

S.A.No.1693 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Judgment Reserved on : 09.04.2025

Judgment Delivered on : 18.07.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1693 of 2001
and
C.M.P.No.9634 of 2003

1. R.Manoranjitham
2. Baskaran (Died)
3. Kumar
4. Hemalatha
5. Pramila
6. Preetha Lakshmi
7. Rogit

... Appellants

[Appellants 5 to 7 are brought on record as L.Rs
of the deceased 2nd appellant vide order dated
06.06.2023 made in C.M.P.No.6504 of 2023
in S.A.No.1693 of 2001]

Vs

1. Kalyana Subramanian
2. R.Mohanambal

... Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 22.12.2000 passed by the Principal District Judge, Karur in A.S.No.7 of 1999, confirming the

Page No.1/32



S.A.No.1693 of 2001

judgment and decree dated 30.08.1996 in O.S.No.9 of 1999 on the file of the Subordinate Judge, Kulithalai.

For Appellants : Mr.M.Ashok Kumar
For Respondents : Mr.S.Parthasarathy
for Mr.K.Govindarajan for R1
No appearance for R2

J U D G M E N T

The second appeal is filed against the judgment and decree dated 22.12.2000 passed by the Principal District Judge, Karur in A.S.No.7 of 1999, confirming the judgment and decree dated 30.08.1996 passed by the Subordinate Judge, Kulithalai in O.S.No.9 of 1999.

2.The Appellants herein are defendants 1, 3, 4 and 5 and first respondent herein is the plaintiff and the second respondent herein is the second defendant in O.S.No.9 of 1999 on the file of the Subordinate Court, Kulithalai. Originally, the suit was filed by the plaintiff seeking partition and separate possession of his undivided 1/3rd share in 'A' schedule properties and thereby, seeking partition of his share to extend to 7/24 by

Page No.2/32



S.A.No.1693 of 2001

metes and bounds in 'B' schedule properties, for accounting in respect of 'A' and 'B' schedule properties and for declaration in respect of 'C' schedule properties as against defendants 1 and 3 to 5 and for consequential reliefs.

3. For the purpose of convenience, the parties are described as per their ranking in the Trial Court.

4. The contents of the plaint in brief, are as follows :

(i) One Ramalingam Pillai, who is the son of Subramania Pillai, had two wives viz., Dhanabhakkiam and Manoranjitham. The plaintiff – Kalyana Subramanian and the second defendant – Mohanambal are son and daughter of Ramalingam Pillai and Dhanabhakkiam. The said Dhanabhakkiam died when the plaintiff was four years old. Thereafter, the said Ramalingam Pillai married one Manoranjitham and they have two sons and one daughter viz., Baskaran/3rd defendant, Kumar/4th defendant and Hemalatha/5th defendant. One Raju/6th defendant is the close associate of defendants 3 and 4 and was given up in the suit.

(ii) The said Ramalingam Pillai died intestate as a divided member on 19.02.1995 leaving behind the plaintiff and defendants 1 to 5 as his

Page No.3/32



S.A.No.1693 of 2001

WEB COPY

surviving legal heirs. During the life-time of the said Ramalingam Pillai, he himself and his sons had constituted an undivided Hindu Joint Family and they divided their properties, by virtue of a registered partition deed dated 18.03.1993. In the said partition deed, subject to certain conditions, the said Ramalingam Pillai was allotted 'A' schedule properties, the plaintiff was allotted 'B' schedule properties, 3rd defendant was allotted 'C' schedule properties and 4th defendant was allotted 'D' schedule properties mentioned in the partition deed. Further, all the sharers had the right to use the cart track, which is existing on the Western portion of S.F.No.554/2, for their effective enjoyment of their respective shares.

(iii) In the said partition, the properties described in 'A' schedule, were allotted to Ramalingam Pillai to enjoy till his lifetime without any right of alienation. After his demise, 'A' schedule properties were to be divided among his three sons viz., the plaintiff and defendants 3 and 4. The first plot of items I, II and III described in the partition deed in 'A' schedule properties are with an extent of 0.18 cents. In the said plot, there is a family house, which is occupied by the members of the family. The said Ramalingam Pillai, the plaintiff and defendants 3 and 4 have clearly agreed



S.A.No.1693 of 2001

to divide the said house property into 3 equal shares after the life-time of Ramalingam Pillai, between the plaintiff and defendants 3 and 4. Therefore, the said house property was not included in the partition deed. This oral agreement is fully known to all the sharers. Even at the time of partition, Ramalingam Pillai directed the plaintiff and defendants 3 and 4 to amicably divide the said house property into 3 shares, after his life-time. As such, the lower portion with an extent of 0.6 cents was allotted to the plaintiff, the middle portion with an extent of 0.6 cents was allotted to the 3rd defendant and upper portion with an extent of 0.6 cents was allotted to the 4th defendant. Therefore, the plaintiff is entitled to 1/3rd share in the house property.

