



A.S.(MD)No.84 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 18.02.2025

CORAM

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

**A.S.(MD)No.84 of 2015
and
M.P.(MD)No.1 of 2015**

V.Nagarajan

... Appellant /
3rd Defendant

Vs.

1.Selvameenal

2.S.Panju @ Panchavarnam

... Respondents /
Plaintiffs 1 & 2

3.S.Murugan

4.S.Ponniah

5.M.Ganesan

4.S.Kaladevi

... Respondents /
Defendants 1,2,4 & 5



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Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code to set aside the judgment and decree dated 04.09.2013 passed in O.S.No. 203 of 2008 on the file of IV Additional District Judge, Madurai by allowing this appeal.

For Appellant : Mr.K.Muraleedharan

For Respondents : Mr.Suriyanarayanan for R.3

No Appearance for R.4 & R.5

JUDGMENT

This appeal arises out of a partition decree. The scope of this appeal is confined only to suit B Schedule. It belonged to one Chinnan Servai. The said Chinnan Servai was none other than the grand father of the plaintiffs and the first defendant. The plaintiffs and the first defendant are the children of one Subramanian Servai. Chinnan Servai had executed Ex.A1 and Ex.A2 settlement deeds dated 10.12.1979 and 17.12.1979 granting life estate for the settlees (plaintiffs and first defendant) and further directing that after their life time, it will go absolutely to their children.



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2.Chinnan Servai passed away. Thereafter, the plaintiffs filed O.S.No.203 of 2008 on the file of IV Additional District Judge, Madurai claiming their share.

3.The first plaintiff examined herself as PW1 and marked Ex.A1 to Ex.A11. The first defendant examined himself as DW2 and the appellant herein examined himself as DW1. Ex.B1 to Ex.B3 were marked. After consideration of the evidence on record, the trial Court passed preliminary decree holding that the plaintiffs are entitled to 2/3rd share in respect of A and B schedule properties and ½ share in the C schedule property. Aggrieved by the same, this appeal has been filed.

4.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal and submitted that the partition suit itself is not maintainable since the plaintiffs are only life estate holders.

5.Though the plaintiffs have been served and their names are printed in the cause list, they have not chosen to enter appearance.



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6.We carefully considered the rival contentions advanced by the learned counsel for the appellant and also went through the evidence on record as well as the pleadings. Two points arise for determination:

i)Whether the suit for partition by life estate holder is maintainable?

ii)Whether this appeal is competent?

7.We carefully went through the terms of the settlement deeds Ex.A1 and Ex.A2 executed by Chinnan Servai in favour of the plaintiffs and the first defendant. It contains a categorical direction that the settlees are not entitled to alienate or encumber the settled properties. In fact, the settlees were to enjoy only life estate and after their demise, the properties were to go absolutely to their legal heirs.

8.However, the first defendant Murugan in clear breach of the said directive set out in Ex.A1 / A2 had sold two items of suit B Schedule property in favour of the appellant. The appellant's vendor had only a joint life estate. He was forbidden by the terms of settlement to alienate or encumber the settled property. When the settlee had only a joint life interest, he could not have dealt with the property as if he is its absolute



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owner. We are therefore of the view that this appeal by the purchaser is not competent.

9.If life interest is conferred jointly and difference of opinion arises between them in the matter of actual enjoyment of the settled property, it can be resolved only by filing a partition suit. Section 9 of CPC states that all suits of civil nature can be tried provided their cognisance is not expressly or impliedly barred. A partition suit is a suit of civil nature. Unless there is any express or implied bar, a life estate holder can seek partition provided the other conditions for filing a partition suit are met. Our attention has not been drawn to any case law indicating that a life estate holder is not entitled to the relief of partition. Admittedly, in this case, joint life estate was conferred on the plaintiffs and the first defendant. Difficulties arose in the matter of joint enjoyment. The first defendant had obviously taken an upper hand. He sought to exclude the plaintiffs. Therefore, the plaintiffs had cause of action. Since there is no prohibition against filing of the partition suit, the Court below rightly entertained the suit for partition. The decree passed at the instance of the life estate holders against the remaining life estate holder will hold good



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till the demise of all of them. After the demise of all the three life estate holders, their heirs will get right in the suit schedule properties as per the settlement deeds.

10.We do not find any ground to interfere with the preliminary decree passed by the court below. This appeal is without any merit. It stands dismissed.

11.The learned counsel appearing for the appellant submitted that the appellant may be permitted to work out his equity in the final decree proceedings. We are not able to accede to this request because the appellant's vendor, namely, the first defendant had only life estate and he himself was not competent to alienate the settled property.

No costs. Consequently, connected miscellaneous petition is closed.

**(G.R.S. J.) & (M.J.R. J.)
18.02.2025**

NCC : Yes/No
Index : Yes / No
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G.R.SWAMINATHAN, J.
and
M.JOTHIRAMAN, J.

MGA

To:

IV Additional District Judge,
Madurai.

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