



A.S.No.56 of 2019 and
C.M.P.No.2661 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2025

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THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

A.S.No.56 of 2019
and
C.M.P.No.2661 of 2019

Mrs.Chithra

... Appellant

...Versus...

1.Kuppan
2.Venu
3.Patipooranam
4.Vethachalam Naicker
5.Selvam
6.Rajendiran
7.Sankar
8.Krishnan
9.Govindaraj

..Respondents

PRAYER: This Appeal Suit is filed under Order 41 Rule 1 R/w Section 96 of C.P.C., to set aside the decree and judgment dated 30.07.2018 in O.S.No.296 of 2009 on the file of Additional District Judge, Chengelpet and dismiss the suit filed by the respondent No.1 and 3 herein with cost.



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For Appellant :: Mr.G.Senthilkumar
For R1 to R3 :: Mr.P.Santhaseelan
For R5 to R9 :: No appearance

J U D G M E N T

1. The 7th defendant is the appellant herein. The plaintiff and the other defendants are the respondents.

2. For the sake of convenience, the parties will be referred to, as they were referred in the trial court.

3. The brief facts leading to the instant first appeal are as follows:

The suit property originally belonged to Chinnammal. Chinnammal's husband is Munusamy. They had two sons namely Chinnathambi @ Chinnapaiyan, Vedhachalam Naicker, and one daughter Govindammal. The plaintiffs are the children of Govindammal. Defendants 2 to 6 are the children of Chinnathambi @ Chinnapaiyan. Vedhachalam Naicker is 1st defendant.



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4. According to the plaintiff, defendants 1 to 6 created a fabricated sale deed in favour of the 7th defendant who is daughter-in-law of 1st defendant, therefore the same is not binding upon them and their share in the suit property.

5. The plaintiffs claim that their mother, Govindammal, is entitled to a 1/3 share in the suit property. As such, they have filed the suit for partition, seeking a partition to divide the suit property into three equal shares and for allotment of 1/3 share to them.

6. The third defendant, who is one of the son of Chinnathambi @ Chinnapaiyan, filed a written statement admitting the plaintiffs' right to have a 1/3 share in the suit property. This written statement was adopted by defendants 2, 4, 5, and 6. However, the subsequent purchaser 7th defendant strongly disputed the plaintiff's claim.

7. The 7th defendant contends that Munusamy and Chinnammal had only two sons, namely Chinnathambi @ Chinnapaiyan and Vedhachalam Naicker. He would assert that Govindammal was not the



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sister of Vedhachalam and Chinnathambi. It is his further submission that Chinnathambi's half-share was sold by Chinnathambi and his legal heirs. Similarly, Vedhachalam sold his $\frac{1}{2}$ share through a sale deed dated 31.01.2007. Accordingly, the 7th defendant claims that she is the sole and absolute owner of the entire suit property and prays for the dismissal of the suit.

8. Before the trial court, the plaintiff examined two witnesses and marked five documents. On behalf of the defendants, the 7th defendant's husband was examined as D.W.1, and nine documents were marked.

9. The trial Court framed the following issues:-

- (1) தாவா காலவரையறை கடந்ததா?
- (2) 7-ம் பிரதிவாதிக்கு தாவா சொத்தில் எதிர்அனுபோக உரிமை ஏற்பட்டுள்ளதா?
- (3) வாதிகள் தாவா சொத்துக்களில் முன்றில் ஒருபாகம் பெற தகுதிபடைத்தவர்களா?
- (4) வேறு என்ன பரிகாரங்கள்?

(extracted as it is)



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10. On the above issues, the trial court concluded that the plaintiff's mother, Govindammal, is a legal heir of Munusamy and Chinnammal, and granted a decree for partition, allotting a 1/3 share to the plaintiffs, further, the trial court declined the 7th defendant's claim of adverse possession. However, under the principle of equity, the trial court ordered that the shares of defendants 1 to 6 may be allotted to the 7th defendant. In short, the trial court decreed the suit as prayed for.

11. Aggrieved by this decision, the 7th defendant preferred the instant appeal.

12. The learned counsel for the plaintiff Mr.G.Senthilkumar and the learned counsel for the defendants Mr.P.Santhaseelan were heard. I have given my anxious consideration to either side submissions.

