



WEB COPY



A.S.(MD)No.104 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved On	Order Pronounced On
09.12.2024	25.10.2025

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.104 of 2024

and

C.M.P.(MD)Nos.2446 and 5775 of 2024

V.Duraiarasan

...Appellant

--Vs--

1.D.Vidhya

2.Mohana

3.Sugashini@Sulochana

...Respondents

PRAYER: Appeal Suit filed under Order 41, Rule 1 and 4 read with Section 96 of Civil Procedure Code, 1908, against the Judgment and Decree in O.S.No.27 of 2013, dated 02.11.2023, on the file of the First Additional District Court (PCR), Tiruchirappalli.

For Appellant	: Mr.A.Haja Mohideen
For R1	: Mr.N.Marimuthu for Mr.A.Chandrakumar
For R2 and R3	: No appearance



A.S.(MD)No.104 of 2024

JUDGMENT

WEB COPY

The appeal suit is preferred by the 1st defendant in the suit against the judgment and decree, dated 02.11.2023, passed in O.S.No.27 of 2013 on the file of the 1st Additional District Court (PCR), Trichirappalli.

2. The plaintiff in the suit is the 1st respondent herein. The 1st defendant in the suit is the appellant herein and defendants 2 and 3 in the suit are the respondents 2 and 3 herein. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the suit.

3. The suit was filed for partition to divide the suit properties by two equal half shares by meters and bounds and to allot one share to the plaintiff. The brief facts as stated in the plaint are that the plaintiff is the daughter of the 1st defendant. The suit properties are ancestral properties of the defendants. The 1st defendant had inherited the same through partition deed, dated 04.07.2012, entered into between the 1st defendant and his brothers namely, Thangavel and Balasubramanian and his sisters namely, Vijaya and Banumathy. 'A' schedule property was allotted exclusively to the 1st defendant and 'F' schedule property



A.S.(MD)No.104 of 2024

was given as common enjoyment for 1st defendant and his brothers Thangavel and Balasubramanian. The plaintiff is the only child born out of the wedlock between the 1st defendant and his wife Pachaiaammal, the mother of the plaintiff. The said Pachaiaammal died and there are no other children for the 1st defendant other than the plaintiff. After the demise of his wife, the 1st defendant is having intimacy with another woman. The 1st defendant has no right over the suit property on his own, since the plaintiff is also entitled to the suit property. The demand made by the plaintiff to effect partition fell into deaf ears. Hence, the plaintiff issued suit notice on 05.09.2012 and the same was received by the 1st defendant on 11.09.2012. But the 1st defendant has not responded positively. The 1st defendant is actively pursuing to alienate and encumber the properties. If the same is allowed, the rights of the plaintiff may be lost. The plaintiff reserves her right to include any other properties which are fit for partition if found later and which are purchased from the income of the suit property. The documents related to the property are with the 1st defendant. Hence, the plaintiff could not file the same. Based on the above pleadings, the plaintiff prayed for partition to divide the properties into equal halves.

4. The 1st defendant has filed a written statement and denied the contents of



A.S.(MD)No.104 of 2024

the plaint and that the suit properties are not ancestral properties of the 1st defendant. Based on partition deed, dated 04.07.2012, the 1st defendant is entitled to 'A' schedule property and joint share as common property along with his brothers in 'F' schedule property. The plaintiff is not the only child born out of wedlock between the 1st defendant and his wife Pachaiaammal. The allegation that there are no other children is denied as false. The allegation that after the demise of his wife Pachaiaammal, the 1st defendant is having intimacy with another woman is denied as false and 1st defendant condemns such word of the plaintiff. After three years from the demise of his wife Pachaiaammal, the 1st defendant married Chinnapponnu in the year 1989. From the said wedlock, two daughters namely, Mohana was born on 18.09.1990 and Sugashini @ Sulochana was born on 26.06.1997. To prove the same, school transfer certificates are produced. The 1st defendant further stated that he had married Pachaiaammal who is his aunt's daughter and she is elder than the 1st defendant. For that reason, Pachaiaammal did not respect the 1st defendant and often made quarrel with him. Finally, she had voluntarily deserted the 1st defendant and went to her sister's house within three months from her date of marriage. Then Pachaiaammal had illegal intimacy with her sister's husband. For this reason, she had deserted the 1st defendant / husband. Pachaiaammal and her sister Dhanalakshmi are the only legal heirs to their parents.



