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AS No. 824 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-06-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

AS No. 824 of 2019

Mallika

..Appellant(s)

Vs

Chinnammal (Died)

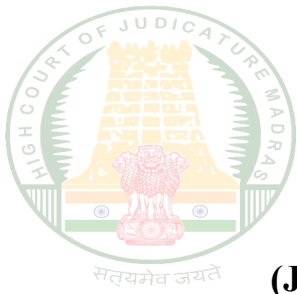
1. Kannammal
2. R.Bharathi
3. R.Gayathri

..Respondent(s)

Appeal against the judgment and decree dated 10.08.2019 passed in
O.S.No.246/2013 on the file of the 1st Additional District Judge, Erode.

For Appellant(s): Mr.I.C.Vasudevan

For Respondent(s): Mr.C.Ramaraj
for Mr.M.Guruprasad



JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

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The plaintiff in O.S.No.246 of 2013 on the file of I Additional District Judge, Erode, aggrieved by the judgment and decree, dated 10.08.2019, by which judgment the suit was dismissed, is the appellant herein.

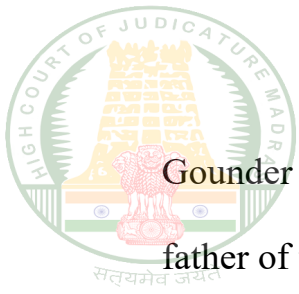
2. The plaintiff, who is the daughter of the first defendant and sister-in-law of the second defendant, had instituted the suit, seeking partition and separate possession of two shares of the suit schedule property and to allot one such share to the plaintiff and for further consequential reliefs.

3. By judgment, dated 10.08.2019, the suit was dismissed, necessitating the plaintiff to file the present appeal.

O.S.No.246/2013 (I Additional District Court, Erode) :

4. It was the case of the plaintiff that she was the daughter of one Karuppana Gounder. The first defendant – Chinnammal was the mother. The second defendant Kannammal was the wife of Rathinasamy, the brother of the plaintiff. He had died. The third and fourth defendants were his daughters. Pending the suit, the first defendant also died and the same was recorded by the trial Court.

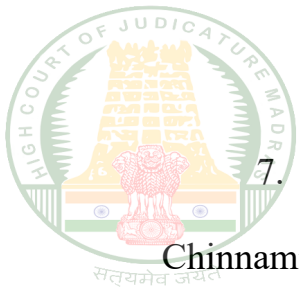
5. It was the further case of the plaintiff that her paternal grandfather was one Chellappa Gounder, whose father was one Kandappa Gounder. Chellappa



Gounder had one son and three daughters. His son Karuppana Gounder was the father of the plaintiff.

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6. On 12.09.1921, Kandappa Gounder and his brother Chennimalai Gounder had jointly purchased the suit property from one Kandasamy Gounder by way of a registered document. Thereafter, Kandappa Gounder enjoyed the property as his absolute property. It had been contended that on 15.07.1954, a partition deed was entered into among the wife, two sons of Kandappa Gounder, namely, Chellappa Gounder, and Ramasamy Gounder and the property was divided into three separate parts. It was stated that the property had been purchased by Kandappa Gounder alone. It had been contended that Kandappa Gounder however was not a party to the partition deed. It had been contended that the properties were ancestral properties of Chellappa Gounder and his son Karuppana Gounder – father of the plaintiff. It had been stated that Chellappa Gounder executed a Will on 17.08.1978 as if the property was a separate property. The plaintiff claimed that the Will was not binding on her. It was claimed that Chellappa Gounder was entitled to execute the Will only with respect to his share of the property. It had been contended that the property thereafter devolved on Karuppana Gounder – father of the plaintiff. Claiming that under the amendment to the Hindu Succession Act, 2005, the plaintiff was entitled to undivided one-third share, the plaintiff had initially instituted the suit. Subsequently, on the death of the first defendant, the plaintiff had amended the plaint, seeking one-half share in the suit property.

