



A.S.NO.980 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08 / 01 / 2026

JUDGMENT PRONOUNCED ON : 3 / 02 / 2026

WEB COPY

CORAM:

**THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR
AND**

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.980 OF 2020

1.Sarasu,
W/o.Late Palaniappan,
Marukkalampatty Village,
Velagoundampatty Post,
Tiruchengode Taluk,
Namakkal District.

2.Manimegalai,
W/o.Ponnusamy,
Thondipattipudhur,
Akkalampatty Post,
Tiruchengode Taluk,
Namakkal District.

...Appellants / Plaintiffs

-Versus-

1.Mani @ Venkatachalam,
S/o.Ramagoundanur @ Ramasamy Gounder
Sallery Thottam (West),
Naikadipudhur,
Kuppagoundampudhur,
Akkalampatty Post,
Tiruchengode Taluk,
Namakkal District.



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2.Thirupathi,
S/o.Ramagoundanur @ Ramasamy Gounder
Naikadipudhur, Kuppagoundampudhur,
Akkalampatty Post, Tiruchengode Taluk,
Namakkal District.

3.Geetha,
W/o.Subramaniam,
Kattupalayam, Elanagar Village & Post,
Tiruchengode Taluk, Namakkal District.

4.Panneerselvam,
S/o.Late Palaniappan,
Marukkalampatty Village,
Velagoundampatty Post, Tiruchengode Taluk,
Namakkal District.

5.Sankar,
S/o.Ponnusamy,
Thondipattipudhur, Akkalampatty Post,
Tiruchengode Taluk,
Namakkal District.

6.Dhanalakshmi,
S/o.Karuppannagounder,
Singilipatty Village, Thaligai Post,
Velagoundampatty Via,
Namakkal District.

7.Pappathi,
W/o.Subramani,
Near Kaliamman Kovil, Thalakkarai Village,
Kolaram Post, Paramathy Velur Taluk,
Namakkal District.

8.Santhamani,
W/o.Raja,
Ayyanthottam, Kottampatty,
Akkalampatty Village, Velagoundampatty via,
Tiruchengode Taluk, Namakkal District. ...Respondents / Defendants



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PRAYER: First Appeal filed under Section 96 read with Order XLI Rules 1 and 2 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated June 05, 2018 made in O.S. No.204 of 2012 on the file of the Sessions (Fast Track Mahila) Judge at Namakkal.

For Appellants	:	Mr.N.Krishna Kumar for M/s.Sarvabhauman Associates
For Respondent-R1	:	Mr.S.V.Pravin Rathinam
For Respondent-R6	:	Mr.C.Prabakaran
For Respondents- 2 to 5, 7 & 8	:	No appearance

* * * * *

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Judgment and Decree dated June 05, 2018 passed in O.S. No.204 of 2012 by 'the Sessions (Fast Track Mahila) Court, Namakkal' ['Trial Court' for brevity], the Plaintiffs therein have preferred this Appeal Suit under Section 96 read with Order XLI Rules 1 and 2 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.



PLAINTIFFS' CASE:

3. Case of the Plaintiffs is that the suit properties consist of two items.

3.1. The 1st item of the suit properties comprises of Survey No.464 situate at Akkalampattu Village and the 2nd item of the Suit properties comprises of Survey Nos.114, 120, 127 and 131 situate at Putthur-Keelmugam Village. Both the Suit villages fall under Tiruchengode Taluk of Namakkal District.

3.2. As regards Suit Item No.1, the entire extent of Suit Survey No.464 i.e., 10 Acre 75 Cents was originally owned by Rama Gounder. Post his demise, the entire extent of Survey No.464 fell into the hands of his three sons, namely Sellappa Gounder, Sengoda Gounder and 'Rama Gounder *alias* Ramasamy Gounder' [hereinafter 'Ramasamy Gounder' for brevity]. One of his sons, namely Sellappa Gounder sold his 1/3 common share in the entire extent of Survey No.464 to his two brothers - Sengoda Gounder and Ramasamy Gounder, on February 12, 1947. Thereafter, Sengoda Gounder and Ramasamy Gounder entered into a registered Partition Deed dated July 06, 1954, whereby they divided the entire extent of Survey No.464 equally. In other words, 'A' Schedule Property described therein consisting of an extent of 5 Acre 37 ½ Cents in Survey No.464 was

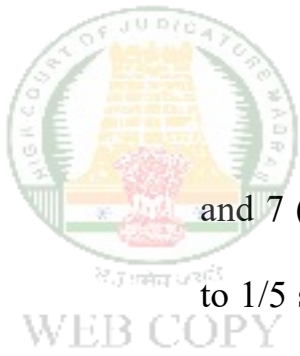


allotted to Sengoda Gounder, and 'B' Schedule Property described therein, which consists of the remaining extent of 5 Acre 37 ½ Cents in Survey No.464, was allotted to Ramasamy Gounder. The said property allotted to Ramasamy Gounder is Suit Item No.1.

