



A.S.(MD)No.70 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Order Reserved On	Order Pronounced On
09.12.2024	20.01.2025

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.70 of 2020
and
C.M.P.(MD)No.2491 of 2020

R.Meenakshi

...Appellant

--Vs--

1.S.Muthaiah (Died)
2.V.Janaki
3.Ambika

S.Jayaraman (Died)

4.Backiyam
5.Dhanapandi
6.Mathanraj
7.Saranya
8.M.Umarani
9.M.Ramesh
10.M.Suresh
11.M.Raji

...Respondents

(Respondents 8 to 11 are brought on record as LR's of the deceased 1st respondent, vide Court order, dated 05.04.2024, made in CMP(MD)Nos.187, 189 and 190 of 2024 in AS(MD)No.70 of 2020)



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PRAYER: Appeal Suit filed under Section 96 of Civil Procedure Code, 1908, against the Judgment and Decree in O.S.No.48 of 2013, dated 01.11.2019, on the file of the 1st Additional District Court, Madurai.

For Appellants : Mr.P.R.Prithivi Raj
R1 : Died
For R2 to R7 : No appearance
For R8 to R11 : M/s.R.Muthu Srinithi
for Mr.V.Ramakrishnan

JUDGMENT

The present appeal suit is filed by the plaintiff in the suit against the judgment and decree, dated 01.11.2019, passed in O.S.No.48 of 2013, on the file of the I Additional District Court, Madurai.

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

3. The plaintiff had filed the suit for partition to divide the property and allot 1/6th share to him and pass a preliminary decree and final decree with a consequential injunction restraining the defendants from selling the property.



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4. The brief facts are that the suit properties originally belong to one Ayyavu Ambalam who is the grandfather of the plaintiff and defendants 1 to 5. The said Ayyavu Ambalam had two sons namely, Somanathan and Salai @ Muthiah. The said Somanathan is the father of the plaintiff and defendants 1 to 5. After the death of grandfather Ayyavu Ambalam, both the sons orally partitioned the properties. The suit property is the ancestral property to the plaintiff and the defendants 1 to 5. There are other properties which were purchased out of the income of the joint family properties. The mother of the plaintiff namely, Panaiyammal died in the year 1991 and the father Somanathan died on 13.12.2004. The 1st defendant being the eldest male member was giving the share to the plaintiff and other sharers from the income earned through the joint family properties, hence the plaintiff and defendants were jointly enjoying the suit properties. The 1st defendant requested the other parties to effect partition and it was decided by the joint family members to divide after the Alagarkovil festival. Thereafter, the plaintiff demanded the 1st defendant to effect partition but he was evading to do so. The further submission of the plaintiff is that the father felt that the plaintiff is a lucky daughter, hence the father started to conduct a school in Melur Town in Survey No.176/7 in the name of the plaintiff “Sri Meenakshi Basic



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School". The school and other properties of the school stood in the name of the plaintiff wherein the plaintiff is also having 1/6th share. The plaintiff issued legal notice, dated 22.06.2012, for effecting partition. Thereafter, the plaintiff filed the suit for dividing the suit properties into 6 equal shares.

5. The 1st defendant has filed a written statement wherein it is stated that the plaintiff is not having any share in the suit properties. Several transactions have taken place in respect of the suit properties even during the lifetime of the father, which were suppressed by the plaintiff. The relationship between the parties is admitted. The oral partition between the said Somanathan and Solai @ Muthiah is denied. There was a registered partition deed, dated 03.03.1969, between them and the properties in the partition deed alone is ancestral properties. The 1st defendant was assisting his father in maintaining the properties and school and the 1st defendant had also attested the partition deed. The said Somanathan was initially working as a Teacher in Sri Sundareshwara Vidhayalaya School in Nondikoivlpatti Village for a monthly salary of Rs.36/-. With the joint effort of the 1st defendant and father Somanathan, the properties were acquired from the correspondent of the school namely one Ramamoorthy, who had expressed difficulty in running the school and he handed over the management of the school



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to the said Somanathan in the year 1958 and the name was changed as “Sri Meenakshi Basic School”. The 1st defendant underwent Teacher Training Course and after completion, he was inducted as teacher in the year 1963 in the said school. Subsequently, the school was developed as “Elementary School” and as a “Middle School” and now it has become “High School”. Neither the plaintiff nor the other defendants had any role in the development of the school. The death of Panaiyammal in the year 1991 and Somanathan in the year 2004 are admitted. The joint possession of the plaintiff and the defendants in the suit properties are denied by the 1st defendant. The said School was founded by one Natesan Iyer working as an Assistant. The name of the school was changed as Meenakshi Basic School not because the name of the plaintiff is Meenakshi. The parents of the 1st defendant are ardent devotees of the Goddess Meenakshi Amman. After acquiring the management of the school, the father became the Headmaster of the School and the 1st defendant took part in the development of the school as the eldest son. As per the direction of the father, the 1st defendant discontinued his education with 11th standard and underwent Teacher Training Course to take care of the school. The 1st defendant joined the school in 1963 as Assistant. As per the suggestion made by the 1st defendant, there was a registered partition deed between the said Salai @ Muthiah and Somanthan Ambalam wherein the 1st defendant has attested.



