



S.A.(MD)No.1203 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 18.08.2025

JUDGMENT PRONOUNDED ON : 04.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.(MD).No.1203 of 2005
and CMP(MD).No.5705 of 2018

1.M.Sasankan

2.M.Mahendran

3.M.Ravindran

M.Langadasan

....Appellants/Appellants/Defendants 1 to 4

Vs

1.D.Muthuganesan

2.I.Nagalakshmi

....Respondents /Respondents 1 & 2

/Plaintiffs

3.B.Natarajan

4.B.Gnanasekaran

5.B.Saravanan

6.B.Amudha

7.K.Rathinavalli (died)

...Respondents/Respondents 3 to 7

/Defendants 5 to 9

8.Ayyammal

9.K.Illangumaran

10.Suguna



S.A.(MD)No.1203 of 2005

11.Selvi

12.Kala

13.K.Kannan

(Respondents 8 to 13 are brought on record as legal heirs of the deceased 7th respondent vide Court order dated 11.02.2022)

PRAYER: Second Appeal is filed under Section 100 of C.P.C, to set aside the decree and judgment dated 16.08.2005 rendered in A.S.No.48 of 2004 on the file of the Subordinate Judge, Ramanathapuram confirming the preliminary decree and the judgment dated 29.09.2004 rendered in O.S.No. 229 of 1999 on the file of the District Munsif of Ramanathapuram by allowing this second appeal.

For Appellants : Mr.S.Subbiah
Senior Counsel for
M/s.P.Jessi Jeeva Priya

For Respondents : Mr.PT.S.Narendravasan for R1 to R6
: M/s.M.D.Devi Saravanan Priya for R8 to R13
: R7 died

JUDGMENT

The defendants 1 to 4 in a suit for partition have preferred the present second appeal challenging the concurrent findings of the trial Court as well as the Appellate Court.

(A).Factual Matrix:

2.The respondents 1 and 2 as plaintiffs have filed the above said suit



S.A.(MD)No.1203 of 2005

seeking partition of their 1/4th share in the suit schedule property. As per the plaintiff averments, the suit schedule property is the self acquired property of one Chinniah Naicker. He had died intestate in the year 1958 leaving behind his three daughters namely Krishnammal, Saraswathi and Rathinavalli and only son Muruganandam. The legal heirs of the Krishnammal are the plaintiffs. The legal heirs of Saraswathi are arrayed as defendants 5 to 8. Another daughter of Chinniah Naicker namely Rathinavalli has been arrayed as 9th defendant. The legal heir of the deceased son Muruganandam have been arrayed as defendants 1 to 4.

3. According to the plaintiffs, since Muruganandam was only the male legal heir of deceased Chinniah Naicker, patta was mutated in his name. However, he did not have any exclusive right over the property. After the death of Muruganandam, the defendants 1 to 4 made an attempt to alienate the property and hence, the present suit for partition claiming 1/4th share.

4. The defendants 1 to 4 had filed a written statement admitting the fact that the suit schedule properties are the self acquired property of Chinniah Naicker. However, they contended that the Chinniah Naicker had passed away in the year 1946 itself and not in the year 1958 as contended by the plaintiffs. Since Chinniah Naicker had died prior to 1956, the plaintiffs who are the legal heirs of the deceased daughter are not entitled to any share. At no point of time, the daughters had made any claim over the suit schedule



S.A.(MD)No.1203 of 2005

property or enjoyed the proceeds of the said property. Only in the year 1996-1997, payment of tax has been made by the plaintiffs in order to make a claim over the suit schedule property. In fact, the defendants 1 to 4 have been enjoying the property by creating othi. The defendants have been in possession over the suit schedule properties by excluding the plaintiffs and other defendants beyond the statutory period. Therefore, the plaintiffs have been ousted from joint the family property.

5.On the side of the plaintiffs, one Mr.Muthukani was examined as PW1 and Exs.A1 to A5 documents were marked. On the side of the defendants, the first defendant has examined himself as DW1 and Exs.B1 to B13 were marked.