3.3. Suit Item No.2 is Ramasamy Gounder's ancestral entitlement.

3.4. Ramasamy Gounder passed away on May 02, 1990. He had two wives, namely Kaliammal (1st wife) and Sellammal (2nd wife). Through his 1st wife - Kaliammal, he had two daughters namely Pavaayee and Muthayee. Pavaayee died without any issues prior to 1989. Muthayee passed away on October 25, 2003, whose legal heirs are Defendants 6 and 7. The Plaintiffs and the Defendants 1 and 2 are daughters and sons of 2nd wife - Sellammal respectively.

3.5. The Plaintiffs are entitled to share in the suit properties in view of 'the Hindu Succession Act, 1956' [henceforth 'H.S. Act'] as amended by 'the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005)' [henceforth '2005 H.S. Amendment Act']. After the demise of Kaliammal and Muthayee (1st wife and one of the two daughters of Ramasamy Gounder born through 1st wife), the Plaintiffs and the Defendants 1 and 2 (being sons and daughters of Ramasamy Gounder born through 2nd wife) are each entitled to 1/5 share in the suit properties, while the Defendants 6



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and 7 (being the children of said daughter - Muthayee) are jointly entitled to 1/5 share in the suit properties. The Plaintiffs and the Defendants are in joint possession and enjoyment of the suit properties.

3.6. Sellammal, the 2nd wife of Ramasamy Gounder during her lifetime executed a Settlement Deed in favour of the Defendants 3 to 5 in respect of suit properties. Hence, the Defendants 3 to 5 were added as necessary parties. Further, the 2nd Defendant filed O.S. No.824 of 2004 in his capacity as a co-owner of suit properties, seeking permanent injunction against the 8th Defendant in respect of Suit Item No.2 and hence, 8th Defendant was added as a necessary party. Patta has been issued wrongly in favour of 8th Defendant in respect of Suit Item No.2. Despite the Plaintiffs' requests, the Defendants 1, 2, 6 and 7 refused partition. The last refusal was on October 29, 2012. Hence, the Plaintiffs filed the Original Suit seeking partition of the suit properties into 5 shares and allot one such share to each of the Plaintiffs and a permanent injunction against Defendants.

DEFENDANTS' CASE

4. The 1st Defendant filed a written statement. Defendants 2 to 8 remained *ex-parte*. Sum and substance of the written statement filed by first defendant is as follows:



4.1. The relationship between the parties as well as the nature and character of the suit properties as stated in the plaint is admitted. The plaint averments, which are captured in Paragraph Nos.3.1 and 3.2 hereinabove are all admitted.

4.2. According to the first defendant, in the year 1982, the Defendants 1 and 2 and their father - Ramasamy Gounder entered into a Partition Agreement in respect of suit properties, wherein and whereby an earlier oral partition was recorded. In the said earlier oral partition, 'A' Schedule Property described in the Partition Agreement was allotted to the share of Ramasamy Gounder as life estate and after his death, it shall devolve to the share of the 1st Defendant on the condition that the 1st Defendant bears the marriage expenses of the Plaintiffs and does *seer*. Further in the earlier oral partition, the 2nd Defendant acquired 'B' Schedule Property described in the Partition Agreement and further, the 1st Defendant acquired 'C' Schedule Property therein. 'A' Schedule Property described in the Partition Agreement consists of an extent of 1 Acre 60 Cents in Survey No.128/1 (not a suit property) and 15 Cents in Suit Survey No.464. 'B' Schedule Property therein consists of an extent of 5 Acre 60 Cents within specific four boundaries in Suit Survey No.464. 'C' Schedule Property therein consists of an extent of 2 Acre 18 Cents in Suit Survey No.114/4 and 3



Acre 42 Cents in Suit Survey No.120/2B. As per the Partition Agreement, pursuant thereto, the parties shall enter into a Partition Deed [*Karar*] on or before June 1, 1982.