(iv) Apart from the above said house property, there is another land in S.F.No.555 of Anjalam Village, which is a garden land, with an extent of 2.91 cents including a Well, electricity service connection in S.C.No.250 and 5 H.P. electric motor pump. The said garden land was not divided, as the plaintiff's father Ramalingam Pillai requested his sons to permit him to enjoy the said property by himself till his life-time and that the said properties are described as 'B' schedule in the plaint. In the said garden

Page No.5/32



S.A.No.1693 of 2001

land, the plaintiff and defendants 3 and 4 are entitled to 7/24 share and defendants 1, 2 and 5 each are entitled to 1/24 share. The sharers are also entitled to have a right in the Well according to their shares in the respective property. There is a clear recital in the partition deed that defendants 3 and 4 are entitled to take water from the Well in S.No.555 only when water is available after irrigating the land in S.F.No.554. The plaintiff is in joint possession and enjoyment of 'A' and 'B' schedule properties. After the demise of the plaintiff's father Ramalingam Pillai, the plaintiff had demanded the defendants 1 and 3 to 5 to effect partition of 'A' and 'B' schedule properties, but they were not amenable for the same. Therefore, the defendants are liable to render accounts in respect of 'A' and 'B' schedule properties to the plaintiff.

(v) The plaintiff had also got 'C' schedule properties under the said partition. The plaintiff's father installed another 7.5 H.P.Motor pump set in the Well in item 10, described in 'C' schedule properties and hence the plaintiff had also got 1/3rd share in the said properties. The 'C' schedule properties in items 1 to 8 are equal to 'B' schedule properties in the partition deed and plots I to V in item 1 of 'A' schedule in the plaint are shown as

Page No.6/32



S.A.No.1693 of 2001

WEB COPY

items 9 to 13 of 'C' schedule. After the demise of the plaintiff's father, items 1 to 8 of 'C' schedule, are the properties of the plaintiff, which he got by the partition of 'B' schedule. Thus, the plaintiff is exclusively entitled to suit 'C' schedule properties. The defendants have got no manner of right, title or interest in 'C' schedule properties, excluding item 9. The plaintiff has been doing cultivation of the lands in 'C' schedule properties. While that being so, taking advantage of the absence of the plaintiff, defendants 1 and 3 to 5 tried to disturb the peaceful possession of the plaintiff and also they have taken steps to harvest ground nut crops with the help of 6th defendant in item 10 of 'C' schedule properties and also taken steps to dig pits for planting coconut saplings in item 13 of 'C' schedule properties. Further, after partition, the plaintiff's father had installed another 7.5 H.P. motor pump set in the Well in S.F.No.555 with 5 H.P. Compressor and another bore-well in the Western side of the Well in S.F.No.554. The bore well in S.F.No.554 was put up in S.F.No.553 with 5 H.P. Compressor. Therefore, the plaintiff has right over the said properties. Hence, the suit has been filed for the above reasons.

Page No.7/32



S.A.No.1693 of 2001

5. The first defendant has filed the written statement, which has been adopted by defendants 3 to 5. The defence raised in the said written statement *inter-alia*, are as follows :

(i) As far as 'A' and 'B' schedule properties are concerned, the plaintiff has no right or title over the properties and he is not entitled to get any share in it. In the partition deed at page No.3, it has been clearly acknowledged and admitted by the plaintiff and other co-parceners that there are no other properties left out for partition among themselves, except the properties which have been mentioned in the partition deed, and hence the plaintiff is estopped from claim any share in 'A' and 'B' schedule properties. The first defendant is having absolute right and title over 'A' and 'B' schedule properties and she is in possession of those properties. As far as 'C' schedule properties are concerned, the defendants are not claiming any title or right over the said properties. However, the first defendant is claiming only tenancy right in respect of items 1 and 10 in 'C' schedule properties, since she is cultivating the above items on the basis of "Vaaram". Defendants 1 and 3 to 5 are not obstructing the pathway in item No.13 in 'C' schedule properties. Further, the plaintiff himself admitted in

Page No.8/32



S.A.No.1693 of 2001

the legal notice dated 22.04.1995 that the defendants are in possession of

WEB COPY

the items 1 and 10 in suit 'C' schedule properties and hence, the plaintiff is

not entitled for injunction as against the defendants. Since the joint family properties have already been partitioned, the suit for partition is not maintainable and hence, the defendants are not bound to render accounts.