13. The learned counsel for the 7th defendant vehemently contended that the plaintiffs failed to prove her relationship between Govindammal and the defendants 1 to 6. He would further submit that since



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the suit property is ancestral in nature, the plaintiff's being the descendants of a female legal heir, has no right over the ancestral properties. It was further contended that the trial court without considering these aspects, erroneously granted a decree in favour of the plaintiffs.

14. Mr. G. Senthilkumar, learned counsel for the plaintiffs, strongly contended that defendants 2 to 6 categorically admitted the relationship between the plaintiffs' mother, qua Govindammal, and their father, qua Chinnathambi @ Chinnapaiyan, as well as Vedhachalam Naicker. He further contended that the 7th defendant, who is none other than the daughter-in-law of Vedhachalam Naicker alone denied the relationship solely to usurp the entire property. In support of his argument, the plaintiffs relied on their marriage invitation.

15. He would further contend that since defendants 2 to 6 admitted the relationship of the plaintiff, the 7th defendant, being a subsequent purchaser, has no locus to dispute the same. Hence, he prayed for the dismissal of the appeal.



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16. Based on the above submissions, the following points
arises for our consideration:

(i) Whether Govindammal is a legal heir of Munusamy & Chinnammal?

(ii) Whether the sale deed executed by the Chinnathambi @ Chinnapaiyan and his legal heirs, and Vedhachalam Naicker disentitle the plaintiffs from claiming partition?

(iii) Whether the plaintiff is entitled to partition as prayed for?

(iv) To what other relief is appropriate?

17. Point No. I:

It is an admitted fact that the suit property stands in the name of Chinnammal. It is further admitted that Chinnammal's husband name is Munusamy. Both the plaintiffs and defendants admit that Chinnathambi @ Chinnapaiyan and Vedhachalam Naicker are the sons of Munusamy and Chinnammal. The only dispute is whether Govindammal is their daughter and entitled to succeed the estate of her mother Chinnammal.



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18. In this regard, as rightly contended by the learned counsel for the appellant/7th defendant, no direct documentary evidence, such as a legal heirship certificate or any other document, filed before this Court, except Ex.B5, which is the marriage invitation of the third defendant. The learned counsel for the plaintiffs infers from this invitation that the first defendant and his brother, Chinnathambi @ Chinnapaiyan, were referred to as maternal uncles.

19. As rightly contended by the learned counsel for the appellant, this by itself may not be a sufficient evidence to substantiate the relationship. However, defendants 2 to 6, who are legal heirs of Chinnathambi @ Chinnapaiyan, have categorically admitted that the plaintiffs are the legal heirs of Govindammal and also admitted that the said Govindammal is the daughter of Munusamy and Chinnammal. They further admitted the plaintiffs' right to have a 1/3 share in the suit property. Curiously these co-sharers have sold the property to the 7th defendant, who is none other than the daughter in law of (D1) one Vedhachalam Naicker. This D1 Vedhachalam Naicker is maternal uncle of these plaintiff. As such,



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the attempt of 7th defendant in denying the plaintiff relationship will not overshadow the admission of the co-sharers of D2 to D6. Therefore, this Court affirms the trial Court's finding that Govindammal is the daughter of Munusamy and Chinnammal. Consequently, the plaintiffs who being the legal heirs of Govindammal, are entitled to have share in the suit property along with Chinnathambi @ Chinnapaiyan and 1st defendant Vedhachalam Naicker.

20. Although the first defendant, and Chinnathambi's legal heirs D2 to D6 sold the entire suit property to the 7th defendant under Exs.B2 and B5, these documents will in noway affect the plaintiffs' rightful share, as neither these plaintiff, nor their mother Govindammal were not party to the sale deed Ex.B2 and Ex.B5. Therefore, this Court is of the indubitable view that the plaintiffs' are entitled to have 1/3 share in the suit property. As rightly held by the trial court, the 7th defendant, under equity, is entitled to have allotment of 2/3 shares of the other legal heirs. Accordingly, this Court finds no reason to interfere with the well-considered finding of the trial court.



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21. In the result,

(i) The Appeal Suit is dismissed.

(ii) The judgment and decree dated 30.07.2018 in O.S. No. 296 of 2009, on the file of the Additional District Judge, Chengelpet, is hereby confirmed.

(iii) There shall be no order as to costs.

(iv) Consequently, the connected C.M.P. is closed.

21.02.2025

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Internet: Yes/No

Speaking Order: Yes/No

To

1. The Additional District Judge, Chengelpet.

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



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C.KUMARAPPAN,J.,

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