A.S.(MD)No.104 of 2024

After the death of Pachaiammal, her sister Dhanalakshmi is in possession and enjoyment of the entire properties including Pachaiammal's share without giving any share to the plaintiff and the 1st defendant. The 1st defendant has right to claim share in Pachaiammal's property as her successor, as per Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005). In order to avoid giving share, the said Dhanalakshmi instigated the plaintiff to file a suit for partition. The plaintiff had come to the 1st defendant's house and he maintained the plaintiff till she attained her puberty. After that, Dhanalakshmi did not allow the plaintiff to meet the 1st defendant. Further, the 1st defendant was not allowed to attend the plaintiff's marriage. The plaintiff also has not considered the 1st defendant as her father and the plaintiff has also not informed about her marriage and also about her daughter's ear boring function. The plaintiff is not entitled to any claim in the suit property, since she is not the legal heir as successor of Oppayee Ammal's property. The 1st defendant and his brothers are the only successors to Oppayee Ammal and they are entitled to succeed to the estate of Oppayee Ammal. The 1st defendant had borrowed loan from Bank by mortgaging the suit property. The plaintiff also has pious obligation to discharge the loan of Rs.2,00,000/-. The suit valuation is not correct and proper Court fee is not paid. The defendant's legal heirs are Chinnaponnu (wife), Mohana (daughter), Sugashini @ Sulochana (daughter).



A.S.(MD)No.104 of 2024

They are the only successors entitled to succeed to the estate of the 1st defendant.

Hence, the plaintiff is not entitled to any share and the 1st defendant is entitled to the suit property.

5. The plaintiff has marked exhibits A1 to A5 and examined PW1 to PW5. The 1st defendant has marked exhibits B1 to B31 and examined DW1 to DW5. Based on the rival pleadings, documents and depositions, the Trial Court had framed the following issues:

- 1) Whether the plaintiff is entitled to partition and separate possession as prayed for?
- 2) To what relief the plaintiff is entitled to?

Thereafter, the Trial Court dismissed the suit without costs. Aggrieved over the same, the plaintiff had preferred A.S.(MD)No.151 of 2015 on the file of the Madurai Bench of Madras High Court and the said appeal was allowed and the suit was remanded back to the Trial Court for the limited purpose of impleading the daughters of the 1st defendant through his second wife Chinnaponnu and for ascertaining the shares of the parties in pursuance of the finding recorded by this Court and for passing preliminary decree. Further, the Court held that the findings



A.S.(MD)No.104 of 2024

with regard to the nature of the suit properties are set aside and the findings with regard to the marital status of Chinnaponnu was confirmed. After remand, the suit was heard on 02.11.2023 and the suit was decreed granting 1/4th share to the plaintiff and separate possession. Aggrieved over the same, the present appeal suit in A.S.(MD)No.104 of 2024 is filed raising various grounds.

6. Pending this appeal suit, the 1st defendant in the suit namely, Duraiarasan had filed a review application in Rev.AplC(MD)SR.No.5505 of 2024 along with a petition to condone the delay in C.M.P.(MD)No.2446 of 2024 to condone the delay of 164 days in filing the review application. The 1st defendant in the suit is seeking to review the judgment decree passed in A.S.(MD)No.151 of 2015, dated 16.03.2023. After the above said judgment, the Trial Court has already considered the case based on the remand order and passed a fresh judgement, dated 02.11.2023. Hence, the plaintiff vehemently opposed to entertain the review application and also submitted that no proper reasons are adduced for filing the review with a huge delay of 164 days.

7. After considering the rival submissions, the points for consideration in the present appeal suit are as follows:



A.S.(MD)No.104 of 2024

1) Whether the plaintiff can be considered as coparcener when the ancestral property was already partitioned among the coparcener? (The children for four generations can be considered as coparcener provided the ancestral property was not subjected to partition)

2) After partition, whether the Oppayee Ammal had inherited the property in her personal capacity after partition by her father-in-law Muthappa Udaiyar?

3) Whether the property in the hands of Oppayee Ammal ought to be considered as female succession and as per Section 14 of Hindu Succession Act 1956?

