

S.A.(MD)No.47 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.01.2025

PRONOUNCED ON: 16.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD)No.47 of 2019
and
C.M.P.(MD)No.1835 of 2019**

1.V.Ramamurthi
2.V.Gomathiswaran
3.V.Narayanan
4.V.Neelambal
5.V.Angayarkanni
6.V.Shanthi

: Appellants/Respondents 4 to 9 /
Defendants 4 to 9

Vs.

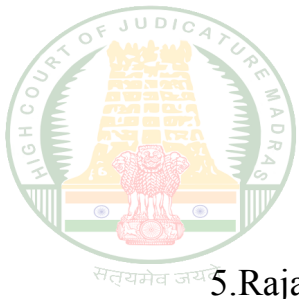
1.Sivakamiammal(died) : 1st Respondent / Appellant / Plaintiff

2.Dhandavarayapillai (died)
(Memo dated 19.03.2024 in USR No.11199
is recorded as R.2 died and R.3 and R.4
who re already on record are recorded
as LR's of the deceased R2, vide Court
order dated 20.03.2024)

3.D.Neelaveni

4.Balasubramanian : Respondents 2 to 4/Respondents 1 to 3/
Defendants 1 to 3

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5.Rajalakshmi

6.Saroja

7.M.Maheswari : Respondents 5 to 7

(Respondents 5 to 7 are brought
on record as LR's of the deceased
1st respondent vide court order dated
19.01.2024 made in C.M.P.(MD)Nos.
355, 357 and 358 of 2020)

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 05.11.2016 made in A.S.No.45 of 2014, on the file of the Court of the Principal District Judge, Tiruchirappalli reversing the judgment and decree dated 24.07.2014 in O.S.No.54 of 2007, on the file of the Court of II Additional Subordinate Judge, Tiruchirappalli.

For Appellants : Mrs.J.Maria Roseline

For Respondents :Mr.R.Baskaran
Senior Counsel
for Mr.M.Siddharthan
for R.3 to R.7
: R.1 died steps taken
: R.2 died memo filed and
recorded



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JUDGMENT

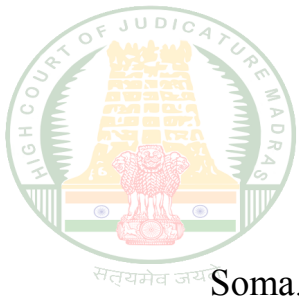
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The Second Appeal is directed against the judgment and decree made in A.S.No.45 of 2014, dated 05.11.2016, on the file of the Principal District Court, Trichirappalli, reversing the judgment and decree passed in O.S.No.54 of 2007, dated 24.07.2014, on the file of II Additional Subordinate Court, Trichirappalli.

2. The appellants are the defendants 4 to 9 and the first respondent as plaintiff filed the suit claiming partition and allotment of 1/3rd share in the suit property.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

4. The case of the plaintiff is that her grandfather – Veerappillai was the absolute owner of the suit property and after his demise, his son Somasundaram Pillai succeeded to the suit property and was enjoying the same, that the said Somasundaram Pillai died in the year 1949 leaving behind two sons namely the first defendant – Dhandavarayapillai and

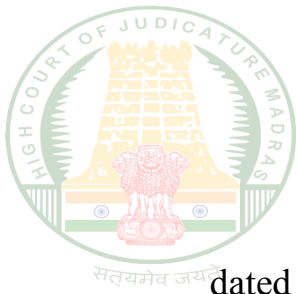


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Soma.Veerappan – father of the defendants 4 to 9 and a daughter - Sivakami Ammal – plaintiff herein, that the plaintiff got married on 11.02.1955 and after her marriage, she has been residing in one portion of the suit property and also doing her profession as Siddha Doctor, that the defendants 4 to 9 are also in possession and enjoyment of the portion of the suit property, that after the death of their father Somasundaram Pillai, the plaintiff requested her brothers to partition the suit property and both of them promised that the property will be partitioned with the help of the elders, that after the death of her brother Soma.Veerappan, his legal heirs – the defendants 4 to 9 do not keep the promise and they have attempted to alienate the property and also to evict the plaintiff and the defendants 4 to 9 have also refused to share the profits from the suit property and that therefore, the plaintiff was constrained to file the above suit for partition.