The first defendant has already filed petition on 23.05.1995 claiming tenancy rights in the Revenue Court at Musiri in respect of items 1 and 10 of 'C' schedule properties. Further, items 2 and 3 of 'C' schedule properties are the Well and pump set, respectively. In respect of items 2 to 9 of 'C' schedule properties, there is no yielding at all. In respect of items 1 and 10 of 'C' schedule properties, the first defendant is the cultivating tenant with effect from the date of partition under oral agreement reached between the plaintiff and the first defendant. The plaintiff never took possession of items 1 and 10 of 'C' schedule properties. The tenancy proceedings are still pending in T.R.No.19 of 1995. Items 11 to 13 in 'C' schedule properties are not lands, but the same are only Well, pump set and pathway respectively. As far as 'B' schedule properties are concerned, defendants 2 and 3 are having 1/2 share in the Well and electricity service connection. Being a tenant, the first defendant is bound to pay only "Vaaram" in respect of

Page No.9/32



S.A.No.1693 of 2001

items 1 and 10 of 'C' schedule properties. There are recitals in the partition deed that defendants 3 and 4 are entitled to get half share in the Well and electric connection in 'B' schedule properties. The father of the plaintiff had not died intestate. There is no cause of action for filing the suit. Hence, the defendants prayed that suit is liable to be dismissed.

6. The defences raised in the additional written statement filed by the first defendant, which was adopted by defendants 3 to 5, are as follows :

The bore well with 5 H.P. compressor in 'B' schedule properties, was installed by the first defendant at her own cost, after partition and hence, the plaintiff has no right to get 1/3 share in it. The land under S.F.No.553 at Anjalam Village, was allotted to the third defendant in the partition deed dated 18.03.1993 as item No.1 in 'C' schedule properties. After partition, he installed the bore well along with 5 H.P. Compressor in S.F.No.553. Therefore, the plaintiff has no right over the said properties. In the year 1980, without the knowledge of the defendants, the father of the plaintiff and the plaintiff had invested the joint family funds worth about Rs. 25,000/- in Aruna Mercantile Sales Corporation in the name of the plaintiff

Page No.10/32



S.A.No.1693 of 2001

and has also invested in Saravana Agencies as a partner in the name of the plaintiff at Trichy. In March 1990 and 1991, the joint family shares of the defendants and the plaintiff in Aruna Mercantile Sales Corporation were Rs.1,40,004/- and Rs.18,749/-, respectively. The plaintiff and his father had also purchased house sites and houses near Periyar Nagar at Trichy in the name of the plaintiff from the income derived from the joint family funds. Therefore, the defendants claim right over the aforesaid properties. The plaintiff has already misappropriated the joint family funds in collusion with his father, and therefore, he is not entitled to get the relief as sought for in the plaint.

7. Before the trial Court, on the side of the plaintiff, two witnesses have been examined as P.Ws.1 and 2 and Exs.A-1 to A-8 were marked. On the side of the defendants, two witnesses have been examined as D.Ws.1 and 2 and Exs.B-1 to B-5 were marked.

8. The Trial Court, after framing issues and after hearing the submissions of the respective counsels, decreed the suit in favour of the plaintiff and as against the judgment and decree of the trial Court,

Page No.11/32



S.A.No.1693 of 2001

defendants 1, 3, 4 and 5 have filed First Appeal in A.S.No.7 of 1999 before the learned Principal District Judge, Karur. By judgment and decree dated 22.12.2000 passed in A.S.No.7 of 1999, the learned Principal District Judge, Karur, dismissed the appeal, confirming the judgment and decree of the trial Court. Aggrieved by the same, defendants 1 and 3 to 5 have filed the present Second appeal.

