



A.S.(MD)No.236 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.04.2025

CORAM

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

**A.S.(MD)No.236 of 2019
and
C.M.P.(MD)No.12404 of 2019**

K.R.Palanisamy

... Appellant /
1st Defendant

Vs.

1.R.Periyasamy

... Respondent /
Plaintiff

2.M.Saraswathi

... Respondent /
2nd Defendant

Prayer : Appeal Suit filed under Section 96 read with Order 41 Rule 1 of Civil Procedure Code to set aside the preliminary decree and judgment dated 26.06.2019 made in O.S.No.54 of 2017 on the file of the Principal Distict Judge, Karur and dismiss the suit.

For Appellant : Mr.K.Prabakaran

For Respondents : Mr.K.Govindarajan



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JUDGMENT

(Judgment of the Court was made by G.R.Swaminathan J.)

Heard both sides.

2.The first defendant in O.S.No.54 of 2017 on the file of the District Judge, Karur is the appellant in this Appeal. This appeal arises out of suit for partition. The parties to the suit were born to Ramasamy Gounder and Palaniyammal. Palaniyammal is the daughter of Kumarappa Gounder. Kumarappa Gounder died in the year 2001. Ramasamy Gounder died on 17.05.1996. Palaniyammal executed settlement deed dated 01.10.2012 in favour of the plaintiff (younger son). Subsequently, the plaintiff also purchased the sister's share in B Schedule property vide sale deed dated 13.04.2017 (Ex.A9). Armed with the settlement deed and the aforesaid settlement deed in the sale deed, he filed O.S.No.54 of 2017 claiming partition, separate possession and for permanent injunction.



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3.The case of the plaintiff was resisted by the appellant herein by filing a detailed written statement. According to the appellant / first defendant, the shares attributed to Kumarappa Gounder in respect of Schedule A under Ex.A1 and Ex.A2 are incorrect. He further contended that Ramasamy Gounder, Periyasamy and Palanisamy constitute HUF and that therefore the mother would get only a widow's share and nothing more. Therefore, she could not have executed a settlement beyond what she was actually entitled to. Based on the rival pleadings, the Court below framed the following issues:

1) Whether the suit properties are ancestral joint family properties of Ramasamy or they are self acquired properties of Ramasamy ?

2) Whether the contention of the defendants that the grandfather of the plaintiff viz. Kumarappa Gounder has contributed only Rs.500/- for purchase of a portion of A-schedule property and he is entitled only for Ac.0.08 cents is correct or not ?

3) Whether the plaintiff is entitled for partition as prayed for ?

4) Whether there was an oral partition between the plaintiff and the first defendant in respect of B-schedule property ?



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5) *Whether the plaintiff is entitled for permanent injunction ?*

6) *What other reliefs is the plaintiff entitled to ?*

4.The plaintiff examined himself as PW1. The mother Palaniyammal was examined as PW2. The attesor of the settlement deed was examined as PW3. Ex.A1 to Ex.A10 were marked. The appellant was examined as DW1. Ex.B1 to Ex.B14 were marked on his side. After a consideration of the rival contentions and evidence on record, the trial Court passed preliminary decree on 26.06.2019 in the following terms:

1. that the suit is partially decreed and a preliminary decree is passed for dividing the A schedule property into 12 equal share and for allotting 10/12 share to the plaintiff and for dividing the B schedule property into 4 equal shares and for allotting 3/4th share to the plaintiff.

2. As far as the relief of injunction is concerned, the suit is dismissed.

3. Considering the relationship between the parties, there is no order in respect of costs.

4. Plaintiff cost taxed at Rs.8,200/- and the defendant cost taxed at Rs.3005/-.

Challenging the same, this appeal came to be filed.



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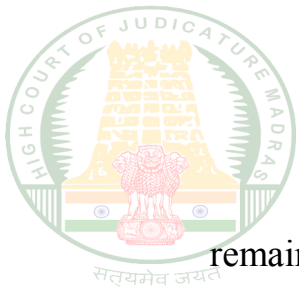
5.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of Appeal. He called upon this Court to reverse the judgment of the Court below and pass an appropriate preliminary decree as set out by him in his written submissions.

6.Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment is well reasoned and that it does not warrant interference.

7.The points that arises for determination are as follows:

- a) Whether Ramasamy Gounder had $\frac{1}{2}$ share or $\frac{9}{10}$ th share under Ex.A2;
- b) Whether the properties acquired by Ramasamy Gounder partake the character of HUF properties.