5. The defendants 4 to 9 have filed the written statement admitting the relationship between the parties and also the plaint averments that the suit property came to be owned by Somasundaram Pillai and his death in the year 1949. The defence of the defendants 4 to 9 is that after the death of Somasundaram Pillai, the first defendant had executed a release deed



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dated 15.06.1951 in favour of his brother Soma.Veerappan – father of the defendants 4 to 9, that the said Soma.Veerappan, in pursuance of the release deed, had repaid the mortgage loan and redeemed the property, that he had taken care of her mother and conducted all her last rites properly, that he conducted the marriage of their sister – the plaintiff by giving all sridhanas and thereby the said Soma.Veerappan had complied with all the conditions embodied in the release deed, that Soma.Veerappan had thus become the owner of the property and had been paying the taxes therefor, that the said Soma.Veerappan along with his mother had executed a mortgage deed dated 26.01.1956 in favour of one Paripoornathammal and since the first defendant had already released his rights in the suit property, he does not stand in the execution of the mortgage deed, that the mortgage loan was obtained only for meeting out the marriage expenses of the plaintiff, that the plaintiff has been permitting to reside in a portion of the suit property considering the relationship and also the fact that she has lost her husband, that since the plaintiff got married in 1955 itself, she cannot claim any right or share in the suit property, that the cause of action alleged in the plaint are false and frivolous and that therefore, the suit is liable to be dismissed.



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6. The learned trial Judge, upon considering the pleadings of both parties, has framed the following issues:

(1) Whether the plaintiff is entitled to get preliminary decree for partition of her 1/3rd share in the suit property?

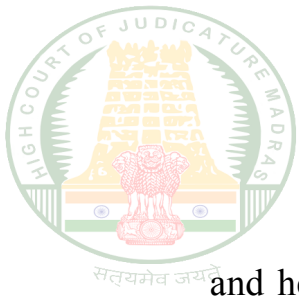
(2) Whether the plaintiff is entitled to get past and future mesne profits?

(3) Is it true that the first defendant had executed a release deed in respect of the suit property?

(4) Is it true that the plaintiff was permitted to reside in the suit property?

(5) To what other relief, the plaintiff is entitled to?

7. During trial, the plaintiff examined herself as P.W.1 and exhibited 60 documents as Exs.A.1 to A.60. The defendants 1 to 3 remained exparte. On the side of the defendants 4 to 9, the seventh defendant came to be examined as D.W.1 and 6 documents came to be exhibited as Exs.B.1 to B.6. The learned trial Judge, considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed the judgment dated 24.07.2014, holding that the suit property is the ancestral property of Somasundaram Pillai



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and hence, the plaintiff is entitled to get 1/9th share in the suit property and granted preliminary decree declaring that the plaintiff is entitled to 1/9th share in the suit property. Challenging the said judgment and decree, the plaintiff preferred an appeal in A.S.No.45 of 2014 and the learned Principal District Judge, upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree dated 05.11.2016, holding that the suit property is the absolute and separate property of Somasundaram Pillai and as such, his sons and daughters are equally entitled to get 1/3rd share, allowed the appeal and granted a preliminary decree declaring that the plaintiff is entitled to 1/3rd share in the suit property. Aggrieved by the impugned judgment and decree, the defendants 4 to 9 have preferred the present Second Appeal.

8. At the time of admission, the following Substantial Questions of Law came to be formulated:

“1) Whether the judgment and decree of the first appellate Court in applying Section 8 of the Hindu Succession Act to the succession that opened in the year 1949 legally correct?



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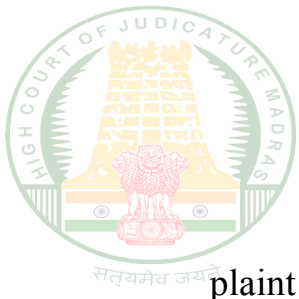
2) Whether Section 8 of the Hindu Succession Act would have retrospective operation to apply to a succession that opened in the year 1949?

3) Whether the judgment of the first appellate Court in rendering a finding with regard to the character of the property in the hands of (Late) Somasundaram Pillai without framing an issue in that regard is in consonance with the provisions of the Civil Procedure Code?

4) Whether the judgment of the Supreme Court in Eramma Vs. Veerupana and others reported in AIR (1966) SC 1879 would apply to the facts of the present case?