Item Nos.15 to 18 were purchased in the name of the mother Panaiyammal. In the said properties initially thatched and tiled structures were put up for running the school and the school was shifted in the year 1967 and 1968 to those properties. Some properties were purchased and the school was also expanded. There were no efforts on the part of the plaintiff for the development of the school. Further, the plaintiff was married in the year 1967. Substantial presents were given to her and marriage was conducted by spending huge money. Since on the date of marriage, the plaintiff was residing with her husband in Kovilpatti village which is 25 kilometers away from the suit village. Likewise, the defendants 2, 3 and 5 were given in marriage prior to 1984 itself. Hence, the concept of joint family is only with the father and defendants 1 and 4 and it would not include the plaintiff and the defendants 2, 3 and 5 who are daughters. After the retirement of the father, the mother Panaiyammal decided to divide the properties and the properties were divided by means of registered partition deed, dated 12.09.1984, wherein the suit Item Nos.1 and 2 were allotted to the parents under A schedule with life estate and after the death, the 1st defendant has to take item No.1 and the 4th defendant has to take item No.2 as their absolute properties. The item Nos.3 to 18, 20 and 24 have been allotted to the 1st defendant under B schedule in the above partition deed. The suit item No.19, 25 to 36 were allotted to 4th defendant under C schedule.



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After partition, the shares are in possession of the respective allottees. In fact, the partition deed was duly attested by the plaintiff, which is suppressed in the plaint.

By considering the efforts of the 1st defendant in the school, the properties in which the school is running were allotted to the 1st defendant in 1985 and 1st defendant is in exclusive management of the school. The 1st defendant issued reply to the legal notice and the reply is suppressed by the plaintiff.

6. The defendant further submitted that the father consented to sell the item No.2 to meet the urgent need and expenditure of the 4th defendant. The 4th defendant sold item Nos.2, 26 to 32 and 34 in favour of one Dhanam by virtue of sale deed, dated 26.07.1995 and the said Dhanam is the wife of the 1st defendant. In the said sale deed, the father Somanathan has attested. Further, the 4th defendant sold the item No.25 in favour of one Nallu on 25.08.1987. The said fact is suppressed by the plaintiff. Further, the 1st defendant sold item No.8 to one Chinniah on 17.07.1989, item Nos.3 and 4 in favour of one Selvam on 29.09.2004 and the transaction and the transferees are well known to the plaintiff but the plaintiff has filed the suit as if he is in joint possession of the same. The daughter of the 4th defendant namely, Saranya challenged the sale deed, dated 26.07.1995, in favour Dhanam in O.S.No.181 of 2008 on the file of Fast Track Court No.2,



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Madurai and a compromise decree was passed on 29.11.2011, which is suppressed by the plaintiff. The 1st defendant and his wife had executed registered settlement deed, dated 01.12.2008, in favour of their sons in respect of the properties in the partition deed, dated 12.09.1984. The management of the school alone was retained by the 1st defendant. But the possession of the properties is with his sons namely, Ramesh and Suresh. In fact, the revenue records had been mutated in their favour. The substantial portion of the suit properties has been sold to various persons prior to filing of suit. Therefore, the joint possession of the property is totally false and the plaintiff was not in joint possession. The valuation of suit is improper and adequate Court fees is not paid. The said Ramesh and Suresh are necessary parties. Hence, the suit is bad for non-joinder of necessary parties. Since already partition was executed in 1984, the amended provisions of Hindu Succession Act will not be applicable. Hence, the plaintiff is not entitled to any share and the 1st defendant prayed to dismiss the suit.

7. The 3rd defendant has filed a separate written statement more or less supporting the case of the 1st defendant and the defendants 4 and 5 have adopted the written statement filed by the 3rd defendant, vide memo, dated 24.10.2019. On the side of plaintiff, PW1 was examined and Exhibits A1 to A5 were marked. On



the side of defendants, DW1 to DW3 were examined and Exhibits B1 to B32, X1 to X8 were marked. The Trial Court has framed the following issues:

1. Whether the suit properties are available for partition?
2. Whether the suit properties were partitioned by a registered partition deed on 12.09.1984?
3. Whether the court fee paid is correct?
4. Whether the suit is bad or non-joinder of necessary parties?
5. Whether the plaintiff is entitled to the reliefs as prayed for?
6. To what other relief?