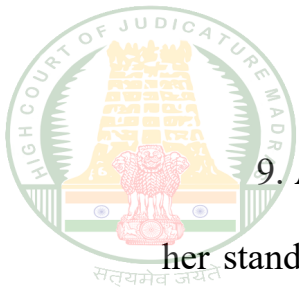


7. A Written Statement had been filed by the first defendant – Chinnammal – mother of the plaintiff. She stated that there had been suppression of material facts in the plaint, particularly, that the property had been sold by Kandappa Gounder on 04.08.1922 by a registered sale deed to one Sengoda Gounder. Thereafter, from the date of sale, Kandappa Gounder did not have any right, title or interest over the property. Subsequently, after a period of 12 years, Valliammal, wife of Kandappa Gounder, with the help of her sons, had purchased a portion of the suit property by a sale deed, dated 14.04.1934. Valliammal also purchased other portions of the suit property by sale deeds, dated 04.07.1934 and 11.05.1940. She had also purchased further portions of the suit property by further sale deeds, dated 29.11.1939 and 26.03.1943. Thereafter, on 15.07.1954, Valliammal and her two sons, namely, Chellappa Gounder and Ramaiya Gounder entered into a registered partition deed, by dividing the properties among themselves. The property allotted to Valliammal was to further devolve on her two sons. 'B' Schedule property was allotted to Chellappa Gounder. It was contended that during his life time, Kandappa Gounder did not question the said partition deed. It had been stated that Chellappa Gounder was enjoying the property allotted to him as his self-acquired property. Thereafter, he executed a Will, dated 17.08.1978, which was registered in the office of SRO, Chennimalai. As per the said Will, in the first item of 'A' Schedule property, his son Karuppana Gounder was to have life estate and after his death the property should go to his grandson Rathinasamy.



The second item of 'A' schedule property was to be enjoyed by Karuppana Gounder with all rights. 'B' Schedule property was bequeathed to Rathinasamy. As per the Will, the property had been devolved on him from the date it came into effect. It had been stated that the husband of the second defendant – Rathinasamy was running a dying factory and also doing textile business. He was also working as an LIC Agent and with the income he earned, he purchased other properties. He unfortunately died, leaving the defendants, his mother, his wife and two daughters as legal heirs. Thereafter, on 02.06.2010, Karuppana Gounder, father of the plaintiff, and the defendants, who represented Rathinasamy, had entered into a registered partition deed and the properties had been allotted to the defendants 2 to 4, who became entitled as absolute owners of the property. They also mutated the revenue records in their name. It was claimed that the plaintiff had issued a notice prior to institution of the suit, which was replied by the defendants. It had been stated that in view of the above facts, the plaintiff was not entitled to any share in the property, much less one-half share in the suit schedule properties.

8. The second defendant- Kannammal – sister-in-law of the plaintiff also filed a separate written statement, stating the same facts as stated in the written statement of the first defendant and tracing the title of the property in the same manner. She also claimed that the plaintiff was not entitled to any share in the suit properties.



9. A reply statement had been filed by the plaintiff, once again reiterating her stand taken in the plaint. She denied the trace of the title as stated by the defendants and claimed that she has a share in the suit property.

10. On the basis of the above pleadings, the following issues had been framed:

(1) Whether the plaintiff is entitled for partition of $\frac{1}{2}$ share in the suit schedule property by metes and bounds as prayed for ?

(2) Whether the schedule properties have been allotted to the defendants 2 to 4 through a registered partition deed entered between defendants 1 to 4 as alleged ?

(3) What other relief the plaintiff is entitled to ?

11. During trial, the plaintiff examined herself as P.W.1 and marked Exs.A-1 to A-11. The documents relating to the title of the property were marked as Exs.A-1 and A-2. Certified copy of the Will executed by Chellappa Gounder was marked as Ex.A-3. Copy of the reply notice by the defendants was marked as Ex.A-11. The defendants examined three witnesses. The second defendant examined herself as D.W.1 and two other witnesses were examined as D.Ws.2 and 3. They marked Exs.B-1 to B-31. The original Will, dated 17.08.1978, of Chellappa Gounder was marked as Ex.B-1. The documents relating to the trace of the title were marked as Exs.B-2 to B-9. Exs.B-10, B-11 and B-12 were the documents relating to the properties purchased by Rathinasamy. Ex.B-13 was the partition deed, dated 02.06.2010. The



documents relating to mutation of revenue records before the statutory authorities were also marked.