9. The learned Counsel for the appellants/defendants 4 to 9 would submit that the first appellate Court had recorded that both the plaintiff and the defendants had not pleaded in their pleadings that the suit property is the ancestral property and had therefore proceeded to assume that the suit property is the absolute property in the hands of Somasundaram Pillai, that the plaintiff herself in paragraphs 4 and 5 of her plaint had admitted that the suit property is the ancestral property in the hands of Somasundaram Pillai and that the said averments in the

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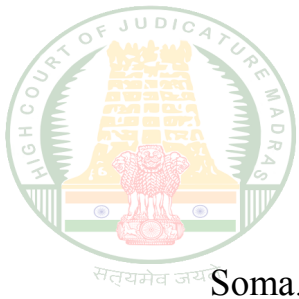
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plaint has been admitted by the defendants 4 to 9 in their written statement and hence, the finding of the first appellate Court that the parties had not pleaded that the suit property is the ancestral property is erroneous and contrary to the pleadings of both sides. He would further submit that admittedly succession opened in 1949 when Somasundaram Pillai died and hence, neither the provisions of the amended Section 6 nor the provision of Section 8 of the Hindu Succession Act would apply to the succession that opened in the year 1949, that as per the Old Mitakshara Law, the plaintiff being a daughter cannot be considered as a coparcener and as such she will not inherit the share of her father and the property would devolve by survivorship and not by succession and that therefore, the plaintiff is not entitled to any share in the suit property and as such, the judgment of the first appellate Court is liable to be interfered with.

10. The learned Counsel for the respondents would submit that even in the Second Appeal, the defendants have not taken a stand that the suit property is the ancestral property, that they have not taken any steps to plead and prove that it is the ancestral property, that the defendants have not pleaded as to whether the first defendant or his brother

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Soma.Veerappan had born prior to the succession / inheritance of the property by Somasundaram Pillai and there is no evidence or pleadings to that effect, that the plaintiff has pleaded that the property is the absolute property of the plaintiff's father Somasundaram Pillai, as he had succeeded to his father Veerappa Pillai, who was the absolute owner of the same, that the defendants in the written statement have admitted the plaint averments to the said effect and that since the suit property is the absolute property of Somasundaram Pillai by succession / inheritance, all his three legal heirs – the plaintiff, the first defendant and the father of the defendants 4 to 9 would get 1/3 shares each by inheritance. He would further submit that the admissions made in paragraphs 5 to 7 of the written statement of the defendants is clear cut, accurate and specific and as such, the same has to be considered as an admission under Section 17 of the Indian Evidence Act and that therefore, there is nothing to interfere with the reasoned judgment passed by the first appellate Court.

11. It is pertinent to note that, in the plaint paragraph No.3, it has been alleged that the suit property originally belonged to Somasundaram Pillai and in paragraph No.4, it has been stated that the grandfather of the plaintiff Veerappa Pillai was the absolute owner of the suit property. The

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defendants in their written statement paragraph No.3, have admitted that the suit property belonged to Somasundaram Pillai and the relevant portion is extracted hereunder:

“தாவா சொத்து ுசாமகந்தரம் பிள்ளைக்கு சொந்தம்.”

In paragraph No.7, they have stated that the defendants are admitting the plaint averments shown in paragraph No.5 and that after the death of Verappa Pillai, Somasundaram Pillai had been in possession and enjoyment of the property by paying taxes. As rightly contended by the learned Counsel for the plaintiff, the defendants in the written statement have nowhere specifically whispered that the suit property is the ancestral property in the hands of Somasundaram Pillai. It is not the specific case of the defendants that Somasundaram Pillai had obtained the suit property as ancestral property and had enjoyed the property along with his sons as ancestral joint family property.

12. As rightly contended by the learned Counsel for the plaintiff, though the defendants have referred the plaint paragraph No.5 and alleged that after the death of Veerappa Pillai, Somasundaram Pillai had been in possession and enjoyment of the suit property, it was nowhere

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whispered that it is ancestral / coparcenary property. Moreover, the trial Court has not framed any issue with regard to the nature of the property, but on the other hand, proceeded to give a finding that it is the ancestral property in the hands of Somasundaram Pillai.