6.On the side of the plaintiffs, the death certificate of Chinniah Naicker issued by Ramanathapuram Municipality was marked as Ex.A2 which discloses that he had passed away on 04.04.1958. However, on the side of the defendants, Ex.B1 issued by the Sub Registrar, Ramanathapuram was marked which indicated that M.Chinniah Naidu had passed away on 19.07.1948. The defendants have further filed Ex.B13 which was issued by Ramanathapuram Municipality to show that the document of Ex.A2 produced by the plaintiff is unbelievable. As per Ex.B13, Chinniah Naidu, son of Muthal Naidu alone passed away on 04.04.1958. The defendants have also filed Ex.B9 othi deed dated 31.07.1950. The said othi has been executed by the son of Chinniah



S.A.(MD)No.1203 of 2005

Naicker namely Murugananda Naicker in favour of a third party indicating that his father Chinniah Naicker had passed away.

7.The trial Court without considering the genuineness or validity or otherwise of the various documents filed on the side of the plaintiffs and the defendants, did not go into the issue of date of death of Chinniah Naicker. Since the defendants 1 to 4 have not established from their exclusive right over the suit schedule property, the trial Court proceeded to grant a preliminary decree for partition with regard to 1/4th share.

8.The First Appellate Court relied upon Ex.A2 death certificate wherein the date of death of Chinniah Naicker was mentioned as 04.04.1958 and arrived at a finding that Chinniah Naicker had died after Hindu Succession Act came into force. The First Appellate Court further found that the defendants have not established their adverse possession and therefore, the plaintiffs are entitled to 1/4th share in the suit schedule properties. Challenging the concurrent findings, the present second appeal has been preferred by the defendants 1 to 4.

9.The second appeal has been admitted on the following substantial questions of law:

1)When there is a dispute relating to the date of death of a person, and when two documents were produced separately by either parties, is not the failure of the Court to examine the genuineness of



S.A.(MD)No.1203 of 2005

the document is illegal?

2)When the registered document Ex.B9 containing the recital regarding a death of a person prior to the date of its execution, is not the finding without consideration of such a document is perverse and illegal?

(B).Submissions of the learned counsel appearing on either side:

10.The learned senior counsel appearing for the appellant had contended that the trial Court has completely ignored the submissions made by either parties with regard to the date of death of Chinniah Naicker. Exs.A2, B1, B9 and B13 have been filed on either side to establish the date of date of Chinniah Naicker. However, none of these documents have been considered by the trial Court. The First Appellate Court had simply relied upon Ex.A2 death certificate wherein the date of death of Chinniah Naicker is mentioned as 04.04.1958. The First Appellate Court has not considered Ex.B1 death certificate issued which reflects the date of death as 19.07.1948. He had also relied upon Ex.B9 mortgage deed executed by the son of Chinniah Naicker in favour of a third party on 31.07.1950 wherein it is mentioned that Chinniah Naicker had passed away. He had also pointed out that Ex.B13 has been filed on the side of the defendants to indicate that Ex.A2 document is a forged document. However, the First Appellate Court has erroneously relied upon Ex.A2 without considering Ex.B9 registered document.



S.A.(MD)No.1203 of 2005

11.The learned Senior Counsel appearing for the appellants further submitted that if Chinniah Naicker had passed away prior to the coming into force of Hindu Succession Act 1956, the daughters would not be entitled to get any share in the presence of his son. Therefore, the date of death of Chinniah Naicker is crucial for deciding the right of the plaintiffs. The trial Court as well the appellate Court have not properly appreciated the said fact.

12.The learned Senior Counsel had further submitted that the trial Court as well as the appellate Court have not taken into consideration the various documents filed on either side to prove the date of death of Chinniah Naicker. When conflicting documents are presented by either parties, the Court should have analysed the genuineness and validity of those documents and should have rendered a finding. The trial Court has not given any findings with regard to date of death of Chinniah Naicker. The First Appellate Court has accepted Ex.A2 without assigning any reason for rejecting the other documents filed on the side of the defendants.

13.The learned Senior Counsel had further submitted that Ex.B9 is a mortgage deed executed by the son of Chinniah Naicker in favour of a third party on 31.07.1950 which clearly reflects that Chinniah Naicker had passed away. The trial Court as well as the appellate Court should have conferred more importance to the registered document than the certificates issued by the Municipality for deciding the date of death of Chinniah Naicker.



