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A.S.No.463 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.02.2026

Delivered on : 23.02.2026

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

A.S.No.463 of 2024

and

C.M.P.Nos.16661 of 2024, 16291 & 16292 of 2025

1.S.Santhosh Kumar

2.Indirani @ Indira Gandhi

... Appellants

Vs.

1.M.Sivabackiam

Mylathal (deceased)

2.Govindammal

3.Rubadevi

... Respondents

Prayer : Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 30.08.2023 passed in O.S.No.164 of 2015 on the file of the I Additional District Court, Coimbatore.

For Appellants : Mr.Sharath Chandran
for Mr.B.Gopalakrishnan

For R1 : Mr.R.Susendhiran



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For R2 and R3 : Mr.S.Mukunth
Senior Counsel
for Mr.K.Sudhakar

For Proposed Respondents : Mrs.M.Pavithra
for R4 to R6
in C.M.P.No.16921 of 2025

J U D G M E N T

N. SATHISH KUMAR, J.

Challenging the judgment and decree of the learned I Additional District Judge, Coimbatore, dated 30.08.2023, passed in O.S.No.164 of 2015, granting (i) preliminary decree for partition and allotting one half share in favour of the 1st respondent/plaintiff and one half share to respondents 2 and 3/defendants 2 and 3; (ii) decree of permanent injunction; and (iii) declaring the sale deed dated 22.02.2007 in favour of the 2nd appellant/5th defendant as null and void, the defendants 4 and 5 in the suit have filed the above Appeal.

2.For the sake of convenience, the parties will be referred to as per their rank before the trial Court.



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3.The plaintiff is the daughter of one A.S.Muthusamy Gounder. The 1st defendant is the wife of A.S.Muthusamy Gounder. Muthusamy Gounder had a son namely Selvaraj. The 2nd defendant is the wife of Selvaraj and the 3rd defendant is his daughter. According to the plaintiff, the 4th defendant is the illegitimate son of Selvaraj born through the 5th defendant.

4.It is the case of the plaintiff that Item No.1 of the suit properties was allotted to one Sellappa Gounder, father of Muthusamy Gounder, by virtue of a Partition Deed dated 08.12.1919. The said Sellappa Gounder died in the year 1950, leaving behind his only son Muthusamy Gounder. According to the plaintiff, Item No.1 of the suit properties is the ancestral property. Item Nos.2 to 4 were purchased by Muthusamy Gounder as kartha of the joint family out of the joint family nucleus and the properties have been in joint possession and enjoyment of Muthusamy Gounder, his son Selvaraj, the plaintiff and defendants 2 and 3. According to the plaintiff, the 5th defendant was brought to home by Selvaraj claiming to be his second wife, along with her son, the 4th defendant herein. To avoid further complications, the parents of the plaintiffs had allowed the defendants 4 and 5 to stay along with them.



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It is the contention of the plaintiff that, when she demanded partition in the year 2006, she realised that her father Muthusamy Gounder was not keeping good mental faculties and he was having senility and he was not in a position to take any decision. Therefore, the plaintiff dropped the idea of seeking partition at that time. Later, the father Muthusamy Gounder died on 11.12.2009, leaving behind the plaintiff and the defendants 1 to 3 as legal heirs. Hence, it is the contention of the plaintiff that the plaintiff and defendants 1 to 3 are in joint possession and are entitled to share in the suit properties. After the death of Muthusamy Gounder, on verification, the plaintiff came to know that the entire property stands in the name of the 4th defendant and the revenue records also have been mutated in his name. It is the case of the plaintiff that the 4th defendant has surreptitiously brought out some alleged documents, which are not valid in the eye of law. Therefore, according to the plaintiff, she is entitled to 1/3rd share in the suit properties and thereby, she has filed the present suit for partition and for other reliefs.

5.The 1st defendant, the wife of A.S.Muthusamy Gounder, has filed a written statement. Admitting the relationship between the parties, it is her contention that Item No.1 of the suit properties has been allotted to Sellappa



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Gounder, who died in the year 1950, leaving behind his only son A.S.Muthusamy Gounder. According to the 1st defendant, her husband Muthusamy Gounder had lorry business in the name of A.Muthuram Lorry Service. He was also doing private contract work for construction. Out of the income earned from the independent business, the 1st defendant's husband A.S.Muthusamy Gounder has purchased Item Nos.2 to 4 of the suit properties by registered sale deeds dated 29.12.1971, 15.10.1973 and 15.10.1973. It is her further contention that the plaintiff was given 100 sovereigns of gold and Rs.50,000/- cash as sridhana at the time of her marriage by her father A.S.Muthusamy Gounder. It is the contention of the 1st defendant that, after the marriage of her son Selvaraj with the 2nd defendant, the 2nd defendant deserted her husband and lived separately along with her child Rupadevi (3rd defendant) for two years. Since there was no chance for reunion, as per panchayat, they decided to dissolve the marriage and a Deed of Divorce was also executed by the 2nd defendant along with a Release Deed with regard to the maintenance, after receipt of maintenance amount for herself and her daughter (3rd defendant). After the said divorce, Selvaraj married the 5th defendant Indirani in the year 1987 at Patteeswarar Temple, Perur, Coimbatore, as per Hindu customs. The 4th defendant was



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born out of the wedlock. During the lifetime of Selvaraj, the 4th defendant and the 5th defendant lived with Selvaraj along with the parents of the said Selvaraj. Hence, according to the 1st defendant, she, her husband Muthusamy Gounder, her son Selvaraj, the 5th defendant and her son 4th defendant were jointly living and enjoying the suit properties. During the lifetime of Muthusamy Gounder, while he was in sound state of mind, he executed a Will dated 22.02.2007, registered as Doc.No.42/BK3 of 2007 on the file of the Anamali Sub-Registrar's Office, bequeathing his properties to the 4th defendant as grandson. After the death of the testator Muthusamy Gounder, the Will came into force and the 4th defendant is enjoying the suit properties. Mutation in revenue records has also taken place and hence, the 1st defendant prays for dismissal of the suit.