8.“A” schedule property was acquired in two parcels. Under Ex.A1 dated 31.08.1959 Kumarappa Gounder / father of Palaniyammal purchased $\frac{1}{3}$ cents in the said property from one Karunai Ammal. The



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remaining 82 2/3 cents of land were purchased jointly by Kumarappa Gounder and Ramasamy Gounder under Ex.A2 dated 27.12.1961. The said document reads that a sum of Rs.1000/- was jointly paid by Kumarappa Gounder and Ramasamy Gounder as advance and the balance amount of Rs.4000/- was received from Ramasamy Gounder at the time of registration in front of the registering authority.

9.The only question that calls for consideration is whether under such circumstances under Ex.A2, Ramasamy Gounder and Kumarappa Gounder would get equal share or not.

10.Section 45 of the Transfer of Property Act, 1882 reads as follows:

“45. Joint transfer for consideration.—Where immoveable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is



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paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced. In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.”

11. In paragraph 3 of the written statement filed by the appellant he had specifically pleaded that Kumarappa Gounder will be entitled to only 1/10th share under Ex.A2. Though this contention is dealt with by the Court below in the impugned judgment, there is absolutely no reference whatsoever to Section 45 of the Transfer of Property Act, 1882. The statutory provision is very clear. It states that in the absence of a contract to the contrary, the purchasers under the deed of conveyance would get share in proportion to the amount of consideration paid by them. The Hon'ble Division Bench of this Court vide judgment dated 29.04.2024 in ***A.S.No.433 of 2018 (P.Marimuthu & another Vs A.Paramasivam & another)*** had held as follows:



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“18.A bare reading of Section 45 of the Transfer of Property Act would demonstrate that share in the immovable property in case of joint purchase would be in the same proportion as the contribution to the consideration is. This rule is subject to an exception that it is subject to the contract to the contrary between the parties. The relevant recitals in Ex.A3, sale deed are as follows:-

"Whereas the share of the purchasers in the property conveyed by the Vendor shall be 25% each."

There is nothing in the document to show that the exact proportion at which the purchasers have contribution to the consideration. Therefore, it has to be presumed that the consideration has been contributed equally by the purchasers. Therefore, natural corollary would be that the purchasers would be entitled to equal share in the property. This conclusion is based on the second part of Section 45 which has extracted supra.”

12.The learned counsel for the respondents wanted to argue to the contrary. The Court below had also made an observation that there is no evidence to corroborate the claim of the defendant that it was Ramasamy Gounder who paid 9/10th share of the sale consideration.



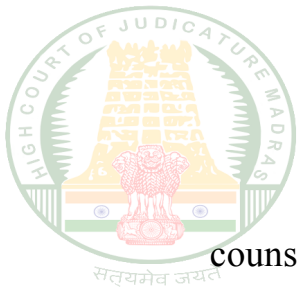
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13. When the registered document itself specifically reads that Ramasamy Gounder paid Rs.4000/- individually and Rs.1000/- was paid jointly, it would not be open to the respondents herein to plead or lead evidence to the contrary. That would fall foul of Section 92 of the Evidence Act, 1872. We therefore answer the first point for determination in favour of the appellant. We hold that Ramasamy Gounder had 9/10th Share under Ex.A2.

14. Though the learned counsel for the appellant strongly contended that on a careful reading of the entire evidence on record one can come to the conclusion that the acquisitions of both “A” schedule as well as B schedule were only from out of ancestral nucleus. In this regard, he placed reliance on the evidence of the mother (PW2).

15. We are of the view that the evidence is not all that sufficient to enable us to come to the conclusion that the suit schedule properties partake the character of HUF properties. Under Ex.B8 and Ex.B7, Ramasamy Gounder had joined his minor children while selling certain properties. This by itself may not be enough for us to endorse the



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counsel's contentions. We take judicial notice of the fact that purchasers do insist that even though the vendor alone may have title over a given the property, he should join the other members of the family so as to avoid future challenges to the transaction.

16.The burden lay entirely on the appellant to show that the suit schedule properties are HUF properties. We hold that this burden has not been sufficiently discharged. Since we have answered the first issue in favour of the appellant, the impugned judgment and decree are modified and disposed of in the following terms:

A schedule

The plaintiff would be entitled to 86.49 cents

The first defendant would be entitled to 18.45 cents

The second defendant would be entitled to 18.45 cents.

B schedule

The plaintiff would be entitled to 3515.25 sq feet

The first defendant would be entitled to 1171.75 sq.feet.



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17.This Appeal Suit is partly allowed. No costs. Consequently,

connected miscellaneous petition is closed.

(G.R.S. J.) & (M.J.R. J.)
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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

The Principal District Judge,
Karur.



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and

M.JOTHIRAMAN, J.

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