9. Learned counsel for the appellants herein/defendants 1 and 3 to 5 submitted that during the life-time of Ramalingampillai, all the family properties were divided by way of registered partition deed, dated 18.03.1993 under Ex.A-2 and no other properties were left for partition. While that being so, 'A' and 'B' schedule properties were specifically set apart for the maintenance of the first defendant. Actually in the suit 'A' schedule properties, there was a family house, which was occupied by the members of the family, which was not covered under the partition deed. Even during the life-time of Ramalingam Pillai, he bequeathed the said house to his wife i.e., the first defendant, in lieu of her maintenance, and as such, the suit 'B' schedule properties were also not included in the partition deed, which was also set apart to the first defendant for her maintenance.

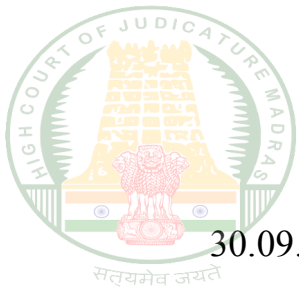
Page No.12/32



S.A.No.1693 of 2001

The same has been proved by the first defendant by producing oral and documentary evidence, i.e., D.Ws.1 and 2 and Exs.B-1 and B-2. However, the Courts below discredited Exs.B-1 and B-2 on the ground that they are not in the hand writing of Ramalingam Pillai and it is not shown that they were actually sent to D.W.2, which are completely erroneous and unsustainable. Learned counsel further submitted that since the plaintiff is one of the parties to the said partition deed/Ex.A.2, he is estopped from claiming partition in suit 'A' and 'B' schedule properties. As far as suit 'C' schedule properties are concerned, the defendants have not interfered with the rights of the plaintiff, except item Nos.1 and 10 mentioned in 'C' schedule properties. The first defendant is claiming only tenancy right in respect of items 1 and 10 of 'C' schedule properties. However, the trial Court failed to appreciate the pleadings and material evidence produced by the defendants and erroneously granted a decree in favour of the plaintiff, which was confirmed by the First Appellate Court. Learned counsel further submitted that during the pendency of the First Appeal, the appellants herein/defendants 1 and 3 to 5 have filed a petition to receive the petition mentioned document as additional evidence and the same was allowed. Thus, Ex.B6/copy of the order issued by the Tahsildar, Musiri dated

Page No.13/32



S.A.No.1693 of 2001

30.09.1995 was marked, which clearly shows that, even prior to the filing of the suit, the first and fourth defendants were enjoying the suit as cultivating tenants and therefore, the plaintiff is not entitled to get the decree, but however, both the Courts below had erroneously rejected the claim of the defendants and accepted the claim of the plaintiff and thereby, the suit was decreed. Therefore, the judgment and decree passed by the both the Courts below are liable to be set aside.

10. Learned counsel appearing for the first respondent herein/plaintiff submitted that the properties described in suit 'A' and 'B' schedule properties are ancestral properties. During the life-time of Ramalingam Pillai, his sons viz., the plaintiff and defendants 3 and 4 have effected a partition by way of partition deed/Ex.A2 dated 18.03.1993. As such, the properties described in 'A' schedule, were allotted to Ramalingam Pillai till his life-time without any right of alienation. After his demise, 'A' schedule properties are to be divided among his three sons. While so, 'B' schedule properties were allotted to the plaintiff and properties in 'C' and 'D' schedule were allotted to defendants 3 and 4, respectively. At the time of effecting partition under Ex.A2, though the daughters of Ramalingam Pillai, viz.,

Page No.14/32



S.A.No.1693 of 2001

defendants 2 and 5 have married prior to 25.03.1989, they do not get the coparcenary right by virtue of the amendment effected under Section 29-A of the Hindu Succession Act. Further, as per amended proviso to Section 6(1) of the Hindu Succession Act, the daughters, namely defendants 2 and 5 will not be entitled to seek for partition in respect of the properties which have already been subjected to partition, *vide* Ex.A.2 and hence, the said partition under Ex.A.2 cannot be reopened. In the said circumstances, the contesting defendants cannot claim any right, much against the letter and spirit of Ex.A.2. He further submitted that it is the contention of the defendants that the properties described in 'B' schedule were given by Ramalingam Pillai to his second wife/first defendant herein, in lieu of her maintenance. The said aspect has not been substantiated either by oral or documentary evidence. The first defendant, who is the best person to speak about such allotment in lieu of her maintenance, had not substantiated the said claim by way of producing any evidence. He further submitted that the character of the suit 'B' schedule properties, which are admitted to be the properties ancestrally belonged to Ramalingam Pillai's family. It is also an admitted fact that suit 'B' schedule properties were not included in the partition deed/Ex.A2. In the said circumstances, what remains is the suit 'B' schedule properties, which

Page No.15/32



S.A.No.1693 of 2001

are ancestral family properties, which were not included in the partition and hence, the parties will have to suffer partition. Therefore, the suit 'B' schedule properties are to be partitioned among the parties to the suit. As far as suit 'C' schedule properties are concerned, the contesting defendants have conceited the exclusive title and possession of the plaintiff. After appreciating the entire oral and documentary evidence, both the Courts below have accepted the case of the plaintiff and decreed the suit as prayed for in favour of the plaintiff. Hence, there are no merits in this Second Appeal and the same is liable to be dismissed.