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12. On the basis of the above evidence, oral and documentary, the learned trial Judge held that the suit properties had been purchased by Kandappa Gounder under Ex.A-1 – sale deed, dated 12.09.1921, as also under Ex.B-2 – sale deed, dated 12.09.1921. This fact had been disclosed in the plaint. But, however, it had been noted that the plaintiff had not disclosed that Kandappa Gounder had sold the entire property to one Sengoda Goundar under Ex.B-3, sale deed, dated 04.08.1922. Therefore, Kandappa Gounder did not have any right or title over the suit property. Thereafter, his wife Valliammal purchased portions of the properties under Exs.B-4 and B-5. Her son Chellappa Gounder purchased another portion of the property under Ex.B-6. Valliammal purchased a further portion of the property under Ex.B-7. Thereafter, yet another portion of the property was purchased under Ex.B-8. Therefore, they had consolidated the property, which had been sold by Kandappa Gounder in their names. Thereafter, Valliammal and her two sons – Chellappa Gounder and Ramaiya Gounder entered into a partition, which was marked as Ex.B-9/A-2. The property had been declared as the separate self-acquired property of Valliammal and her two sons. Kandappa Gounder did not question that particular partition deed. Under the partition deed, the property, which had been allotted to Chellappa Gounder, was further devolved by a Will in the year 1978.



13. The main contention of the plaintiff was that Chellappa Gounder did not have right to execute the Will, as it was a joint family property. However, the learned trial Judge held that it was the self-acquired property of Chellappa Gounder, having been allotted to him under a partition deed and further holding that the Will was executed with every right and that the Will had been proved in the manner known to law. It was further held that the property had devolved in accordance with the bequeathal after the death of Chellappa Gounder and that the plaintiff cannot claim any right or title over the property. Holding as above, the suit was dismissed.

A.S.No.824 of 2019 (High Court) :

14. Challenging the said judgment and decree, the plaintiff had filed the present appeal before this Court.

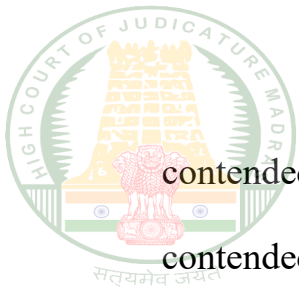
15. Heard the learned counsel for the appellant and also the learned counsel for the respondents.

16. Learned counsel for the appellant contended that the suit schedule properties originally belonged to one Kandappa Gounder and his brother Chennimalai, who had purchased the property in the year 1921. It had been contended that the property, therefore, remained as joint family property of Kandappa Gounder. Learned counsel stated that partition was effected over the said property among the wife and two sons of Kandappa Gounder and the property was then allotted to Chellappa Gounder. According to the learned



counsel for the appellant, this property was the ancestral property of Chellappa Gounder. It was contended that the Will could be executed only to his share of property, as it retained the character of ancestral property. Learned counsel, accordingly, contended that the appellant, as daughter of the family, was entitled to a share under the amendment brought under the Hindu Succession Act, 2005. Stating that the trial Court had not adjudicated the issues properly, the learned counsel stated that the judgment and decree of the trial Court must be set aside and the suit decreed as prayed.

17. Learned counsel for the respondents, however, denied and disputed the said contentions. The learned counsel contended that after the purchase of the property on 12.09.1921, the property had been sold by Kandappa Gounder to one Sengoda Gounder by a sale deed in the year 1922, which was marked as Ex.B-3. This property was again purchased by Valliammal, wife of Kandappa Gounder, and her two sons by various portions and, therefore, the property became their absolute property. They entered into a partition deed, which was not questioned by Kandappa Gounder. Under the said partition deed, the property had been allotted to Chellappa Gounder. It had been contended that this property was the separate property of Chellappa Gounder. The said Chellappa Gounder was the grandfather of the plaintiff. He had executed a Will, bequeathing the property in the year 1978 and, according to it, the property had devolved on the legatees under the said document. Learned counsel, therefore,

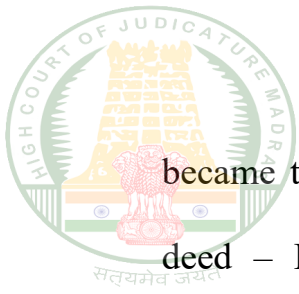


contended that the appellant had no right or share over the property. He contended that the trial Court had correctly dealt with the issues and rightly dismissed the suit. Accordingly, he prayed for dismissal of this appeal.