S.A.(MD)No.1203 of 2005

14.The learned Senior Counsel had further submitted that Chinniah Naicker had passed away prior to 1956 and the present suit for partition has been laid by the legal heirs of one of the daughters of Chinniah Naicker in the year 1999 after more than 40 years. No documents have been filed on the side of the plaintiffs to establish that they were receiving any share in the income from the suit schedule property or they were in joint possession through out the period. In such circumstances, the Courts below ought to have considered the fact that the defendants 1 to 4 have ousted the right of the plaintiffs, if any, in view of long passage of time, even assuming that the plaintiffs have got a right to make a claim for a share in the suit schedule property. Hence, he prayed for setting aside the judgment and decree of the Courts below and to dismiss the suit for partition.

15.The learned Senior Counsel appearing for the appellants had further submitted the Hindu Women's Rights to Property Act, 1937 also does not protect the daughters and therefore, the daughter cannot make a claim seeking a share in the suit schedule property. He relied upon the judgments of our High Court reported in **2025-2-L.W.657** (*V.Ramamurthi and others Vs.Sivakamiammal (died) and others*); **2025 (1) CTC 673** (*N.Dharmalingam Vs. N.Ayyavoo (died) and others*); **2022-1-L.W. 628** (*Vellapandian @ Thanga Arumugasamy Nayakkar Vs. Duraiappan (died) and others*); **2022 (4) CTC**



S.A.(MD)No.1203 of 2005

590 (*Puniyavathi and another Vs. Pachaiaammal and others*) and the judgment of the Hon'ble Supreme Court reported in **(2025) 5 SCC 198** (*Uma Devi and others Vs. Anand Kumar and others*) to impress upon the Court that the son having dealt with the property, excluding the sisters would amount to ouster.

16.Per contra, the learned counsel for the respondents/plaintiffs submitted that the plaintiffs have marked Ex.A2 death certificate issued by the Municipality to establish that Chinniah Naicker had passed away only on 04.04.1958 i.e. after commencement of Hindu Succession Act 1956. Admittedly, the suit schedule properties are the self acquired properties of Chinniah Naicker. In such circumstances, the daughters would be entitled to a share on par with the son.

17.The learned counsel for the respondents had further submitted that the defendants were not able to establish, through oral or documentary evidence, with regard to their plea of ouster. In such circumstances, the trial Court as well as the appellate Court have rightly decreed the suit as prayed for. He had further submitted Ex.B9 registered mortgage deed does not reflect the survey number, therefore, the trial Court as well as the appellate Court have rightly rejected the said documents. He had also relied upon the decision of the Hon'ble Supreme Court reported in **(2022) 11 SCC 520** (*Arunachala Gounder and others Vs. Ponnusamy and others*) to impress upon the Court



S.A.(MD)No.1203 of 2005

that when a father died prior to 1956, leaving behind his self acquired property, the daughter would be entitled to a share over the said property. He had further submitted that no question of law much less a substantial question of law arises for consideration in the present second appeal and therefore, the second appeal may be dismissed and the judgment and decree of the Courts below may be confirmed.

18.I have considered the submissions made on either side and perused the material records.

(C).Discussion:

19.In Paragraph No.1 of the plaint, it is stated that the suit schedule properties were purchased by Chinniah Naicker under Ex.A1 on 26.01.1935. The said fact has been admitted by the defendants 1 to 4 in Paragraph No.2 of the written statement. Therefore, there is no dispute that the suit schedule properties are the self acquired properties of deceased Chinniah Naicker.

20.The plaintiffs contend that Chinniah Naicker had passed away in the year 1958. However, the defendants contend that he had passed away in the year 1946 itself. On the side of the plaintiffs, Ex.A2, a death certificate issued by Ramanathapuram Municipality has been marked which reflects the date of death of Chinniah Naicker as 04.04.1958. On the other hand, the defendants have produced Ex.B1, another death certificate which states that one Chinniah Naidu son of Muthal Naidu had passed away on 19.07.1948. The



S.A.(MD)No.1203 of 2005

defendants have also filed Ex.B13. According to them, Ex.B13 would clearly show that Ex.A2 is a forged document. Therefore, it is clear that three different death certificates had been produced before the trial Court as Exs.A2, B1 and B13.