11. Heard both sides and perused the materials available on record.

12. The Second Appeal was admitted by this Court on 27.11.2001, on the following substantial questions of law :

"Whether the first respondent can seek for partition of 'C' schedule property which is not available for partition in view of the earlier partition deed marked as Ex.A-2, whereunder the said 'C' schedule property was allotted to the second appellant ?"



S.A.No.1693 of 2001

13. This Court, after hearing the arguments and perusal of the records, the substantial question of law framed at the time of admission on 27.11.2001, which is recast as follows :

1. Whether the judgment and decree passed by the both the Courts below are erroneous in respect of 'A' and 'B' schedule properties ?

2. Whether the decision of the first appellate Court is erroneous in considering Ex.B.6?

14. Substantial Question of Law No.1 :

Whether the judgment and decree passed by the both the Courts below are erroneous in respect of 'A' and 'B' schedule properties ?

14.1. Admittedly, the suit properties are ancestral properties, which originally belonged to one Ramalingam Pillai. The plaintiff and defendants 1 to 5 are the legal heirs of the said Ramalingam Pillai. During the life-time of the said Ramalingam Pillai, himself and his sons divided the suit properties by virtue of a registered partition deed, dated 18.03.1993/Ex.A2.

Page No.17/32



S.A.No.1693 of 2001

WEB COPY

While that being so, 'A' schedule properties were allotted to Ramalingam Pillai to enjoy the said properties till his life-time without any right of alienation. 'B' schedule properties were allotted to the plaintiff, and 'C' and 'D' schedule properties were allotted to 3rd and 4th defendants. Since the second defendant and fifth defendant have married much prior to 25.03.1989, they do not become the coparceners by virtue of the Tamil Nadu Amendment effected under Section 29-A of the Hindu Succession Act and hence, in the partition deed, no share was allotted to defendants 2 and 5. There is no dispute regarding Ex.A2-partition deed. Both the parties had admitted that in the 'A' schedule property, there is a family house, which is occupied by the members of the family and the same was not included in the partition deed.

14.2 However, the main defence taken by the plaintiff is that suit 'A' schedule properties were allotted to Ramalingam Pillai to enjoy the said properties till his life-time without any right of alienation and after his demise, 'A' schedule properties are to be divided among his three sons, viz., the plaintiff and defendants 3 and 4. Further, in the 'A' schedule there is a family house and his father Ramalingam Pillai was residing there. As per

Page No.18/32



S.A.No.1693 of 2001

the oral understanding, the said Ramalingam Pillai had kept the said house as a family property and after his life-time, the said property will have to be divided between his three sons into 3 equal shares. Therefore, the plaintiff is entitled to get 1/3 share in the suit 'A' schedule properties. Per contra, it is the contention of the defendants that the said Ramalingam Pillai, during his life-time, had bequeathed the said house property described in 'A' schedule in favour of the first defendant/wife for her maintenance and hence the said house was not included in Ex.A2. Further, except the properties shown in Ex.A2, no other properties were left for partition. However, both the parties have admitted that the said house property, which is described in 'A' schedule, is also an ancestral property, and therefore, the same has to be considered as an undivided joint family property. When the defendants are claiming that the said 'A' schedule property was orally allotted to the first defendant for her maintenance, it is for the first defendant to establish her case.

14.3. When it is admitted that house situated in 'A' schedule property, is an ancestral property, which is not divided and the same is in continuous possession of first defendant, it is for the first defendant to prove the same.