4.3. However, the 1st wife of Ramasamy Gounder, namely Kaliammal, had filed a Suit before the District Munsif Court and got a maintenance decree and pursuantly filed an execution petition bringing major portion of 'A' and 'C' Schedule Properties described in the said Partition Agreement, which includes major portion of Suit Item No.2 herein, for sale through process of Court. One Sengottaiyan purchased the same through Court auction sale and thereafter, it was sold by him to one Selvarani, who is the daughter of 2nd Defendant. Further, Ramasamy Gounder had borrowed loan by executing a Promissory Note by mortgaging Suit Item No.2. The creditor filed a Suit and obtained a money decree in his favour and executed the same. In such a manner, Suit Item No.2 was sold once again through Court auction sale in favour of one Duraisamy, who in turn sold the property to Santhamani, the 8th Defendant.

4.4. Hence, there arose some difficulty in the 1st Defendant enjoying 'A' and 'C' Schedule Properties described in the said Partition Agreement including a major portion of Suit Item No.2 as per the earlier oral partition. Therefore, an oral family arrangement was made between Ramasamy



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Gounder, Defendants 1 and 2, wherein it was agreed that Suit Item No.1 shall be enjoyed equally by the parties thereto. In other words, in the oral family arrangement, it was agreed that the Ramasamy Gounder, Defendants 1 and 2 shall each be entitled to 1/3 share in Suit Item No.1. Thereafter, the 2nd Defendant came forward to execute Sale Deed in favour of the 1st Defendant in respect of his 1/3 share in Suit Item No.1 and accordingly, a Sale Agreement dated May 30, 1989 was executed by the 2nd Defendant in favour of the 1st Defendant.

4.5. Thereafter, as Ramasamy Gounder passed away on May 02, 1990, the 2nd Defendant executed Sale Deed dated May 29, 1990 in favour of the 1st Defendant in respect of ½ share (instead of 1/3 share) in Suit Item No.1. In short, the 1st Defendant is absolutely entitled to Suit Item No.1 vide the oral family arrangement and the Sale Deed executed by 2nd Defendant. The Plaintiffs have suppressed the aforesaid material fact. 1st Defendant alone is in exclusive possession and enjoyment of Suit Item No.1. The Court Auction purchasers *qua* Suit Item No.2 are necessary parties to the Suit. Since they were not added as parties, the Suit is bad for non-joinder of necessary parties. Accordingly, the 1st Defendant prayed to dismiss the Suit with costs.



5. The Plaintiff filed a reply statement on September 01, 2016 denying the averments made in the written statement.

TRIAL COURT

6. Based on the above pleadings, the Trial Court framed the following issues:

- '1. *Whether it is true that the suit properties was already partitioned between 2nd defendant and the first defendant and binding on the plaintiff?*
2. *Whether the suit is bad for non joinder of necessary parties ?*
3. *Whether the plaintiff is entitled into 1/5 share in the suit property ?*
4. *Whether the plaintiff is entitled for permanent injunction ?*
5. *To what relief the plaintiff is entitled to ?'*

7. At trial, 2nd Plaintiff - Manimegalai was examined as P.W.1 and one Subramani was examined as P.W.2 and Ex-A.1 to Ex-A.6 were marked on the side of the Plaintiffs. On the side of the Defendants, 1st Defendant was examined as D.W.1, one Thirupathi was examined as D.W.2 and Ex-B.1 to Ex-B.14 were marked.



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8. After full-fledged trial, the Trial Court concluded that the suit properties were partitioned between Ramasamy Gounder and his two sons *vide* Ex-B.2 - Partition Agreement dated January 06, 1982. Post the demise of Ramasamy Gounder, the 2nd Defendant executed Ex-B.4 Sale Deed dated May 29, 1990 in favour of the 1st Defendant in respect of his share in suit properties. Thus, Suit Item No.1 has already been partitioned and now solely belongs to 1st Defendant. Hence, the Plaintiffs are not entitled to partition the same. As regards Suit Item No.2, it was sold to third parties through Court auction sale and those auction purchasers are necessary parties to the Suit. Hence, the Suit is bad for non-joinder of necessary parties. The Trial Court further concluded that the Plaintiffs are not entitled to the relief of partition as they suppressed material facts. Accordingly, the Trial Court dismissed the Suit.

9. Feeling aggrieved, the Plaintiffs have preferred this First Appeal under Section 96 read with Order XLI Rules 1 and 2 of the CPC.