6.During the pendency of the suit, the 1st defendant died on 29.11.2019.

7.The 4th defendant has adopted the written statement of the 1st defendant.



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8.The 2nd defendant, in her written statement, admitting the relationship of the parties, contends that Item No.1 of the suit properties is an ancestral property allotted to Muthusamy Gounder and Item Nos.2 to 4 were purchased in the name of Muthusamy Gounder by utilising the income from the Item No.1 of the properties. It is her contention that there was some misunderstanding between herself and her husband Selvaraj and therefore, the 2nd defendant was sent out of her matrimonial home for sometime. Thereafter, they got reunited and till the death of her husband, she participated in all the matters and she was residing with her husband. After the death of her husband Selvaraj, on account of some misunderstanding with the 1st defendant, the 2nd defendant started living with her sister and her family in the year 2009 after the death of Muthusamy Gounder. It is her further contention that the said Muthusamy Gounder was taken care of by the 2nd defendant, as he was not in a position to understand the nature of things for more than two years till his death. Therefore, it is the contention of the 2nd defendant that she has a share in the suit properties.



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9.The 3rd defendant has filed a written statement, which was adopted by the 2nd defendant, contending that the first item of suit property is having irrigation facility with water source from open well, PAP water as well as a bore well with free electricity connection and there are almost 2000 coconut trees aged about 20 years and they are now yielding good income of Rs.48,00,000/- per year. The said income is shared by the plaintiff, the 1st defendant, and defendants 2 and 3. After the demise of the 1st defendant, the plaintiff is in absolute possession and enjoyment of the suit properties and also the entire income from the suit properties is derived by the plaintiff only in active collusion with the 4th defendant. According to her, Item Nos.2 to 4 of the suit properties were purchased out of the agricultural income derived from Item No.1 of the suit properties. A.S.Muthusamy Gounder, being the kartha of the family, has no right, whatsoever, to execute any document in favour of the defendants 1 and 4. Hence, it is the contention of the defendants 2 and 3 that any document executed by Muthusamy Gounder will not bind their share.



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10.It is the contention of the 5th defendant that Item No.1 of the suit properties is not an ancestral property and it is derived by Muthusamy Gounder through his father Sellappa Gounder. The other items 2 to 4 of the suit properties are also self acquired properties of Muthusamy Gounder. He has purchased the Item Nos.2 to 4 by virtue of registered sale deeds dated 29.12.1971, 15.10.1973 and 15.10.1973 by his own earned money. The said Muthusamy Gounder was running a transport business in the name of Muthuram Transport. Item No.1 of the properties was a dry land and there was no agriculture carried out and there was no water source in the land and no income was derived from the said land. The entire Item Nos.2 to 4 were purchased by her father-in-law Muthusamy Gounder out of his independent income. It is her further contention that the first marriage of her husband with the 2nd defendant had failed and the 2nd defendant had deserted him within four months from the date of marriage and the defendants 2 and 3 had settled in the 2nd defendant's mother's house. The 2nd defendant has also executed a Deed of Divorce after getting One-Time Maintenance and she has relinquished all her future right of maintenance on behalf of the 3rd defendant by way of a registered Release Deed. According to the 5th



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defendant, the marriage between herself and Selvaraj was solemnised in the year 1987 at Patteswarar Temple, Perur, Coimbatore, as per Hindu rites and customs. From the wedlock, the 4th defendant was born to them. It is her contention that she and her son (4th defendant) were residing along with the parents of her husband Selvaraj. After the demise of Muthusamy Gounder on 11.12.2009, during the 16th day ceremony, the 5th defendant came to know through their family friend about the Will executed by Muthusamy Gounder dated 22.02.2007 in favour of her son 4th defendant. It is her contention that the plaintiff also has knowledge about the Will from December, 2009. However, she has filed the suit only in the year 2015. Further, during the lifetime of Muthusamy Gounder, he had sold a portion of the property to her (5th defendant) on 22.02.2007 by way of a registered sale deed bearing Doc.No.697/2007 on the file of the Sub-Registrar's Office, Aanamalai. Hence, according to her, the 4th defendant alone is entitled to the properties of Muthusamy Gounder as per his Will dated 22.02.2007 and neither the plaintiff nor the defendants 2 and 3 has any share in the suit properties. Hence, she disputed the suit claim.



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11. Based on the pleadings of the parties, the trial Court has framed the following issues :

1. *Whether the suit 1st item of the property is ancestral property of the plaintiff and the defendants ?*
2. *Whether items 2 to 4 of the suit schedule properties are purchased out of the income from the ancestral property and whether the same is treated as joint family properties ?*
3. *Whether the plaintiff is entitled for partition of suit schedule property ?*
4. *Whether the Will dated 22.02.2007 is valid and binding on the plaintiff ?*
5. *Whether the plaintiff is entitled to 1/3 share in the suit schedule properties ?*
6. *What other reliefs is the plaintiff entitled to ?*

12. The following additional issues were also framed by the trial Court on 11.11.2021 :

1. *Whether the sale deed dated 22.02.2007 brought out in favour of D5 is valid and binding on the plaintiff ?*
2. *Whether the release deed dated 30.09.1987 executed by D2 in favour of D1's son Selvaraj is valid ?*
3. *Whether the 4th defendant is a legal heir of the 5th defendant*



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and Selvaraj ?

