



SA No. 325 of 2008



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-02-2026

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CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

SA No. 325 of 2008

1. Devaraji

Appellant(s)

Vs

1. PONNURANGAM(died)

2.Kamalammal

3.Lakshmi Ammal

4.Meganathan

5.Kannadasan @ Dayanithi

6.Kasi

7.RAJESWARI(died)

8.Anjala

9.Susila

10.Jagadammal
W/o.Ponnurangam

11.MAHESWARI(died)
W/o.Shanmugam

12.Kumaran



S/o.Ponnurangam

13.Kamatchi
W/o.Selvaraj

14.Dharmarajan

S/O.PONNURANGAM, 10 TO 14 RESIDING AT
1/186, KADHIRMANGALAM VILLAGE AND
POST, THIRUPPATHUR TALUK,
PINCODE-635601 r1 died, rr10 to 14 are brought on
record as lrs of the deceased r1 vide court order dated
13/08/2024 made in cmp nos 1135,1139 and 1140 of
2019 in sa no 325 of 2008(TVTSJ)

15.Bala Dandapani

S/o. Late Shanmugam, D.No. 1/1, Pillaiyar Koil
Street, Periyavarikam Village, Ambur Taluk,
Thirupathur District. r11 died, rr15 is brought on
record as lr of the deceased r11. r7 died, rr16 to 20 are
brought on record as lrs of the deceased r7 vide court
order dated 29/08/2024 made in cmp nos
18942,18945,18946,18947 of 2024 in sa no 325 of
2008(tvtsj)

16.L.Palanisamy

17.L.Nagarajan

18.L.Soundararajan

19.L.Vasanthi

20.L.Babu

S/o. Late.Lakshmana Gounder 118, Mariamman Koil
Street, Periyavarikkam Village, Ambur Taluk, Vellore
District. r11 died, rr15 is brought on record as lr of the
deceased r11. r7 died, rr16 to 20 are brought on record
as lrs of the deceased r7 vide court order dated
29/08/2024 made in cmp nos
18942,18945,18946,18947 of 2024 in sa no 325 of
2008(tvtsj)



Respondent(s)

PRAYER

Against the judgment and decree dated 6.11.2007 passed in A.S.No.30 of 2006 by the Sub-Court, Thirupatthur confirming the decree and judgment dated 03.04.2006 passed in O.S.No.210 of 1997 by the District Munsif Court, Thirupathur, Vellore District.

For Appellant(s): Mr.V.Anand for
M/s.A.M.Packianathan Easter
M.Rajaguru

For Respondent(s): Mrs.Elizabeth Ravi
(For R3 to R8 & R15 to R19)

ORDER

(Order of the Court was made by Mummineni Sudheer Kumar J.)

This second appeal is directed against the judgment and decree in A.S.No.30 of 2006 dated 26.11.2007 passed by the Court of Sub Court, Tirupathur, Vellore District, confirming the judgment and decree in O.S.No.210 of 1997 dated 03.04.2006 on the file of the District Munsif Court, Thirupathu at the instance of the unsuccessful appellant/ unsuccessful plaintiff. For the sake of convenience, the parties are referred to as per their status in the suit.

2. The appellant/ plaintiff herein laid a suit in O.S.No.210 of 1997 on the file of the court of District Munsif, Tirupathur against his elder brothers, defendants 1 and 2, and elder sister, the third defendant, seeking partition of the



suit scheduled property admeasuring 1 acres 98 cents situated in S.No.136/4 Kathirimangalam, Thirupathur Taluk, into three equal shares and for allotment

of one such share admeasuring 0.66 acres to the plaintiff. During the pendency of the suit, the first defendant/ elder brother of the plaintiff passed away and accordingly, the defendants 4 to 10 were brought on record being the legal representatives of the first defendant/ Srinivasan.

3. The case of the plaintiff is that the mother of the plaintiff and the defendants 1 to 3 by name Mrs.Krishnammal was the absolute owner of the suit scheduled property, having purchased the same under a registered sale deed dated 20.03.1936, and on her demise in the year 1982, the plaintiff and the defendants 1 to 3 became entitled to equal shares but the third defendant/ daughter of Late Krishnammal gave up her right in the suit scheduled property in favour of her three brothers and thus, the plaintiff and the defendants 1 and 2 are entitled for equal share in the suit scheduled property. It is also further pleaded that from out of the suit scheduled property, admeasuring 1 acre 98 cents, an extent of 14 cents was in occupation and possession of the second defendant with the consent of late Krishnammal and he has constructed a house over the said extent of land. Thus, the plaintiff claimed for partition of the suit scheduled property into three equal shares and allotment one-third in his favour.