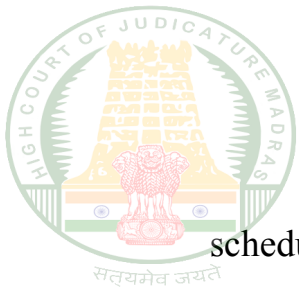
Page No.19/32



S.A.No.1693 of 2001

WEB COPY

In order to prove the same, on the side of the defendants, Exs.B2 and B3/letters were marked, which are said to have been sent by Ramalingam Pillai to D.W.2, who is his son-in-law. However, during the examination, D.W.1 has stated that Ramalingam Pillai has not written the said letters, and the third defendant alone wrote the said letters, wherein the said Ramalingam Pillai had put his signatures. Hence, from the evidence of D.W.1, it is clear that Exs.B2 and B3 were not written by Ramalingam Pillai on his own hand writing. Further, nothing has been mentioned about the said letters Exs.B2 and B3, either in the reply notice or in the written statement. If at all, the intention of the Ramalingam Pillai was that the said house had to be allotted to his wife for her maintenance, and it ought to have been mentioned in the partition deed Ex.A2 itself or some other document has to be written on the same date, after getting signature and permission from the other co-sharers. In this case, except Exs.B2 and B3, the defendants have not produced any other document to show that 'A' schedule property was allotted or given to the first respondent by the said Ramalingam Pillai, for her maintenance. Moreover, the first defendant was not examined as a witness. The non-examination of first defendant is fatal to the present case. The defendants have failed to prove that the house in 'A'



S.A.No.1693 of 2001

schedule was given to the first defendant towards her maintenance, and the plaintiff is entitled to partition in the suit 'A' schedule property. The trial Court, after appreciating the entire oral and documentary evidence, granted decree in favour of the plaintiff and allotted 1/3 share in the 'A' schedule property, which was confirmed by the first appellate Court.

14.4. As far as the quantum of share, is concerned, it is an admitted fact that 'A' schedule properties are ancestral properties and the same were not included in the partition deed/Ex.A2, which was effected in the year 1993 between the parties. Further, at the time of effecting partition under Ex.A2, the daughters of Ramalingam Pillai i.e., D2 and D5 were not impleaded as parties to the partition deed and no share was allotted to them, as the character of the properties, is ancestral in nature and those two daughters were got married prior to 25.03.1989, and they are not coparceners by virtue of the Tamil Nadu amendment effected under Section 29-A of the Hindu Succession Act. However, it is seen that, as per the oral understanding between the parties the said Ramalingam Pillai was using the said property and after his death on 19.02.1995, the said properties were used as a "joint family properties". Though it is the contention of the

Page No.21/32



S.A.No.1693 of 2001

plaintiff that there was an oral arrangement between them, i.e., after the death of Ramalingam Pillai, 'A' schedule properties were divided between his three sons i.e., the plaintiff and defendants 3 and 4. Admittedly, there is no recital in Ex.A2 regarding the 'A' schedule properties, and therefore, those properties were kept only as "joint family properties". Therefore, after the death of Ramalingam Pillai, the plaintiff filed the suit for recovery of 'A' schedule properties. On a perusal of the entire records, it is seen that, as on date, no final decree is passed and the appeals are continuation of the suit proceedings. In the partition suit, the properties are generally treated as "joint family properties" until the passing of the final decree and the suit is still considered as pending.

14.5. At this juncture, it would be useful to refer the judgment of the Hon'ble Supreme Court in the case of ***Venkata Reddy & Ors. V. Pethi Reddy*** reported in ***AIR 1963 SC 992***, wherein it has been observed that in a suit for partition, the decree passed in the preliminary decree is not a conclusive one until final decree is passed. Further, it has been held that the decree contains two parts, viz., preliminary and final. Until the final decree passed in the suit for partition, the preliminary decree passed by the court is

Page No.22/32



S.A.No.1693 of 2001

not executable. The relevant portion of the said judgment is extracted

WEB COPY hereunder:-

"... *"A preliminary decree passed, whether it is in a mortgage suit or a partition suit, is not a tentative decree but must, in so far as the matters dealt with by it are concerned, be regarded as conclusive. No doubt, in suits which contemplate the making of two decrees, a preliminary decree and a final decree, the decree which would be executable would be the final decree. But the finality of a decree or a decision does not necessarily depend upon its being executable. The legislature in its wisdom has thought that suits of certain types should be decided in stages and though the suit in such cases can be regarded as fully and completely decided only after a final decree is made, the decision of the court arrived at the earlier stage also has a finality attached to it.*

... "

14.6. It is also useful to refer the another decision of the Hon'ble Supreme Court in the case of ***Shankar Balwant Lokhande (Dead) by LRs. v. Chandrakant Shankar Lokhande & Anr.*** reported in AIR 1995 SC 1211, wherein, it has been held as follows:-