8. After considering the above issues, the Trial Court has dismissed the suit with costs. Aggrieved over the same, the present appeal is preferred.

9. The points for consideration framed by this Court are as follows:

- i. Whether the plaintiff is entitled to partition, when the plaintiff being the female heir?
- ii. Whether the plaintiff is entitled to get the benefit under the amended provisions of Hindu Succession Act, 2005?
- iii. When there is a registered partition dated 12.09.1984 between the father Somanathan, mother Pannaiammal, the 1st defendant and 4th defendant under Ex.B6, whether the plaintiff can claim against the said registered partition deed?



iv. Whether the said partition dated 12.09.1984 was acted on?

10. The defendants had categorically stated that there was a registered partition deed dated 12.09.1984 marked as Ex.B6, which was executed among father Somanathan, mother Pannaiammal, the 1st defendant and 4th defendant. The plaintiff had admitted that the said partition deed was executed and she was one of the attestors. But the contention of the plaintiff is that merely being attestors, it is not conclusive proof that the plaintiff is aware of the contents in the partition. The said contention of the plaintiff cannot be accepted since the plaintiff may not be aware of the contents or the details stated in the partition deed, but she is definitely aware of the fact the said deed is for partition and the properties were subjected to division. Either she ought to have objected or she ought to have demanded to allot the shares to the three daughters. Further the said partition deed was executed in the year 1984, then the plaintiff ought to have filed the suit for partition during 1984 itself. Furthermore, the plaintiff failed to demand partition during the life time of the father until 2004 and had filed the suit only on 20.03.2013.

11. It is seen after the partition the said two sons had dealt with the properties. Especially the 1st defendant has dealt with the properties. Some of



them were sold, some of them were settled in the name of the 1st defendant's sons.

Likewise, the 4th defendant who is the brother of the 1st defendant and another male member of the joint family had inherited the properties and have also dealt with the properties. Therefore, the contention of the plaintiff that the partition deed dated 12.09.1984 was not acted on is incorrect. When the 1st defendant and the 4th defendant, who are the beneficiaries of the said partition deed, had dealt with the properties by selling, settling, encumbering the allotted properties, the same would prove the parties have dealt with the properties.

12. The subsequent sale, partition or testamentary disposition are saved by the Hindu Succession Act, 2005, wherein the said proviso states that the said sale would not invalidate by the amendment and the same would include partition or testamentary disposition also. The relevant provision is extracted hereunder:

“6. Devolution of interest in coparcenary property. —

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had



if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.”

13. The said amendment was challenged and the Hon'ble Supreme Court in the case of ***Vineeta Sharma Vs. Rakesh Sharma and others*** reported in **(2020) 9 Supreme Court Cases 1** had held that any sale, partition or testamentary disposition prior to 20.12.2004 would not be affected by the Amendment Act, 2005. The relevant portion is extracted hereunder:

“137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1950 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the



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disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December. 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act. 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognized mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”



14. Admittedly in the present case, the partition deed dated 12.09.1984 is prior to cut off date dated 20.12.2004. Therefore, by applying the provisions and the judgment of Vineeta Sharma's case, this Court is of the considered opinion that the plaintiff is not entitled to partition. And the Trial Court had rightly held that the plaintiff is not entitled to partition.

15. Further, it is seen that the plaintiff was married in the year 1967 and all other daughters were also married prior to 1989. It is a specific contention of the 1st defendant that all the daughters were sufficiently presented with gifts and sridhana which is not being denied by the plaintiff. Infact the other daughters also admitted the said fact of and are sailing along with the defendants. Therefore, this Court is of the considered opinion that the plaintiff and the other daughters / defendants are not entitled to any partition.

16. The four points for consideration are answered in favour of the 1st defendant and 4th defendant and against the plaintiff and other daughters. Therefore, for the reasons stated supra, this Court is of the considered opinion that the plaintiff / appellant herein is not entitled to partition. The Trial Court has rightly declined partition and dismissed the suit. Therefore, the grounds raised by



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the appellant are not legally sustainable. Hence, the appeal suit is dismissed confirming the judgment and decree rendered by the Trial Court. No costs. Consequently, connected miscellaneous petition is closed.

20.01.2025

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

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To

1. 1st Additional District Court, Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.,

Tmg

Judgment made in

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