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13.On the side of the plaintiff, P.W.1 was examined and Exs.A1 to A9 were marked. On the side of the defendants, D.W.1 to D.W.7 were examined and Exs.B1 to B25 were marked. Besides, the Court summons were marked as Exs.C1 and C2.

14.The trial Court, on appreciation of evidence and materials on record, by its judgment and decree dated 30.08.2023, rejected the Will (Ex.B12) propounded by the 4th defendant and decreed the suit and granted preliminary decree allotting half share to the plaintiff and half share to the defendants 2 and 3 and also set aside the sale deed dated 22.02.2007 executed by Muthusamy Gounder in favour of the 5th defendant as null and void and not binding on the plaintiff's share over the property and also granted a decree for permanent injunction.

15.Aggrieved over the decree and judgment of the trial Court, the defendants 4 and 5 have filed the above Appeal.



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16.1.Mr.Sharath Chandran, learned counsel appearing for the appellants/defendants 4 and 5, would submit that the trial Court has not appreciated the evidence as per law. According to the learned counsel, though it is the contention of the plaintiff that the first item of the suit properties is ancestral in character, on a perusal of the Partition Deed dated 16.12.1919 (Ex.A1), it is seen that the property is not derived by Sellappa Gounder from his ancestor; whereas, the property has been allotted in a partition between him and his brother. Therefore, such property cannot be treated as ancestral property. In support of his contention, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in **Nani Bai v. Gita Bai** reported in **AIR 1958 SC 706**, wherein, it is held as follows :

“11. ... Partition in the Mitakshara sense may be only a severance of the joint status of the members of the coparcenary, that is to say, what was once a joint title, has become a divided title though there has been no division of any properties by metes and bounds. Partition may also mean what ordinarily is understood by partition amongst co-sharers who may not be members of a Hindu coparcenary. For partition in the former sense, it is not necessary that all the members of the joint



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family should agree, because it is a matter of individual volition. If a coparcenar expresses his individual intention in unequivocal language to separate himself from the rest of the family, that effects a partition, so far as he is concerned, from the rest of the family. By this process, what was a joint tenancy, has been converted into a tenancy in common. For partition in the latter sense of allotting specific properties or parcels to individual coparcenars, agreement amongst all the coparcenars is absolutely necessary. Such a partition may be effected orally, but if the parties reduce the transaction to a formal document which is intended to be the evidence of the partition, it has the effect of declaring the exclusive title of the coparcener to whom a particular property is allotted by partition, and is, thus, within the mischief of Section 17(1)(b), the material portion of which has been quoted above. But partition in the former sense of defining the shares only without specific allotments of property, has no reference to immovable property. Such a transaction only affects the status of the member or the members who have separated themselves from the rest of the coparcenary. The change of status from a joint member of a coparcenary to a separated member having a defined share in the ancestral property, may be effected orally or it may be brought about by a document. If the document does not evidence any partition by metes and bounds, that is to say, the partition in the latter sense, it does not come within the purview



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of Section 17(1)(b), because so long as there has been no partition in that sense, the interest of the separated member continues to extend over the whole joint property as before. Such a transaction does not purport or operate to do any of the things referred to in that section. Hence, in so far as the documents referred to above are evidence of partition only in the former sense, they are not compulsorily registrable under Section 17, and would, therefore, not come within the mischief of Section 49 which prohibits the reception into evidence of any document “affecting immovable property”. It must, therefore, be held that those documents have rightly been received in evidence for that limited purpose.”

16.2.Further, it is the contention of the learned counsel for the appellants that, even assuming that the family had some ancestral source as to Item No.1 of the properties as per the allotment under Ex.A1, those properties are only dry lands not yielding any income. Whereas, the 1st defendant (D.W.2), the wife of Muthusamy Gounder, has clearly stated that her husband was running a lorry business from the year 1966, besides he was also a contractor. Only out of the income from the separate business, Item Nos.2 to 4 were purchased by sale deeds under Exs.A2 to A4. It is his contention that Exs.B17 and B18 clearly show that Muthusamy Gounder had



independent income to purchase the properties under Exs.A3 to A5. Hence, the trial Court holding that the entire properties are ancestral properties, is not correct. It is his contention that, merely because the family had some agricultural lands, in the absence of any evidence to show surplus income out of the said lands, the properties purchased by the kartha of the family cannot be presumed to be joint family properties.

16.3.Further, it is the contention of the learned counsel for the appellants that, though the 2nd defendant married one Selvaraj, son of A.S.Muthusamy Gounder, she had deserted her husband and as per the Panchayat, she has also dissolved the marriage and executed a Marriage Dissolution Deed dated 30.09.1987 which was also registered and the same has been marked as Ex.B8. Further, Exs.B1 to B3 (certificates relating to 3rd defendant) clearly indicate that the matrimonial life between the 2nd defendant and Selvaraj had already strained and the relationship between the 2nd defendant and Selvaraj has come to an end. Further, it is his contention that the Will executed by Muthusamy Gounder under Ex.B12 clearly shows that the 4th defendant is none other than the son born to his son Selvaraj. Hence, it is his contention that the relationship mentioned in the Will is



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relevant and admissible in evidence. The Will has also been registered and the execution and attestation has been spoken by D.W.6 and D.W.7. However, the trial Court has simply rejected the Will without any appreciation, when there is not even a cross-examination with regard to the execution and attestation. It is his contention that the trial Court, rejecting the Will, is not proper.