Page No.23/32



WEB COPY



S.A.No.1693 of 2001

".....where a decree relates to any immovable property and the partition or separation cannot conveniently be effected without further inquiry, then the court should pass a preliminary decree declaring the rights of parties having interest in the property. The court is also empowered to give such directions as may be required. *A preliminary decree in a partition suit is a step in the suit which continues until the final decree is passed.*

(emphasis supplied)

14.7. In view of the forgoing discussions, this Court is of the view that, as far as the quantum of share is concerned, Ramalingam Pillai, plaintiff and defendants 2 to 5, who are sons and daughters of the said Ramalingam Pillai, are equally entitled to get their respective share in the suit properties. If that be so, the plaintiff is entitled to 1/36 share in 'A' schedule properties and not 1/3.

14.8. As far as suit 'B' schedule properties i.e., a land in S.F.No.555, measuring an extent of 2.91 cents, including a Well and 5 H.P electric motor pump set, are concerned the same were not included in the partition

Page No.24/32



S.A.No.1693 of 2001

WEB COPY

deed Ex.A2 and the same were under the possession and enjoyment of the said Ramalingam Pillai till his life-time. According to the plaintiff, as per the oral arrangements, after the life-time of Ramalingam Pillai, his three sons will have to divide the said properties and the plaintiff is entitled to get 7/24 share in the suit 'B' schedule properties. Per contra, it is contention of the defendants that as far as 'B' schedule properties are concerned, the plaintiff has no right or title and he is not entitled to get any share, since the said Ramalingam Pillai bequeathed the said 'B' schedule properties in favour of the first defendant for her maintenance and hence, the first defendant is having absolute right and title in 'B' schedule properties, but the same was not proved by the defendants, either by oral or documentary evidence. Further, the first defendant, who is the best person to speak about such allotment in lieu of her maintenance, had not substantiated the said claim by any evidence. The character of the suit 'B' schedule properties, is admitted to be the properties ancestrally belonged to Ramalingam Pillai's family, which are not covered under the partition deed/Ex.A2. It is an admitted fact that some of the ancestral properties i.e., 'A' and 'B' schedule properties, are left out in the said partition. If any partition had been effected and some of the properties have not been covered under the

Page No.25/32



S.A.No.1693 of 2001

partition deed, the said partition can be treated as partial partition and the omitted properties can also be divided by the co-parceners subsequently. In the case on hand, till the life-time of the said Ramalingam Pillai, 'A' and 'B' schedule properties were only treated as joint family properties. Further, the plaintiff has not established that Ramalingam Pillai had kept the aforesaid properties for his life-time and given right of the share only to the male members of the family. In the absence of any oral and documentary evidence, contrary to Ex.A2, this Court finds that the aforesaid properties can be treated only as ancestral properties. Though the plaintiff has filed the suit in the year 1996 and also obtained preliminary decree on 30.08.1996, as on date, no final decree has been passed and hence, the said Ramalingam Pillai and his legal heirs are equally entitled to 1/6 share in the suit properties and after the death of Ramalingam Pillai, his share will equally go to his wife, sons and daughters, i.e., plaintiff and defendants 1 to 5. Insofar as 'B' schedule properties are concerned, the plaintiff is entitled to get 7/36 share and not 7/24 share. Substantial Question of Law No.(1) is answered in the above terms.



S.A.No.1693 of 2001

15. Substantial Question of Law No.2 :

WEB COPY

Whether the decision of the first appellate Court is erroneous in considering the Ex.B.6 ?

15.1. As far as the second substantial question of law is concerned, there is no dispute regarding 'C' schedule properties, which were allotted to the plaintiff, as shown in 'B' schedule under Ex.A2. According to the plaintiff, he is the exclusive owner of the suit 'C' schedule properties. However, the defendants were trying to interfere with his peaceful possession and also trying to harvest groundnut in item 10 of 'C' schedule properties and tried to plant coconut saplings in item 13 of 'C' schedule properties to obstruct the cart track and that the plaintiff had issued notice and subsequently, he had filed the suit. The defendants have admitted that they are not claiming any title over the suit 'C' schedule properties allotted to the plaintiff, as shown in suit 'B' schedule in Ex.A2 partition deed. However, it is the contention of the defendants that the first defendant is a cultivating tenant in respect of items 1 and 10 of suit 'C' schedule properties. Therefore, the plaintiff is not entitled to any decree of injunction, except the pump set in the item 13 of 'C' schedule properties and