ARGUMENTS:

10. Mr.N.Krishna Kumar, learned Counsel appearing for the Appellants/Plaintiffs would submit that the Trial Court failed to appreciate the evidence in proper perspective. He would submit that the burden of



proof lies upon the 1st Defendant to prove that the alleged oral partition / family arrangement that allegedly took place between Ramasamy Gounder and the defendants 1 and 2. No evidence was adduced to prove the alleged oral partition / family arrangement. The Trial Court erroneously relied on Ex-B.2 - Partition Agreement, which is an unregistered and inadmissible document. Consequent to Ex-B.2, no Partition Deed was entered into by the parties. No revenue records were produced to prove the alleged exclusive / independent possession of Suit Item No.1 in the hands of 1st Defendant. No proof was adduced to show that, the 1st Defendant bore the marriage expenses of the Plaintiffs and thereby, fulfilled the conditions stated in Ex-B.2.

10.1. He would further submit that the Trial Court was not correct in recording the finding that the Plaintiff suppressed the oral partition pursuant to which Ex-B.2 was entered into. Further, the Plaintiffs had no knowledge about the Execution Proceedings in E.P. No.134 of 1991 and E.P. No.254 of 1979 and the Court auction sale made through those execution petitions *qua* Suit Item No.2. In these circumstances, the Trial Court's finding that the Plaintiff suppressed the said facts is erroneous.



10.2. He would further submit that the 8th Defendant and one Selvarani are purchasers from the Court auction sale of Suit Item No.2. While 8th Defendant has been brought on record, the other purchaser namely Selvarani is represented by her father / 2nd Defendant in the Suit. Under such circumstances, the Trial Court's finding that the Suit is bad for non-joinder of necessary parties is incorrect. Accordingly, he would pray to allow the Appeal, set aside the Decree and Judgment of the Trial Court and grant a preliminary decree to the Plaintiffs.

11. *Per contra*, Mr.S.V.Pravin Rathinam, learned Counsel appearing for the 1st Respondent / 1st Defendant would submit that the suit properties were ancestral and joint family properties in which Ramasamy Gounder, Defendants 1 and 2 alone were entitled to equal rights as co-parceners. The Plaintiffs' marriages took place before March 25, 1989 and hence, they are not entitled to the benefit under Tamil Nadu Act No.1 of 1990. In view of Ex-B.2 - Partition Agreement and the subsequent oral family arrangement between Ramasamy Gounder, Defendants 1 and 2, post the demise of Ramasamy Gounder, the Defendants 1 and 2 were entitled to ½ share each in Suit Item No.1. The 2nd Defendant executed a Sale Deed in respect of his ½ share in favour of 1st Defendant *vide* Ex-B.4 - Sale Deed dated May 29, 1990. Pursuant to the Sale Deed, the 1st Defendant is in exclusive



possession and enjoyment of Suit Item No.1 in an open, continuous and uninterrupted manner, by excluding all and dealing individually. Ex-B.11 to Ex-B.14 would prove the same.

11.1. He would further submit that while marking Ex-B.2, the Plaintiffs did not raise any specific objection *qua* stamp duty and registration. Hence, the Plaintiffs are precluded from raising an objection *qua* stamp duty at a later stage. He would further submit that Ex-B.2 only recorded past events. Ex-B.2 does not create or extinguish any rights or interest *in praesenti*. In fact, an oral partition took place and the properties were divided in the presence of Panchayatdhars and well-wishers, and only pursuant to said oral partition, Ex-B.2 - Partition Agreement was executed.

11.2. Further, he would submit that Ex-B.3 - Sale Agreement and Ex-B.4 - Sale Deed executed between Defendants 1 and 2 in the years 1989 and 1990 respectively, probablize the defense that the oral partition took place prior to 1990. Pursuant to Ex-B.4 - Sale Deed, the 1st Defendant is dealing with the property till date and he mortgaged the property with the Cooperative Society Bank and also redeemed the same. Further, he got Ex-B.13 - Release Deed from his daughter in the year 2005. A cumulative consideration of the evidence shows that the Plaintiffs have been in open and exclusive possession and enjoyment of Suit Item No.1 after the



execution of Ex-B.4, to the knowledge of both the Defendants and the Plaintiffs. The Plaintiffs were never in joint possession and enjoyment of the suit properties. They are not coparceners as on the date of Ex-B.3 and Ex-B.4. Therefore, the Plaintiffs cannot claim right over Suit Item No.1.

11.3. Further he would submit that, Suit Item No.2 was sold by Court auction sale. The 8th Defendant and one Sengottaiyan were in possession and enjoyment of Suit Item No.2. Hence, the Court auction purchasers as well as subsequent purchasers from the Court auction sale purchasers, are necessary parties to decide the Suit. Since they were not added as parties to the Suit, the Suit is bad for non-joinder of necessary parties. Further, the Plaintiffs suppressed the said fact in their pleadings. The Trial Court, after considering the evidence available on record, rightly concluded that the Plaintiffs have not approached the Court with clean hands and they have no right over the Suit Property. There is no need to interfere with the Judgment of the Trial Court. Accordingly, he would pray to dismiss the Appeal and sustain the Decree and Judgment of the Trial Court.