4. The said suit was resisted by the defendants 4 to 7, who are the legal heirs of the deceased first defendant, by filing a written statement. The defendants 4 to 7 contended that Late Krishnammal is having right only over an extent of 1 acre 21 cents but not in respect of 1.98 cents, as the remaining land is owned by one person by name Ramasami. It is also further pleaded that in addition to the said extent of 1.21 acres in S.No.136/4, Late Krishnammal also possessed other lands admeasuring 0.69 acres in S.No.135/3B and an extent of 0.70 cents in S.No.139/4. They also admitted about the land admeasuring 0.14 acres being in possession of the second defendant in S.No.136/4 and the permission accorded by Late Krishnammal. However, the defendants 4 to 7 took a specific stand that there was an oral partition in the year 1960 among the plaintiff and the defendant 1 to 3, and in the said oral partition, the land situated in S.No.135/3B was allotted to the plaintiff, while the land situated in S.No.135/4 was allotted to the second defendant, and the suit land admeasuring 1.21 acres in S.No.136/4 was allotted to the first defendant, considering his contribution to the family, including performing the marriage of the third defendant and the loan that was agreed to be cleared by the first defendant availed for imparting Teacher Training course to the plaintiff etc. Thus, in short, the defence of the defendants 4 to 10, who are contesting defendants, is that there was an oral partition of the properties of Late Krishnammal, including the suit scheduled property, as early as in the year 1960.



5. Yet another stand taken by defendants 4 to 10 is that, if at all the plaintiff is entitled for partition of the properties standing in the name of Late Krishnammal, he should have sought partition in respect of other properties as well, such as the lands situated in S.No.135/3B and S.No.139/4 as well. Thus, it is contended that the suit, being the one for partial partition, is liable to be dismissed.

6. The second defendant supported the case of the plaintiff, and whereas the third defendant admitted about she releasing the property in favour of her three brothers. During the course of evidence also, P.W-1/ plaintiff and D.W-1/second defendant stood together and claimed for partition of the suit scheduled property

7. On behalf of the plaintiff, the plaintiff himself got examined and marked Ex.P1 to Ex.P30 and on behalf of the defendants, second defendant got examined as D.W-1 and supported the case of the plaintiff. The fifth defendant was examined as D.W-2 and Exhibits D-1 to D-54 were marked in support of their case.

8. The trial court, after having examined both the oral and documentary evidence, came to the conclusion that the properties possessed by Late Krishnammal were all partitioned orally between the plaintiff and defendants 1



and 2, taking into consideration the admission made by P.W-1 and D.W-1. Thus the trial court came to the conclusion that there was an oral partition and if at all the claim of the plaintiff is to be believed, it is for the plaintiff to establish that the suit scheduled property was allowed to be continued in joint despite the oral partition in the year 1960, but, the plaintiff failed to establish the same. Thus, the trial court dismissed the suit. Aggrieved thereby, the plaintiff filed appeal in A.S.No.30 of 2006 as noted above and the said appeal also came to be dismissed by the lower appellate court on examining the entire material on record and conclusions arrived at by the trial court were confirmed. It is against the said concurrent judgments, the appellant plaintiff is before this court.

9. Though this second appeal is of the year 1997, the same is not admitted as on date. The learned counsel for the appellant raised the following substantial questions of law:-

(i) Are the courts below right in holding that the suit property is hit by the rule of partial partition especially when the respondents 3 to 9 contend that the entire family properties were already partitioned?

(ii) Whether the courts below are right in holding that the suit property was already partitioned and allotted to the father of the respondents 3 to 9 especially when the Patta (Ex.A2) still stands in the names of appellants and respondents?



10. Mr.V.Anand, learned counsel for the appellant strenuously contended that the patta in respect of the suit scheduled property is still standing in the name of the plaintiff and the defendants 1 to 3 jointly and therefore, the theory of oral partition setup by the defendants 4 to 10 cannot be accepted. He also further contended that the question of partitioning orally of the property possessed by Late Krishnammal of the year 1960 i.e., during her lifetime, is totally false and does not arise at all. He also further contended that there is nothing on record to show that the said Late Krishnammal was allotted any share in the alleged oral partition of the year 1960 and therefore, the theory of oral partition is liable to be rejected. He also further contended that the Late Krishnammal/ Mother of the plaintiff and defendants 1 to 3 not being coparcener of the joint family consisting of plaintiff and defendants 1 to 3, cannot throw the suit property into the hotchpotch of the joint family, thereby excluding herself from claiming share in the suit scheduled property. In support of his contention, he also placed reliance on a decision of the Hon'ble Supreme Court of India in the case of ***"Smt.Pushpa Devi -vs- the Commissioner of Income Tax, New Delhi"*** reported in **1977 AIR (SC) 2230**.

11. On the other hand, Mrs.Elizabeth Ravi learned counsel appearing for the respondents 3 to 8 and 15 to 19, contended that the courts below, on appreciating the entire documents as well as the oral evidence, came to the conclusion that the plaintiff/ appellant is not entitled for any relief as sought for



in the suit and there is no question of law nor substantial question of law that would arise for consideration before this court and all the conclusions that were recorded by the courts below are all on factual aspects which are not open for interference by this court in the second appeal under Section 100 of CPC.