16.4. Insofar as the sale deed (Ex.A9) executed by Muthusamy Gounder in respect of one of the properties in favour of the 5th defendant, it is the contention of the learned counsel that the trial Court, setting aside the entire sale deed, is not valid. Even assuming that the entire properties are ancestral properties, every member has right to disburse his/her own share by way of alienation or testamentary document. Therefore, to that extent, the document will be valid. However, the trial Court has rejected the entire sale deed, which is not correct. Therefore, the learned counsel prayed for setting aside the judgment and decree of the trial Court.



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17. Whereas, Mr.R.Susendhiran, learned counsel appearing for the 1st respondent/plaintiff, would submit that the trial Court has rightly disbelieved the Will (Ex.B12) by disbelieving the evidence of D.W.6 and D.W.7. It is his contention that their evidence clearly shows that Ex.B12 was brought out fraudulently by the 4th defendant. The conduct of D.W.6 and D.W.7 in coming to the Court and giving evidence, itself is highly doubtful. Therefore, the trial Court has rightly disbelieved the Will. It is his further contention that the properties are admittedly ancestral in character. Though Item Nos.2 to 4 were purchased in the name of the Muthusamy Gounder, the fact remains that the first item of the property is a fertile agricultural land which yields a huge income to the family. Therefore, in the absence of any evidence to show that Muthusamy Gounder had surplus income by individual business, the purchase made by him cannot be held to be out of his separate income. Hence, it is his contention that the trial Court has rightly held that the properties held by Muthusamy Gounder in his name have been purchased only out of the joint family nucleus. Further, it is his contention that the 2nd appellant/5th defendant is not a legally wedded wife of Selvaraj and the 1st appellant/4th defendant is not a legitimate son of Selvaraj.



Therefore, he cannot be a coparcener to the ancestral properties of Muthusamy Gounder. The trial Court has rightly negated their case. Therefore, the learned counsel prayed for dismissal of the Appeal.

18.Mr.Mukunth, learned Senior Counsel appearing for the respondents 2 and 3/defendants 2 and 3 would submit that the appellants have not proved the Will and further, the very paternity of the 4th defendant has not been established. That apart, the marriage of the 5th defendant with Selvaraj has also not been established. Further, the appellants have not chosen to examine themselves before the trial Court. Merely on the basis of the Will, they cannot claim to be the wife and son of Selvaraj. Further, it is his contention that the identity is also not established. It is his further contention that the evidence of D.W.6 and D.W.7 creates lot of suspicion with regard to execution of the Will by Muthusamy Gounder. Therefore, the Will Ex.B12 has been rightly disbelieved by the trial Court. Hence, the learned counsel prays for dismissal of the Appeal.

19.In the light of the above submissions, the points that arise for consideration in this Appeal are as follows :

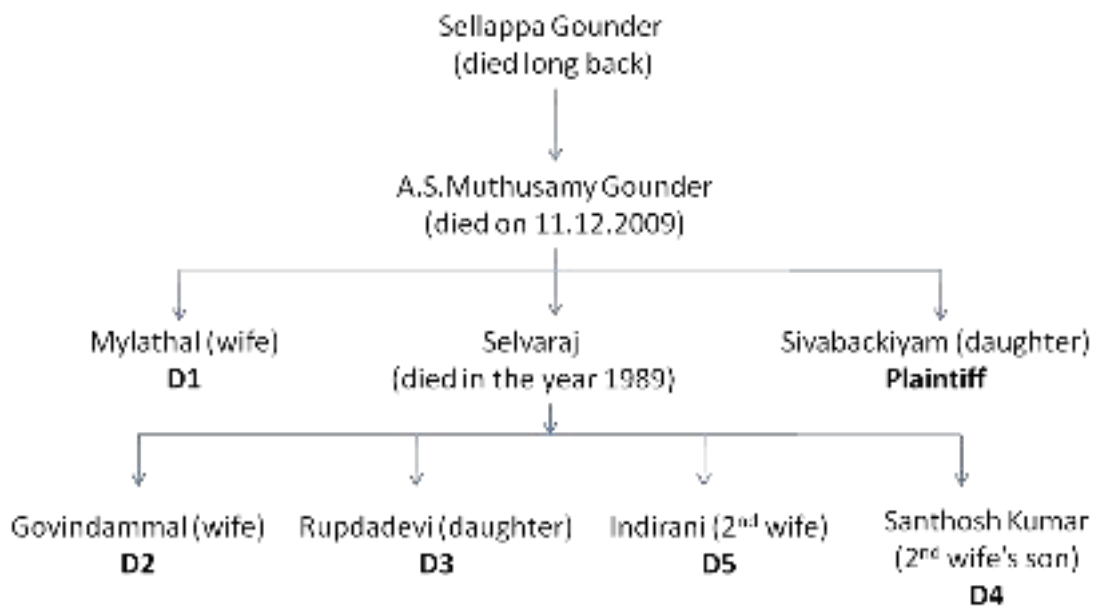


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- (1) Whether the first item of the suit properties is ancestral property in the hands of Muthusamy Gounder ?
- (2) Whether Item Nos. 2 to 4 are the properties purchased out of the income from the joint family nucleus ?
- (3) Whether the Will dated 22.02.2007 (Ex.B12) executed by Muthusamy Gounder is valid and true ?
- (4) Whether the sale deed dated 22.02.2007 is valid and binding to the extent of the share of Muthusamy Gounder ?