8. Even though delay was not condoned in the review application, this Court perused the grounds raised in the review application which are more or less similar to the grounds raised in A.S.(MD)No.104 of 2024. It is seen clear finding was rendered in the earlier appeal suit in A.S.(MD)No.151 of 2015, vide judgment, dated 16.03.2023. Hence, the present review application was filed to get over the finding rendered in the earlier judgment. Further the subsequent judgement dated 02.11.2023 which is impugned herein was passed, at this stage the review cannot be entertained. Therefore, the review is dismissed on the ground of delay as well as on merits.



A.S.(MD)No.104 of 2024

9. The primary contention of the 1st defendant Duraiarasan in the main appeal suit is that his father was very much alive when the partition was effected by Muthappa Udaiyar. However, his father's name Vaithiyalingam was not included in the partition, but his mother's name Oppayee Ammal was included and the properties were divided. Further the said Oppayee Ammal was in possession as female and she is entitled to the said property as full owner and not as a limited owner. After the demise of Oppayee Ammal in the year 2012, her legal heirs entered into partition and divided the properties equally among themselves. In such circumstances, the properties in the hands of 1st defendant Duraiarasan cannot be considered as ancestral but individual property. The said contention cannot be accepted since the reason for granting the properties to Oppayee Ammal was stated in the said partition itself. The father Vaithiyalingam was living a wayward life and in order to protect the properties, the share of the father Vaithiyalingam was given in the name of the mother Oppayee Ammal. In fact, Oppayee Ammal had inherited the share of her husband Vaidyalingam. Because her name was included in the partition, the same cannot be stated as the property inherited by the women. In fact, it is the father's property. Therefore, the point raised by the 1st defendant that the mother had inherited and it is a woman property cannot be accepted.



10. Further, at the time of the said partition, the four children born to Vaidyalingam and Oppayee Ammal were very much alive and they would form part of the coparcener. Hence, the Duraiarasan ought to be considered along with his two brothers and two sisters as coparcener along with their father Vaidyalingam. Subsequently, after the demise of Oppayee Ammal, the four children of Oppayee Ammal and Vaidyalingam were holding the properties as coparcener. Therefore, the claim of the Durairasan that the property ought to be considered as female succession is incorrect and the 1st and 2nd points for consideration is answered in favour of the plaintiff and against the defendant.

11. Further the four children of Oppayee Ammal and Vaidyalingam namely Thangavel, Balasubramanian and Vijaya and Bhanumathy had executed partition deed on 04.07.2012. On the date of partition in the year 2012, the plaintiff was born to 1st defendant Duraisaran and to his 1st wife Pachaiammal. In fact, the marriage with the 2nd wife was in the year 1989 and the children were born out of second wife in the years 1990 and 1997. The partition by the 1st defendant along with his brothers are in the year 2012. When all the children were born prior to 2012, they ought to be considered coparcener along with the father Duraiarasan.



A.S.(MD)No.104 of 2024

12. The entire family namely, the father Duraiarasan and the 2nd wife Chinnaponnu and the daughters born out of the said two marriages will constitute a joint family and all are entitled to the property. This is supported by the amendment in the Hindu Succession (Amendment) Act, 2005 and also the judgment rendered by the Hon'ble Supreme Court in the case of ***Vineetha Sharma Vs. Rakesh Sharma and others*** reported in **2020 (5) CTC 302**. Therefore, the subsequent amendment will give a right to the plaintiff to claim right over the suit property. Infact the judgment in ***Vineetha Sharma case*** states if there is any partition sale or dispossession of property prior to 2004, then the said sale, dispossess are saved. If there is no dispossession or sale and the property is available for partition, then the female legal heirs are entitled to the share. In such circumstances, the plaintiff is entitled to right over the property as a coparcener and she can claim partition.

13. All the points for consideration are answered in favour of the plaintiff and the plaintiff along with 1st defendant father and the daughters born out of 2nd marriage, i.e., all the four are entitled to 1/4th share in the suit properties. The appeal suit is dismissed confirming the judgment and decree, dated 02.11.2023, confirming that the parties are entitled to 1/4th share.



A.S.(MD)No.104 of 2024

14. No costs. Consequently, connected miscellaneous petition in C.M.P. (MD)No.5775 of 2024 is closed and the C.M.P.(MD)No.2446 of 2024 which was filed to condone the delay in filing the review application is also dismissed.

25.10.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes

Tmg

To

1. First Additional District Court (PCR),
Tiruchirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.104 of 2024

S.SRIMATHY, J.,

Tmg

Judgment made in

A.S.(MD)No.104 of 2024

25.10.2025