12. This court has carefully considered the submissions made on either side and also perused the entire material on record.

13. From the perusal of the record, it is evident that it is an admitted that Late Krishnammal possessed the property in S.No.136/04 admeasuring 1 acre 21 cents, as against an extent of 1 acre 98 cents claimed by the plaintiffs and certain other properties as well. It is also an admitted fact situation that other properties situated in S.No.135/3B and S.No.139/4 are in possession and enjoyment of the plaintiff and the second defendant and originally belonged to Late Krishnammal. Admittedly, those two properties were not included in the suit scheduled property and no partition is sought for. The partition in the present suit is confined only in respect of one property. According to defendants 4 to 7, the suit property was allotted to the first defendant in the oral partition that took place in the year 1960 and the two other properties were allotted to the plaintiff and second defendant. Both the plaintiff and the second defendant, without explaining as to how both of them got the property situated in S.Nos.135/3B and S.No.139/4 claiming that they are entitled for partition of the



suit scheduled property only. As it is now admitted that the Late Krishnammal was holding the other properties other than the suit property and as admitted by the plaintiff and the second defendant, there was no partition or any other arrangement in respect of those two properties, the suit filed for partial partition for one of the items is liable to be dismissed as rightly did by the courts below.

14. Be that as it may, the plaintiff as well as the second defendant, in unequivocal terms, admitted about the oral partition that took place in the year 1958/1960 during the course of their cross-examination as P.W-1 and D.W-1. Once it is admitted that there was an oral partition long before, it is for the plaintiff to explain as to how the suit schedule property remained joint as on the date of filing of the suit. No proper explanation is offered by the plaintiff or the second defendant much less any evidence to show that the suit scheduled property is remained in joint possession and enjoyment of the plaintiff and the defendants 1 and 2.

15. On the other hand, as rightly pointed out by the courts below, there is enough material to show that the defendants 1 and 4 to 10 have been in possession and enjoyment of a portion of the suit scheduled property to an extent of 1 acre 21 cents in S.No.136/4. Therefore, this court does not find any error or illegality in the judgment and decree passed by the trial court, as confirmed by the lower appellate court.



16. Then, coming to the contentions raised by the learned counsel for the appellant, contending that Late Krishnammal could not have thrown the property possessed by her into the hotchpot of the joint family is concerned, in the considered view of this court, such a contention is liable to be rejected. Admittedly, the suit scheduled property was purchased in the name of Late Krishnammal by the father of the plaintiff and defendants 1 to 3. It is a known fact that Kartha of a family acquires properties in the name of his spouse and other coparceners/ children, and in such an event, all such properties are to be treated as joint family properties and are liable for partition among the coparceners. Merely because the properties standing in the name of the wife of Kartha of family, the same does not confer any exclusive right or any right upon the wife of the Kartha and such a property is liable for partition among coparceners. The decision relied upon by the learned counsel for the appellant also reiterates the same and the relevant portion reads as under:-

“Having considered the decisions cited at the bar, it may be useful to have a fresh look at the doctrine of blending. The theory of blending under the Hindu law involves the process of a wider sharing of one's own properties by permitting the members of one's joint family the privilege of common ownership and common enjoyment of such properties. But while introducing new sharers in one's exclusive property, one does not by the process of blending efface oneself by renouncing one's own interest in favour of others. To blend is to share along with others and not to surrender one's interest in favour of others to the exclusion of



oneself. If a Hindu female, who is a member of an undivided family, impresses her absolute, exclusive pro- perty with the character of joint family property, she creates new claimants to her property to the exclusion of herself because not being a coparcener, she has no right to demand a share in the joint family property by asking for a partition. She has no right of survivorship and is entitled only to be maintained out of the joint family property. Her right to demand a share in the joint family property is contingent, inter alia, on partition taking place between her husband and his sons (see Mulla's Hindu Law, 14th Ed. p. 403, para 315). Under [section 3 \(2\) and \(3\) of the Hindu Women's Rights to Property Act, 1937](#) her right to demand a partition in the joint family property of the Mitakshara joint family. accrued on the death of her husband. Thus, the expression 'blending' is inapposite in the case of a Hindu female who puts her separate property, be it her absolute property or limited estate, in the joint family stock."

17. In the present case, it is not a question of blending the property by Late Krishnammal. But it is a case where a joint family property standing in the name of Late Krishnammal and admittedly, which was subjected to partition and 'No Objection' was raised by Late Krishnammal during her lifetime. Admittedly, the plaintiff and the second defendant have been in possession and enjoyment of the property that stood in the name of Late Krishnammal after the oral partition. Therefore, the very claim made by the plaintiff supported by second defendant is totally a false claim and rightly the trial court as well as the lower appellate court non suited the appellant/ plaintiff.



18. In the light of the above, this court is of the considered view that there are no merits in the second appeal, and no substantial question of law arise for consideration, and accordingly, the second appeal is dismissed. No costs. Connected applications, if any, shall stand closed.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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