13. As rightly observed by the first appellate Court, in the absence of any pleadings or any specific issue or any evidence, the finding of the trial Court that the suit property is ancestral in character cannot be sustained. As already pointed out, the first appellate Court by observing that the suit property is the absolute and separate property of Somasundaram Pillai, has given a finding that all the three legal heirs of Somasundaram Pillai have become entitled to 1/3rd share each and on that basis granted the preliminary decree. The main defence of the defendants 4 to 9 is that since the plaintiff got married in 1955 and the succession got opened in 1949 on the death of Somasundaram, the plaintiff being a daughter is not at all entitled to get any share in the suit property.

14. Considering the above, the main point to be decided is that since Somasundaram Pillai had died in the year 1949, as per Old Hindu

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Law, whether the plaintiff – daughter is entitled to get a share in her father's property.

15. The learned Counsel for the defendants 4 to 9 would rely on a decision of the Honble Supreme Court in ***Eramma Vs. Veerupana and others*** reported in ***AIR 1966 SC 1879*** and the relevant passages are extracted hereunder:

“4. There is nothing in the language of this section to suggest that it has retrospective operation. The words "The property of a male Hindu dying intestate" and the words "shall devolve" occurring in the section make it very clear that the property whose devolution is provided for by that section must be the property of a person who dies after the commencement of the [Hindu Succession Act](#). Reference may be made, in this connection, to [s. 6](#) of the Act which states :

"6. When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female



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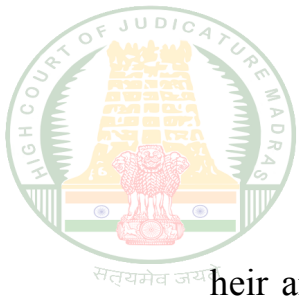


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relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession as the case may be, under this Act and not by survivorship.

5. It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. It is manifest that the language of s. 8 must be construed in the context of s. 6 of the Act. We accordingly hold that the provisions of s. 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force i.e., where succession opened before the Act, s. 8 of the Act will have no application.”

16. The learned Counsel would rely on the decision of the Hon'ble Supreme Court in ***Kasabai Tukaram Karvar and Others Vs. Nivruti (dead) through legal heirs and Others*** reported in ***2022(7) Supreme 1026***, wherein there was a claim with respect to the property of the deceased father between his daughters and adopted son and the Hon'ble Supreme Court by applying the doctrine of “relation-back” has held that since the adoption was admitted by either side, the adopted son would become the sole coparcener and that the daughter would not be a legal



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heir and as such, would not be entitled to share along with the son and the relevant passages are extracted hereunder:

“11. In this case, there is no dispute about the adoption or about the validity of the adoption. It is, in fact, the case of the plaintiff that the first defendant was the adopted son. On the said basis, the further conclusion is inevitable that on applying the doctrine of relation back, it would be deemed that as on the date of the death of their father, the first defendant was very much notionally alive and he would become the sole coparcener. It is indisputable that there can be no vacuum or break in vesting of title on the death of a person. We must further bear in mind that this is a case where succession opened up admittedly prior to the [Hindu Succession Act, 1956](#) coming into force.

12. The learned counsel for the plaintiff, no doubt, relied upon Section-72 of Part-I, Chapter VI-Order of Succession to Males in the Bombay State in Mulla on Hindu Law, 23rd Edition which is reproduced below:-

*72. Order of succession in cases governed by Mitakshara-
The following is the order of succession to males among sapindas in the Bombay State in cases governed by Mitakshara:*

(1-6) Son, son's son (whose father is dead) and son's son's son (whose father and grandfather are both dead). These inherit simultaneously. [Under Act XVIII of 1937](#), the widow,



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the predeceased son's widow, and the widow of a predeceased son of a predeceased son, are also recognised as heirs.

xxxxxx

(7) Daughter

xxxxxx

In the Bombay State, daughter do not take as joint tenants with benefit of survivorship, but they take as tenants-in-common. Further, a daughter in that State does not take a limited estate in her father's property, but takes the property absolutely. Thus, if Hindu governed by the Bombay School dies leaving two daughters, each daughter takes an absolute interest in a moiety of her father's estate, and holds it as her separate property, and on her death her share will pass to her own heirs as her stridhana.

xxxxxx

13. There are other heirs but they are not being referred to. We must, in the facts of this case, proceed on the basis that the adopted son (first defendant), being a son on applying the doctrine of relation back, would exclude the daughter. This result flows from the statement that the persons in serial Nos.1 to 6, namely, son, son's son (whose father is dead) and son's son's son (whose father and grandfather are both dead) inherit simultaneously.