Point No.(1):

20.The genealogy of the family is as follows :



The plaintiff is the daughter of A.S.Muthusamy Gounder. It is admitted fact that the 1st defendant is the wife of Muthusamy Gounder. One Selvaraj is the son of Muthusamy Gounder. It is the case of the plaintiff that the 2nd



defendant is the wife of Selvaraj and the 3rd defendant is the daughter born to Selvaraj through 2nd defendant; the 5th defendant, claiming to be the second wife of Selvaraj, came with her son 4th defendant to the house of Muthusamy Gounder; in order to safeguard the name of the family, the defendants 4 and 5 were allowed to reside in the house of Muthusamy Gounder along with Selvaraj. However, it is the specific case of the 1st defendant (wife of Muthusamy Gounder and mother of Selvaraj) and defendants 4 and 5 that the 5th defendant is the second wife of Selvaraj after the 2nd defendant (first wife) dissolved her marriage with Selvaraj and the 4th defendant is the son born to Selvaraj through the 5th defendant. Be that as it may. The above relationship as pleaded by the parties is not seriously disputed.

21.Now, the contention of the plaintiff and the defendants 2 and 3 is that the suit properties are ancestral properties. They rely upon the Partition Deed (Ex.A1), the earliest document in the year 1919, by which, Item No.1 of the suit properties was allotted to Sellappa Gounder, the father of Muthusamy Gounder. The said Sellappa Gounder died leaving behind his only son Muthusamy Gounder as legal heir. This aspect is also admitted by the parties. On a careful perusal of Ex.A1 document, it is seen that it does



not indicate that the property has straightaway come from a common ancestor. But the fact remains that the property has been allotted to Sellappa Gounder, father of Muthusamy Gounder. Though the document Ex.A1 does not indicate the character of the properties, the fact remains that, as early as in the year 1919, Sellappa Gounder was allotted huge properties. Though it appears that the 1st item of the suit properties is the self-acquired property of Sellappa Gounder, he died in the year 1950 prior to the Hindu Succession Act, 1956, coming into force. By that time, his son Muthusamy Gounder had inherited the property. Admittedly, his son Muthusamy Gounder had also had a son by name Selvaraj and a daughter, who is the plaintiff herein. Therefore, the property inherited by Muthusamy Gounder from his father prior to the Hindu Succession Act, 1956, will be now ancestral in his hands. The illustration set out in Mullah's Hindu Law under Section 211 (Hindu Coparcenery) under Part-I which deals Principles of Hindu Law, reads as follows :

***“Illustration (b)** It is, however, the other way as to separate property. A person was the absolute owner of the property inherited by him from his brother, uncle etc. His son did not acquire any interest in it by birth and on his death, it passed to the son not by survivorship but by succession. Thus, if an*



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inherited property from his brother, it was his separate property, and it was absolutely at his disposal. His son B acquired no interest in it by birth and could not claim a partition of it, nor could he restrain A from alienating it. The same rule applied in case of self-acquired property of a Hindu, who died prior to the coming into force of The Hindu Succession Act, 1956. It is, however, important to note that separate or self-acquired property, once it descends to a male issue of the owner, became ancestral in the hands of the male issue who inherited it. Thus, if A owned separate or self-acquired property, it passed on his death to his son B, as his heir. However, the result of the separation of the doctrine of ancestral property and a son taking interest in it simply by his birth, was that if A had a son C, the latter (C) took an interest in it by reason of his birth and became a coparcener with B in respect of the same. C could restrain B from alienating it, and could enforce a partition of it against B. This doctrine has been materially affected by operation of section 8 of the Act of 1956, as will be noticed in notes under this section.”

22. Applying the above principle, admittedly, when Muthusamy Gounder inherited the property on the death of his father Sellappa Gounder and remained in its possession as his individual property, the moment son Selvaraj was born, it became ancestral in the hands of Muthusamy Gounder.



Therefore, we are of the view that the 1st item of the suit properties is the ancestral property in the hands of Muthusamy Gounder. ***Point No.(1) is answered accordingly.***

Point No.(2) :

23.Now, it has to be seen as to what is the nature of the 1st item of the property. Admittedly, Item No.1 of the suit properties is an agricultural property. Though it is contended that the said property is a dry land, it is relevant to note that Ex.A1 (Partition Deed) itself clearly indicates that, in the said property, a well is very much available for irrigation purposes. That apart, Ex.B16 (Patta) filed by the defendants also indicates that the property is situated adjacent to PWD Canal, which clearly shows that the property is a fertile land. The 1st defendant (D.W.2) has admitted in her evidence that the property is fully developed with coconut trees. Though it is the contention of the 1st defendant that Item Nos.2 to 4 were purchased out of the separate income of her husband, in the cross-examination, she (D.W.2) has clearly admitted that the lands are fertile lands and she and her husband also cultivated 20 to 30 years back and she was not aware as to whether the



property was developed by her father-in-law and she was also not aware as to from which income Item Nos.2 to 4 were purchased. Therefore, it is clear that the 1st item of the suit properties is an irrigable agricultural property with sufficient water facilities and the same is developed with coconut trees.

