amended Act 39/2005. The partition deed in the Ex.A1 dated 26.11.1983 was only between the parents of the first defendant and others. At the time of execution, the father of the first defendant Muthusamy was alive. The portion of the suit property has been purchased out of the income derived from the properties allotted in the partition deed to the first defendant. Once the plaintiff is born and



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incorporating the Section 6 of the Act, the daughter is entitled to seek partition from her father as she gets her right by birth. The alleged settlement deed was executed only in the year 2014 in favour of the second defendant. When the daughter was born through the first defendant, the plaintiff gets share in the suit property and the first defendant cannot settle the property and it is null and void. To strengthen his contention, the learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court of India reported in ***AIR 1979 MAD-1 in the case of Additional Commissioner of income tax Vs. P.M.Karuppan Chettiar*** and the judgment reported in 1987 (1) SCC 204 ***Yudhister Vs. Ashok kumar***. Without considering the entire fact, the trial Court has erroneously dismissed the appeal, which is unsustainable and hence, the learned counsel prays to allow this appeal.

9. Per contra, the learned counsel appearing for the second respondent/second defendant would submit that at that time of execution



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of partition deed/Ex.A1 dated 26.11.1983, no marriage was held between the first defendant and the mother of plaintiff one Shanthi. At that time of partition, the defendants 2 & 3 is the only legal of the first defendant. The first defendant has purchased the land in S.No.177/1 having 3 acres 36 cents of land on 25.04.1984 by ways of loan obtained from one Subramabi, Karukuthalpatty for a sum of Rs.20,000/- Thereafter, constructed a house in the said land and also digging a well for irrigation. The suit schedule property is the self-acquired property of the first defendant. Therefore, the first defendant has executed a settlement deed on 05.02.2014 in favour of his son/2nd defendant. Since then the second defendant is in possession and enjoyment of the same. The revenue records have also transferred in favour of the second defendant. To strengthen his contention, the learned counsel for the second respondent has relied upon the judgment of the Hon'ble Supreme Court reported in 2025 SCC online SC 877 in the case of Angadi Chandranna Vs. Shankar and others, to show that the properties were divided among the brothers

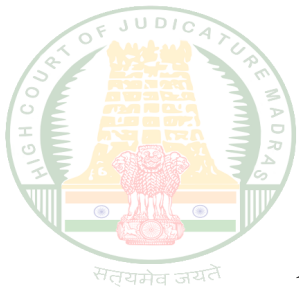


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through partition deed are joint family properties. However, as per Hindu law, after partition, each parties gets a separate and distinct share and the share become a self acquired property and they have absolute right over it. Therefore, the findings rendered by the trial court is perfectly in order and no interference is warranted.

10. This Court has considered the submissions made on either side and perused the records.

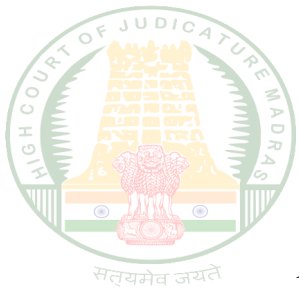
11. Admittedly, the plaintiff/Shanmugapriya, the second defendant/Arulmurugan and the third defendant/Chitra are the legal heirs of the first defendant/Kanthasamy. The first defendant has married one Poovayee as second wife, since the first wife died without any issues. The said Poovayee also died. Thereafter, the first defendant has married one Shanthi and the plaintiff was born through the third wife Shanthi.



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12. A perusal of Ex.A1 partition deed dated 26.11.1983 shows that the property mentioned therein was divided among the first defendant, his parents viz., Muthusamy Gounder, Palaniammal, his brothers viz., Duraisamy, Ganapathi and his siser viz., Nallammal. The first defendant was allotted 'A' schedule property in the said partition deed. The said 'A' schedule property is the subject matter of the suit schedule property in this case.

13. It is the case of the plaintiff is that the first defendant has also purchased one portion of the suit property in S.No.177/1 to an extent of 3 acres 36 cents using family nucleus the income derived from the property which was allotted to the first defendant i.e. "A" schedule property vide partition deed dated 27.06.1983. Therefore, the suit property should be treated as ancestral property and the plaintiff who is a coparcener have a right in it.



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14. Whereas the defense raised by the first defendant purchased the suit property in S.No.177/1 having 3 acres 36 cents by obtaining a loan for a sum of Rs.20,000/- from one Subramani. In order to prove the said fact, the defendants did not enter into the witness box and not produced any document to that effect.

15. Ex.A1 recitals shows that the respective parties shall hereinafter enjoy the properties allotted to their share with a right to sell, lease and gift etc., It is also proceeds to state the joint family become un-managable and therefore, they decided that it was not good to stay together and partitioned their lands to allotted to them and also they intended to pay some amounts to some of the shareholders.

16. It is relevant to cite the judgment of the Hon'ble Supreme Court reported in ***2016 (2) CTC 306 SC, in the case of Uttam Vs. Saubhag Singh and others***, wherein it has been held as follows:



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vi. *On a conjoint reading of Section 4,8 and 19 of the Act, after joint family property has been distributed in accordance with Section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants."*

17. It is also relevant to cite the judgment of the Hon'ble Supreme Court reported in 2025 SCC online SC 877, in the case of ***Angadi Chandranna Vs. Shankar and other***, wherein it has been held on follows:

"17.It is also a well-established doctrine of Hindu Law that property which was originally self-acquired may become joint property if it has been voluntarily thrown by the coparcener into the joint stock with the intention of abandoning all separate claims upto it. But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred from acts which may have been done from kindness or affection. The important point to keep in mind is that the separate property of a Hindu coparcener



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ceases to be his separate property and acquires the characteristics of his joint family or ancestral property, not by mere act of physical mixing with his joint family or ancestral property, but by his own volition and intention by his waiving or surrendering his special right in it as separate property. Such intention can be discovered only from his words or from his acts and conduct.”

18. By applying the said ratio laid down in the above judgment, after the joint family property has been distributed in accordance with law, it ceases to be a joint family properties and the shares of the respective parties become their self-acquired property.

19. In the instant case on hand, since the partition took place on 26.11.1983 and the portion of the suit property was purchased on 25.04.1984. Since the partition was held among the family members of the first defendant, his parents and brothers and sister, the ancestral property ceased to be joint family property on the date of partition itself. The judgments relied by the learned counsel for the appellant are not supported to the present case, since the facts of this case is different from



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those cases. All the issues raised in this appeal, the trial Court has rightly answered. There is no reason to interfere with the impugned judgment and decree of the Court below. There is no merit in this appeal and hence, the same is liable to be dismissed. The points are answered accordingly.

20. Accordingly, the Appeal suit is dismissed. No costs. The judgment and decree passed by the Principal District Judge, Namakkal in O.S.No.46 of 2014 dated 14.06.2018 is hereby confirmed.

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Internet;Yes/No

Index:yes/No

Speaking order/Non-speaking order

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To
The Principal District Judge, Namakkal



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M.JOTHIRAMAN,J.

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