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14. We would hold that if there is a son, the daughter would not be entitled to share along with the son. The daughter, in other words, would not be a legal heir who would take simultaneously with the son. The example which, in fact, has been set out and which we have extracted would only be applicable in a situation where there were only daughters and no son.”

17. It is pertinent to mention that before the enactment of Hindu Succession Act, 1956, the daughters had no inheritance rights to ancestral property or the separate property of their father and only the sons could claim such a right. The Hindu Succession Act 1956 brought about the significant changes granting daughters equal rights to inherit in the self-acquired property of the father along with sons and through amendment in 2005, the daughters are also made coparceners giving them equal rights and liabilities in the ancestral property. But in the case on hand, as already pointed out, since the father Somasundaram Pillai died in the year 1949, the question of invoking the Hindu Succession Act 1956 or Amendment Act 2005 does not arise and Old Hindu Law alone can be made applicable.



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18. A Division Bench of Bombay High Court in ***Radhabai Balasaheb Shirke, since deceased, through her heirs & L.Rs. Vs Keshav Ramchandra Jadhav and others*** reported in ***2024 Live Law Bombay 584***, when a reference was made as to whether a daughter could acquire any right either limited or absolute by inheritance prior to coming into force of the Hindu Succession Act 1956 in the property of her deceased father who died prior to 1956 leaving behind him in addition to such a daughter a widow as then, has held that a daughter will not have any limit or absolute right of inheritance in the property of his father if he has died prior to the enforcement of the Hindu Succession Act 1956 and the relevant passage is extracted hereunder:

"Under Hindu customs, a daughter when born, on reaching marriageable age is married and sent to her in-laws house. Therefore, a daughter was never considered as a part of the family in the era when 1937 Act was in operation. It is also important to note that the 1937 Act is a Pre-Independence enactment. During that period, a widow had to be protected on the death of her husband since she could not go back to her parents house and at the same time, her husband could not take care of her since he was no more. With a view to get over such a situation that limited rights were conferred on a widow by the Act of 1937. A daughter was however excluded



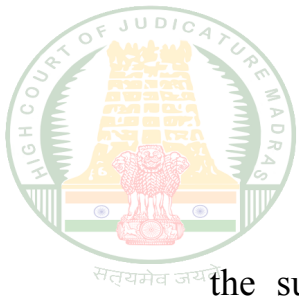
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from claiming any inheritance right prior to the enactment of the Act of 1956,"

19. In the case on hand also, as already pointed out, Somasundaram Pillai died in the year 1949 and as such, the plaintiff being a daughter will not have any right of inheritance in the suit property, but the learned appellate Judge, without considering the legal position in proper perspective and without applying to the legal position existed prior to the passing of Hindu Succession Act 1956 and the applicability of the Old Hindu Law, has rendered a finding that the plaintiff is also entitled to get a share along with her brother. Hence, this Court has no hesitation to hold that the above finding of the first appellate Court cannot legally be sustained and the same is liable to be set aside. It is pertinent to note that since the succession opened prior to the passing of 1956 Act, the question whether the property is ancestral in character or self acquired and separate property in the hands of the father, is irrelevant.

20. Given the succession opened prior to the Hindu Succession Act 1956, the plaintiff's claim to inheritance is barred, regardless of whether



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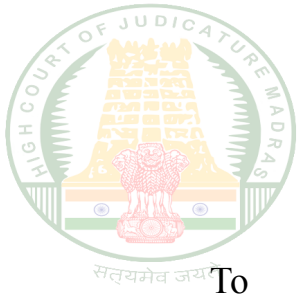
the suit property is ancestral or self-acquired. As the nature of the property doesn't affect the outcome, this Court concludes that the Second Appeal is liable to be allowed. Considering the circumstances and the parties' relationship, this court decides that both parties are to be directed to bear their own costs.

21. In the result, the Second Appeal is allowed and the judgment and decree dated 05.11.2016 made in A.S.No.45 of 2014, on the file of the Court of the Principal District Judge, Tiruchirappalli is set aside and the suit in O.S.No.54 of 2007 stands dismissed. Both parties are directed to bear their own costs.

16.04.2025

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

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1. The Principal District Court, Tiruchirappalli.
2. II Additional Subordinate Court, Tiruchirappalli.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.47 of 2019

16.04.2025