S.A.No.1693 of 2001

they are also not claiming anything. According to the plaintiff, the suit 'C' schedule properties were allotted to the plaintiff under the partition deed and from the date of partition he is cultivating the items 1 and 10 of suit 'C' schedule properties and that the same are in his possession and enjoyment. However, it is the contention of the defendants that the first defendant is the cultivating tenant of items 1 and 10 of suit 'C' schedule properties on "Vaaram" basis. In order to prove the same, the defendants have produced Ex.B6. Ex.B6 is the copy of the order issued by the Tahsildar, Musiri on 30.09.1995 on the basis of the complaint given by the fourth defendant on 27.09.1995. However, it is seen from the records that in the reply notice, it was mentioned that the first defendant alone is the cultivating tenant of items 1 and 10 of suit 'C' scheduled properties. However, the document/Ex.B6 which was produced by the defendants to prove their tenancy, shows that, based on the complaint given by the fourth defendant, the Thasildar, Musiri passed the order and the same was passed subsequent to the pre-suit notice issued by the plaintiff. When it is admitted that the plaintiff is the exclusive owner of 'C' schedule properties, and when the defendants are claiming that the first defendant is only cultivating tenant in respect of items 1 and 10 of 'C' schedule properties, it is for the

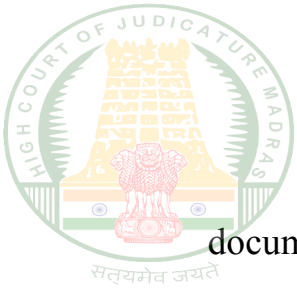


S.A.No.1693 of 2001

defendants to prove the same by documentary evidence. Admittedly, there are no registration particulars in the Revenue Register, as the first defendant has been recorded as a cultivating tenant in respect of items 1 and 10 of 'C' schedule properties. Hence, the document/Ex.B6, which was relied on by the defendants, is not helpful to establish that the first defendant is the cultivating tenant. Moreover, the first defendant was not examined as a witness and the third defendant alone was examined as a witnesses and he has also not produced any material to show that the first defendant is a cultivating tenant. Therefore, the first appellate Court had elaborately discussed about Ex.B6 and was not satisfied with the case of the defendants regarding cultivating tenant and hence, the claim of the defendants was rejected by the First Appellate Court.

15.2. On a reading of the entire materials, it is seen that defendants have admitted that the plaintiff is the exclusive owner of 'C' schedule properties and also admitted that they are not disturbing or interfering with his peaceful possession and enjoyment, except claiming the possession and enjoyment of items 1 and 10 of suit 'C' schedule properties as a cultivating tenants on "Vaaram" basis. However, a reading of pleadings and oral and

Page No.29/32



S.A.No.1693 of 2001

documentary evidence, it is seen that the first appellate Court, as a final Court of fact-finding, after re-appreciating the entire materials, found that the first defendant has not established that she is a cultivating tenant in the said items, and therefore rejected the claim of the defendants in respect of 'C' schedule properties. This Court does not find any perversity in appreciation of evidence by the first appellate Court in considering Ex.B.6. However, the first appellate Court, failed to note that 'A' and 'B' schedule properties are not covered under Ex.A2 partition deed, till the life-time of Ramalingam Pillai and the same were continued to be used as undivided joint family properties. Therefore, after the death of Ramalingam Pillai, the plaintiff had filed the suit and till date the final decree has not been passed in the suit. Further, as per proviso to Section 6(1) of the Hindu Succession (Amendment) Act, 2005, the daughters will also become co-parceners and they are also entitled to get their respective shares on par with the sons and as far as quantum of share is concerned the same shall stand modified as indicated above. Therefore, except this modification, this Court, does not find any substantial question of law to be answered.



S.A.No.1693 of 2001

16. In view of the above findings and discussions, the Second Appeal

is partly allowed. The plaintiff is entitled to 1/36 share in 'A' schedule properties and 7/36 in 'B' schedule properties and in all other aspects, the judgment and decree passed by the both the Courts below, the same shall stand unaltered. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.07.2025

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
ms

To

- 1.The Subordinate Judge,
Sub Court, Kulithalai.
- 2.The Principal District Judge,
Karur.
3. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court at Madurai.

Page No.31/32



WEB COPY



S.A.No.1693 of 2001

P.VELMURUGAN, J.

ms

S.A.No.1693 of 2001

18.07.2025

Page No.32/32