24.Though Exs.B23 and B24 have been filed to show that Muthusamy Gounder had purchased two lorries in his own name in the year 1966, the fact remains that he had agricultural property left by his father, admittedly irrigable lands, as held above. Therefore, mere purchase of the lorries in his name in the year 1966 itself cannot be a conclusive proof to show that he had purchased the other properties only out his independent income from the lorry business. Ex.B17 (Income and Expenditure statement of Muthusamy Gounder) is also filed to show the so-called accounts maintained by Muthusamy Gounder. On perusal of the same, the said document is only a photocopy. Be that as it may. Even assuming that certain accounts for expenditure and income were maintained by Muthusamy Gounder in the year 1966, the fact remains that the document shows some expenditure to maintain the lorry. Absolutely, there is no evidence to show as to what was the nature of income earned all these years. Whereas, the sale deeds Exs.B5,



B6 and B7 of the year 1971 to 1973 show that huge sale consideration of Rs.39,000/-, Rs.17,000/- and Rs.12,000/- has been paid by Muthusamy Gounder towards purchase of the properties. Therefore, in the absence of any proof to show surplus income from the individual business of the elder member of the family, merely because the purchase is made in his name, it cannot be said that those properties were purchased only out of his separate income. When it is established that the family had sufficient joint family agricultural properties which is capable of yielding income, it is for the kartha to show that the properties did not yield any income and further, he had income from his individual business. Though it is stated that Muthusamy Gounder was a contractor by profession, admittedly, there is no evidence, whatsoever, to show that he had earned more income from his contractor business. Merely because he had two lorries in his name, it cannot be said that, only out of the income from the independent lorry business, he had purchased the properties.

25.Further, it is relevant to note that the family had vast extent of agricultural lands and commercial crops like coconut trees were also grown and the property was a developed one. In such case, it can be seen easily



inferred that the income generated from the joint family agricultural properties could have been utilised by Muthusamy Gounder to purchase the other properties, instead of his income from the separate businesses. Therefore, in the absence of any evidence to show that there was a definite and separate income more than the income from the joint family properties and only out of that income, the other properties have been purchased, it has to be presumed that the properties in Item Nos.2 to 4 were purchased out of the joint family nucleus, though the properties stood in the name of the Muthusamy Gounder. When sufficient joint family nucleus has been established, the burden lies on the party alleging independent business to show that the joint family nucleus was not sufficient to purchase the other properties. However, in the case on hand, even the nature of the income from the individual lorry business or contractor business of Muthusamy Gounder, has not been established. Therefore, as long as the burden is not discharged and the family was having huge agricultural lands with irrigation facilities with developed coconut trees therein, we are of the view that it has to be held that the purchases made by Muthusamy Gounder under Exs.B5, B6 and B7 (Item Nos.2 to 4 of the suit properties) were out of the joint family nucleus. ***Point No.(2) is answered accordingly.***



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Point No.(3) :

26.It is relevant to note that there were some matrimonial disputes between the husband Selvaraj and the 2nd defendant (first wife of Selvaraj and daughter-in-law of the Muthusamy Gounder) and the 2nd defendant has left the matrimonial home. Ex.B8 (Divorce Deed) clearly proves the fact that the matrimonial relationship between the 2nd defendant and her husband Selvaraj has come to an end. The said Divorce Deed has been registered. Though divorce or dissolution of marriage can be effected only by process of law as per Hindu Marriage Act, 1955, the fact remains that the registration of the Divorce Deed is not prohibited. Though mere registration of the document will not sever the status of the parties in law, it is relevant to note that the contents of the document (Ex.B8) executed by both sides clearly show that there was a matrimonial dispute between the husband Selvaraj and the wife/2nd defendant and the wife was residing separately from the matrimonial home and they agreed to obtain divorce from the Court. Though the marriage between Selvaraj and the 2nd defendant has not been dissolved by operation of law, the very contents of Ex.B8 (Divorce Deed) clearly show that their relationship had strained and they had separated long



back.

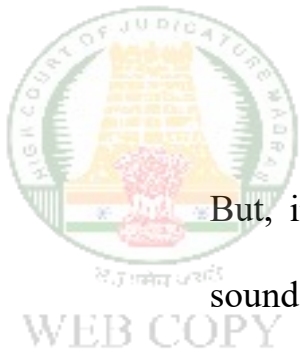
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27.It is the contention of the plaintiff that the 5th defendant, claiming to be the second wife of Selvaraj, came to the house of Muthusamy Gounder along with her child (4th defendant) and only in order to safeguard the family's respect, the defendants 4 and 5 were allowed to stay in the house of Muthusamy Gounder. The said contention of the plaintiff cannot be countenanced for the simple reason that, admittedly, the 2nd defendant has separated from her husband. D.W.2 (mother-in-law of 2nd defendant) has clearly admitted the relationship of the parties. It is her contention that, after the 2nd defendant deserted her husband and left the matrimonial home, there was a marriage between the 5th defendant and her son Selvaraj in the Temple as per Hindu rites and customs. She (D.W.2) has clearly spoken about the valid marriage performed in the Temple in the year 1987 between the 5th defendant and Selvaraj and out of the said marriage, a child, i.e., 4th defendant was born to Selvaraj and 5th defendant. The evidence of D.W.2 also clearly shows that the 5th defendant and 4th defendant were all along residing with her and her husband. Though the marriage between Selvaraj and 5th defendant cannot attain legal sanctity in view of the earlier marriage



with the 2nd defendant which has not been dissolved legally (in legal parlance, it is subsisting), the fact remains that the child, namely the 4th defendant, is born to Selvaraj. The Bombay High Court in ***Shahaji Kisan Asme and others v. Shri Sitaram Kondi Asme*** reported in ***(2009) SCC OnLine Bom 1499***, has held that “In view of the definition of word ‘related’ in Section 3(1)(j) read with Section 15(1), they can succeed and inherit the property of their mother Vimal and in view of Section 16(3) of the Hindu Marriage Act, they can also succeed to their mother as well as father. Section 16(3) makes it abundantly clear that they would be entitled to inherit the property of their parents only and no other relations.” In view thereof, the 4th defendant is certainly entitled to share from his father's share.