18. We have carefully considered the arguments advanced.

19. The only point which arises for consideration is, whether the property retained the joint family nature in the hands of Chellappa Gounder, and whether he was entitled to execute the Will on 17.08.1978 ?

20. To determine this issue, the trace of the property will have to be examined. The property originally belonged to one Kandappa Gounder and his brother Chennimalai Gounder having purchased the same under Ex.A-1, dated 12.09.1921. But, the appellant, in her plaint, had unfortunately not stated that Chennimalai Gounder had sold the property to one Sengoda Gounder, by a sale deed, dated 04.08.1922, which had been marked as Ex.B-3. The original sale deed had been marked during the course of trial. By this sale, Kandappa Gounder had lost all title over the said property. After 12 years on 13.06.1934, a portion of the property was repurchased by his wife - Valliammal under Ex.B-4. Thereafter, successively, Valliammal and her two sons Chellappa Gounder and Ramaiya Gounder continued to purchase portions of the property under Exs.B-4 to B-8. Therefore, the said property, which had been sold by Kandappa Gounder to Sengoda Gounder was repurchased into the family by his wife – Valliammal and her two sons Chellappa Gounder and Ramaiya Gounder. The property, thus,



became the absolute property of the purchasers. They entered into a partition deed – Ex.B-9, dated 15.07.1954. It is very significant to point out that Kandappa Gounder did not object to that partition. It is only natural that he did not object because he did not have right or title, having sold the property in the year 1922 itself. Thereafter, the purchasers entered into a partition deed, dated 15.07.1954, under Ex.B-9. This particular partition was questioned by the appellant, stating that ancestral properties could not have been partitioned. But, as pointed out by us, the parties to the partition deed had purchased the property and had every right to enter into a partition among themselves. It was also to be noted that the father of the appellant had been born at the time of partition deed and, therefore, they cannot independently partition the property. Under the partition deed, the suit property had been allotted to Chellappa Gounder, one of the sons of Valliammal and one of the purchasers. He executed a Will on 17.08.1978. This Will executed by him, if proved, will be a valid document. He had every right to execute the Will. We hold that Chellappa Gounder was the absolute owner of the property with a right to execute the Will or any other document over the said property. The contention of the appellant that the suit property was the joint family property is rejected by us. The Will had also been proved in the manner known to law, by examining D.Ws.2 and 3, attestors to the Will.



21. The appellant claimed that the property in the hands of her father was ancestral property. That stand of the appellant is not legally correct. Under the Will, life estate alone was granted to Kandappa Gounder and the property was devolved on Rathinasami, husband of the second defendant. After the death of Kandappa Gounder, Rathinasami became the absolute owner of the property. The trace of the title indicates that the appellant stood excluded from claiming any right, title or share over the said property. She had initially suppressed the fact of sale of the property in the year 1922. Under the Will, 'B' Schedule property was bequeathed absolutely to Rathinasami. That property is the suit property. The appellant cannot claim any right, title or share over the said property. The suit was speculative in nature.

22. With respect to the point framed for answer, we hold that Chellappa Gounder had every right to execute the Will on 17.08.1978. Subsequently, in the year 2010, there had been further partitions over the said property, which had also not been questioned by the appellant. The property, which had devolved on him under the earlier Will, had also been dealt with and allotted to the other parties to the partition deed. Hence, we hold that the suit was speculative and that the appellant was not entitled to any share of the property. The trial Court had elaborately considered the evidence adduced and also the trace of the title and had come to a correct conclusion that the suit has to be dismissed. We confirm the said judgment and decree of the trial Court.



23. Appeal Suit stands dismissed, however, taking into consideration the relationship among the parties, without costs. Consequently, the connected C.M.P.No.25509 of 2019 is closed.

(C.V.K.,J.) (K.R.S.,J.)
22-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

DIXIT

To

1. I Additional District Judge,
Erode.
- 2.V.R.Section,
High Court,
Madras.



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**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

DIXIT

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