



A.S.(MD)No.96 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

A.S.(MD)No.96 of 2021

1.A.Pushpa

2.A.Sakunthala

... Appellants

Vs.

1.A.Ramachandran

2.A.Murugiah,(Died)

A.Sankareswari (Died)

3.S.Karunakaran

R.Sankaran (Died)

4.M.Ganesh Kumar

5.M.Senthil Meenakshi

6.M.Senthilkumar

7.Muthupandi

... Respondents

*(R4 to R7 are brought on record as legal heirs of
the deceased 2nd respondent vide order dated
20.10.2023 made in C.M.P.(MD)No.7522 of 2021
in A.S.(MD)No.96 of 2021 by TKRJ & PBBJ)*



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Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 30.07.2020 passed in O.S.No.47 of 2014 on the file of the Principal District Judge, Theni, by allowing this appeal suit and decree the suit.

For Appellants : Mr.C.Ganesh Kumar

For Respondents : Mr.K.K.Senthil for R1.
Mr.S.Vellaichamy for R6.

JUDGMENT

This appeal arises out of a suit for partition. The suit schedule properties belonged to Arasappa Thevar. He married one Dhanuskodi Ammal. Through the said wedlock, five children were born namely, A.Pushpa, A.Sakunthala, A.Ramachandran, A.Murugaiah and A.Sankareswari. Arasappa Thevar died on 09.12.1965 and his wife / Dhanuskodi Ammal passed away on 01.03.1989. Sakunthala got married in the year 1974 itself and Pushpa got married on 12.03.1984.



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2. There was a partition of the suit schedule properties on 19.04.1991. It was reduced into writing and registered (Ex.A6). While so, Pushpa and Sakunthala filed O.S.No.47 of 2014 on the file of the Principal District Court, Theni seeking partition of their 2/5th share in the suit properties. Pushpa examined herself as P.W.1 and Exs.A1 to A8 were marked. Ramachandran examined himself as D.W.1 and Exs.B1 to 23 were marked. After considering the evidence on record, the learned trial Judge vide judgment and decree dated 30.07.2020 dismissed the suit. Challenging the same, this appeal came to be filed.

3. During the pendency of the appeal, Murugaiah passed away and his legal heirs have been brought on record. During the trial, Sankareswari passed and her legal heirs were also brought on record.

4. The only question that calls for consideration is whether the impugned judgment and decree dismissing the partition suit deserves to be interfered with.



5.The plaintiffs obviously felt inspired to file the partition suit in view of the amendment made to Section 6 of the Hindu Succession Act, 1956. The said section reads as under:-

“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.

(2)Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.



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(3)Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a)the daughter is allotted the same share as is allotted to a son;

(b)the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c)the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation. —For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4)After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a



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son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted. Explanation. —For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation. —For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.”



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6. In the said section itself, an exception has been carved out. If the family properties had been partitioned prior to 20.12.2004, partition that had already taken place cannot be reopened. In the case on hand, the suit schedule properties had been partitioned among the brothers in the year 1991 itself.

7. It is also seen that the said partition was also acted upon and mutations had also been effected. After the partition that took place between the brothers on 19.04.1991, there was a further partition that took place on 17.06.1992 involving the sons of the two brothers also. Subsequently, there were also alienations. All these documents have been brought on record.

8. It is seen that the brothers / their alinees have been enjoying the suit schedule properties as their own properties from 1991 onwards. The suit itself came to be filed only in the year 2014 ie., after lapse of more than 23 years. That is why, the Court below came to the conclusion that the suit is barred by limitation. The decision of the Court below that the



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plaintiffs are not entitled to the relief of partition and separation possession is justified. Interference is not warranted and the appeal is dismissed. No costs.

(G.R.S. J.) & (M.J.R. J.)
25.03.2025

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

The Principal District Court,
Theni.

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The Section Officer,
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Madurai Bench of Madras High Court,
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