28. In the above background, now, it has to be seen whether the Will executed by A.S.Muthusamy Gounder under Ex.B12 in favour of the 4th defendant, is valid and true. It is relevant to note that the Will is a registered Will. Though the plaintiff became aware of the Will (Ex.B12) after filing of the written statement, there is no reply statement, whatsoever, challenging the Will. Though it is pleaded by the plaintiff that Muthusamy Gounder was not keeping good mental faculties, such pleadings are only general in nature.



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But, in evidence, P.W.1 has clearly admitted that her father was keeping sound mind and good mental faculties and what was stated in the pleadings is not correct. Therefore, it is clear that the very plea in the plaint alleging that Muthusamy Gounder was not keeping sound mind and mental faculties, is not correct and is made only to non-suit the document Ex.B12. Ex.B12 is a registered document. Registration of a document carries a legal presumption that all the official acts are done properly.

29.To prove the execution and attestation of the Will, D.W.6 and D.W.7 have been examined. D.W.6 is a Teacher by profession. He is known to the family. The evidence of D.W.6 clearly shows that, on 22.02.2007, at the request of Muthusamy Gounder, he went to his house and D.W.7 also came there and the Will was prepared and Muthusamy Gounder signed the Will in their presence. Thereafter, they signed. The evidence of D.W.6 with regard to execution and attestation of the Will, is not disputed in the cross-examination. Whereas, the cross-examination is directed in another aspect as if D.W.6 had not prepared the Will. D.W.6 is originally a retired Teacher, who retired in the year 2005. From the entire cross-examination of D.W.6, we find no suspicious circumstance, whatsoever, brought out. Merely



because the witnesses have stated in their evidence that, after the receipt of summons, they had met the 4th defendant and discussed about the case, it cannot be said that their entire evidence is unbelievable. Whenever a summon is received from the Court, it is the normal conduct of any person to meet the party concerned to enquire as to what is the nature of the case and why he has been summoned to come to the Court, etc. Therefore, such circumstance cannot be put against the witness to disbelieve his entire evidence. When the chief-examination with regard to the execution and signing of the document by the testator and the witnesses, have not been disputed in the cross-examination by the other side, it has to be held that the execution and attestation have been clearly established. D.W.7, in his evidence, has also clearly supported the version of D.W.6. He has also clearly spoken about the execution and attestation of the Will. The plaintiff (P.W.1) has clearly admitted that her father was in a sound state of mind with good mental faculties, though she has pleaded otherwise in the plaint. Further, the fact remains that the defendants 2 and 3 have left the house as early as in the year 1987. Therefore, the testator, executing a Will in favour of his grandson, the 4th defendant, who is all along living with him and his wife/1st defendant, is quite normal. However, the trial Court has disbelieved



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the evidence of D.W.6 and D.W.7 merely on the ground that, since D.W.6 has stated that he has prepared the Will. We are of the view that, such a finding of the trial Court disbelieving the Will, is not based on proper appreciation. Admittedly, the grandson (4th defendant) was all along residing with the grandparents. This aspect has been clearly spoken to. The first daughter-in-law (2nd defendant) and the granddaughter (3rd defendant) of the testator have left the family in the year 1987 as per Ex.B8. Therefore, in such situation, the grandfather, executing the Will in favour of his grandson, cannot be found fault with. There is no suspicious circumstance, whatsoever, attached to the document. Therefore, we are of the view that, as long as the evidence of D.W.6 and D.W.7 with regard to the execution and attestation of the Will has not been challenged in the cross-examination, it has to be held that the Will (Ex.B12) being a registered one where registration also carries presumption, has been properly executed by grandfather Muthusamy Gounder. Hence, we hold that the Will dated 22.02.2007 (Ex.B12) executed by Muthusamy Gounder is valid and true.



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30.It is relevant to note that, even in the Mitakshara coparcenery, any male Hindu can will away only his share. Therefore, though the Will (Ex.B12) governs the entire properties, since we have already held that the 1st item of the suit properties is an ancestral property and other items of suit properties were also purchased only out of the joint family nucleus, the Will (Ex.B12) could be valid only in respect of the 1/3rd share of Muthusamy Gounder. Therefore, we hold that the Will under Ex.B12 is certainly valid in respect of his 1/3rd share. ***Point No.(3) is answered accordingly.***

Point No.(4) :

31.It is further to be noted that, on the same day of execution of the Will, i.e. on 22.02.2007, Muthusamy Gounder has also executed a sale deed under Ex.A9 in favour of the 5th defendant in respect of 735 sq.ft. (around 1 ¾ Cents) along with the building constructed thereon, situated at Grama Natham Survey No.157/C1 of Angalakurichi Village, Pollachi Taluk. Admittedly, Muthusamy Gounder has 1/3rd share in the entire properties. Therefore, it cannot be said that the entire sale deed is void as held by the trial Court. The purchaser/5th defendant can certainly step into the shoes of



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her vendor and she is entitled to claim even equity in the final decree proceedings. Therefore, the trial Court's finding that the sale deed Ex.A9 is null and void, is not valid in the eye of law. Hence, we are of the view that the sale deed dated 22.02.2007 (Ex.A9) is valid and binding to the extent of the 1/3rd share of Muthusamy Gounder. ***Point No.(4) is answered accordingly.***

32.Conclusion :

- (a) Since this Court has held that the entire suit properties are ancestral properties in the hands of Muthusamy Gounder, the plaintiff, being the daughter of Muthusamy Gounder and also a coparcener, is entitled to equal share along with her father Muthusamy Gounder and brother Selvaraj. Accordingly, the plaintiff is entitled to 1/3rd share in all the suit properties.
- (b) Since A.S.Muthusamy Gounder, during his lifetime, has executed a Will in favour of 4th defendant under Ex.B12 and this Court has held that the Will is valid and true, the 1/3rd share of Muthusamy Gounder is bequeathed to the 4th defendant.
- (c) The remaining 1/3rd share devolves on son Selvaraj. By birth, the 3rd



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defendant (daughter) alone becomes coparcener along with Selvaraj.