21.The defendants have produced Ex.B9 which is a registered mortgage deed executed by the father of the defendants 1 to 4 (Muruganandam) in favour of a third party. This document has been executed on 31.07.1950 and it has been registered as Document No.2624 of 1950 before the Sub Registrar Office, Ramanathapuram. The recital in the document reflects that Chinniah Naicker had passed away and as the son of Chinniah Naicker, Murugananda Naicker is mortgaging the property. Relying upon this document, the defendants contend that Chinniah Naicker had passed away even prior to 1950. However, the learned counsel appearing for the plaintiffs contended that the document does not reflect the survey numbers of the suit property and therefore, the said document cannot be relied upon.

22.A careful perusal of Ex.B9 reveals that Muruganandam had traced his title relying upon the sale deed in favour of his father Chinniah Naicker dated 26.01.1935. Therefore, it is clear that the property purchased by Chinniah Naicker under Ex.A1 has been dealt with under Ex.B9 by the son



S.A.(MD)No.1203 of 2005

of Chinniah Naicker. It is to be noted that they have not been mentioned the survey numbers even in Ex.A1 sale deed. When a registered document dated 31.07.1950 points out that Chinniah Naicker has already passed away and as his son Muruganandam is mortgaging the property, it is clear that Chinniah Naicker had passed away prior to 31.07.1950. Rather than relying upon the certificates issued by the Municipality, this Court safely relies upon the registered document namely Ex.B9 to fix the date of death of Chinniah Naicker. Therefore, it is clear that Chinniah Naicker had passed away prior to the coming into force of the Hindu Succession Act, 1956.

23.The devolution of self acquired property of a Hindu male under Mitakshara law prior to the Hindu Succession Act 1956 is in the order of priority and each order would take per stirpes. In the order, a son, a grandson whose father is dead and a great-grandson whose father and grandfather are both dead are ranked as First Order. The daughter is ranked as Fifth Order.

24.After 14th April 1937, under Hindu Women's Rights to Property Act, 1937, the widow gets a share on par with her son. However, the daughter's right has not been elevated either to the level of the son or to the level of the widow of the deceased. In such circumstances, it is clear that the daughter would be entitled to succeed to his father's self acquired property (who died



S.A.(MD)No.1203 of 2005

prior to 1956), only if she is the sole surviving legal heir. If a son or widow is available, she will be disinherited.

25.The learned counsel for the respondents had relied upon a decision of the Hon'ble Supreme Court reported in *(2022) 11 SCC 520 (Arunachala Gounder and others Vs. Ponnusamy and others)* wherein the Hon'ble Supreme Court had an occasion to consider the right of a daughter to inherit the self acquired property of her father who had died prior to the commencement of Hindu Succession Act, 1956. The facts of the said case would reveal that the daughter was the sole surviving legal heir. In the said case, the Hon'ble Supreme Court was pleased to uphold the decree for partition among the legal heirs of the said daughter. Therefore, the said judgment is not applicable to the facts of the present case.

(D).Conclusion:

26.The trial Court as well as the appellate Court have not properly appreciated the fact that Chinniah Naicker had passed away prior to the commencement of Hindu Succession Act 1956 and on the said date when the son (Muruganandam) was alive, the daughter would not be entitled to a share. In such circumstances, both the substantial questions of law are answered in favour of the appellants. The judgment and decree of the Courts below are



S.A.(MD)No.1203 of 2005

hereby set aside and the second appeal stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

04.11.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes/No
msa



S.A.(MD)No.1203 of 2005

To
WEB COPY

- 1.The Subordinate Judge
Ramanathapuram
- 2.The District Munsif
Ramanathapuram
- 3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



WEB COPY



S.A.(MD)No.1203 of 2005

R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgment made in
S.A.(MD).No.1203 of 2005
and CMP(MD).No.5705 of 2018

04.11.2025