Therefore, the 3rd defendant is entitled to 1/6 share along with her father Selvaraj.

(d) After the death of Selvaraj in the year 1989, his 1/6 share devolves upon the 1st defendant (his mother), 2nd defendant (his wife) and again the 3rd defendant (his daughter) and the 4th defendant (his son, though born through second wife), whereby, each of them gets 1/24 share.

(e) The 1st defendant (grandmother) died during the pendency of the suit.

After the death of a Hindu female member, the devolution is governed by Section 15 of the Hindu Succession Act, 1956. The Bombay High Court in ***Shahaji Kisan Asme and others v. Shri Sitaram Kondi Asme*** reported in ***(2009) SCC OnLine Bom 1499***, after referring to various precedents, has held as follows :

“On reading the above observations, it only appears that children of a female Hindu, whether legitimate or illegitimate, as well as children of any pre-deceased son or adopted son fall within the meaning of expression ‘son’. It is impossible to hold from these observations that the illegitimate children of a son of a woman would be included in the word ‘son’ within section 15(1)(a). In the present case, Kisan was the legitimate son of deceased Draupadabai and Sitaram and he could certainly



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*inherit the property of his parents and he would also be entitled to share in the coparcenary property as a coparcener. However, he had died during the lifetime of his father as well as mother. The plaintiffs Nos. 1 to 3, who sought partition and share in the property, are the illegitimate children of deceased Kisan and the plaintiff no. 4 Vimal. In view of the definition of word 'related' in section 3(1)(j) read with Section 15(1), they can succeed and inherit the property of their mother Vimal and in view of Section 16(3) of the Hindu Marriage Act, they can also succeed to their mother as well as father. Section 16(3) makes it abundantly clear that they would be entitled to inherit the property of their parents only and no other relations. **They being illegitimate children cannot be deemed to be related to the grandparents which necessarily requires that the children must be legitimate.** Therefore, they cannot claim any right over the property of their grandparents.”*

Accordingly, the 1/24 share of the 1st defendant (grandmother) will devolve on her daughter (plaintiff) and the 3rd defendant (daughter of pre-deceased son Selvaraj) alone. Though 4th defendant also was born to her son Selvaraj, since the second marriage was solemnized during the subsistence of the first marriage, it is not a valid marriage in law and the grandson (4th defendant) born out of the said wedlock is illegitimate, and therefore, in the light of the judgment extracted



supra, he is not entitled to the share of his grandmother. Accordingly, the plaintiff (daughter) and the 3rd defendant (granddaughter) are entitled to 1/48 share each.

33. In fine, the entitlement of the parties would be as follows :

<i>Plaintiff</i>	:	$1/3 + 1/48 = 17/48$
<i>2nd defendant</i>	:	$1/24 = 2/48$
<i>3rd defendant</i>	:	$1/6 + 1/24 + 1/48 = 11/48$
<i>4th defendant (appellant)</i>	:	$1/3 + 1/24 = 9/24 = 18/48$

34. As a result, **this Appeal is allowed and the decree and judgment of the trial Court is set aside.**

- i. There shall be a preliminary decree for partition dividing the entire suit properties and allotting 17/48 share to the plaintiff; and allotting 2/48 share to the 2nd defendant and 11/48 share to the 3rd defendant on payment of Court fee.
- ii. The appellant shall get 1/3rd share in the suit properties as that of his grandfather A.S.Muthusamy Gounder by way of Will Ex.B12. Apart from that, on adding the shares devolved on him through his father



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Selvaraj (i.e., 1/24), the appellant is totally entitled to 18/48 share.

- iii. Since A.S.Muthusamy Gounder has alienated a portion of the property in favour of 5th defendant by way of sale deed (Ex.A9) on 22.02.2007, i.e., the same day on which Will (Ex.B12) was executed, the sale deed (Ex.A9) executed by A.S.Muthusamy Gounder in favour of the 5th defendant will be valid to the extent of his 1/3rd share in the suit properties, besides bequeathing to the 4th defendant.
- iv. Considering the relationship between the parties, both parties shall bear their own costs throughout.
- v. Consequently, connected miscellaneous petitions in C.M.P.Nos.16661 of 2024 and 16292 of 2025 are closed.
- vi. Since the rights of the parties have been declared, the subsequent purchasers from the plaintiff and defendants 2 and 3, who are sought to be impleaded vide C.M.P.No.16291 of 2025, can claim their right only to the extent of the shares of their vendors. With this observation, the impleading petition in C.M.P.No.16291 of 2025 is dismissed.

(N.S.K., J.) (R.S.V., J.)
23.02.2026

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Internet : Yes
Index : Yes / No
Speaking Order / Nonspeaking order
Neutral Citation : Yes

To

- 1.The I Additional District Judge,
Coimbatore.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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A.S.No.463 of 2024

N. SATHISH KUMAR, J.
and
R. SAKTHIVEL, J.

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Pre-Delivery Judgment in
A.S.No.463 of 2024

23.02.2026