12. Mr.C.Prabakaran, learned Counsel for the 6th Respondent / 6th Defendant would submit that the 6th Defendant's mother namely Muthayee was a Class-I legal heir of Ramasamy Gounder and post her lifetime, 6th and 7th Defendants are entitled to her lawful share.



DISCUSSION:

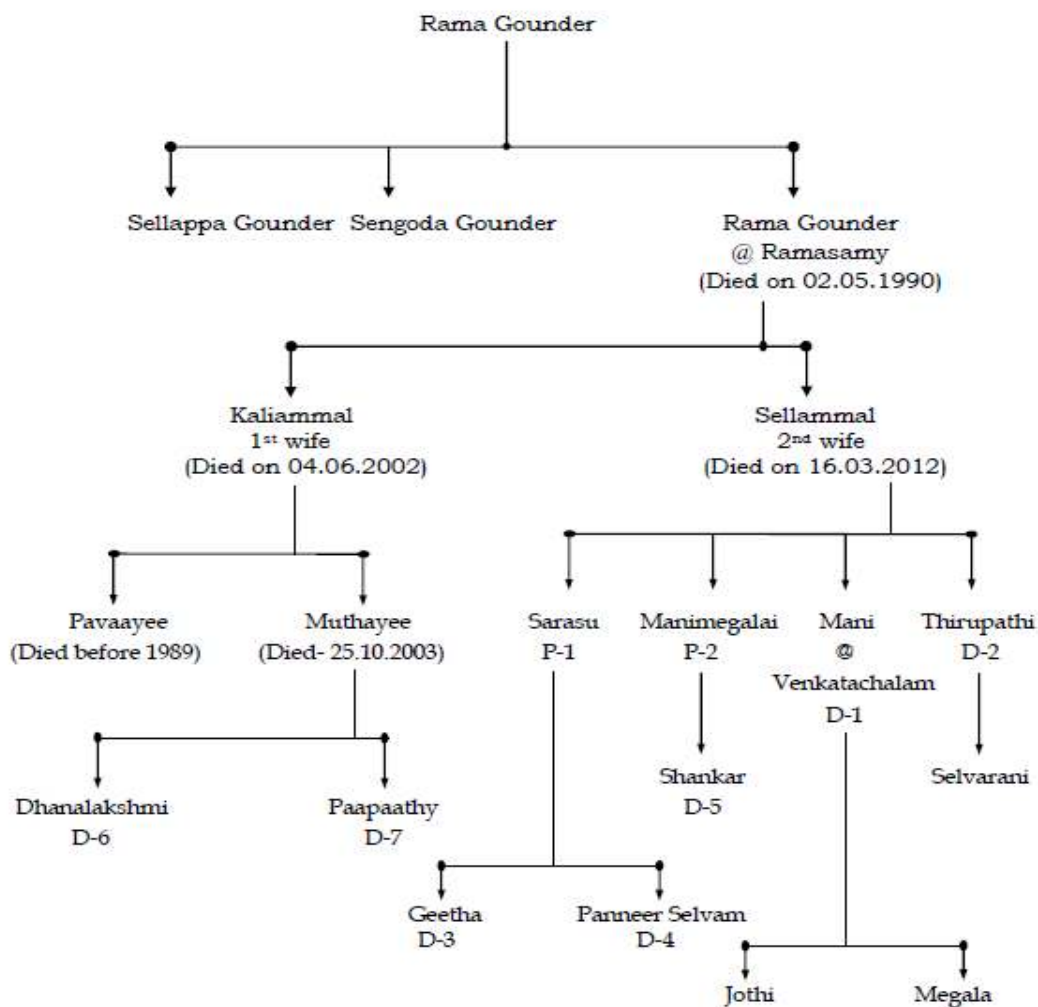
13. Heard either side. Perused the entire evidence available on record. The points that arise for consideration in this Appeal Suit are as follows:-

- (i) Whether the suit properties were ancestral and joint family properties in the hands of Ramasamy Gounder ?
- (ii) If Point No.(i) is answered in affirmative, whether the Plaintiffs *qua* daughters are coparceners each entitled to equal share in the suit properties on the same footing as the sons *viz.*, the Defendants 1 and 2 ?
- (iii) Whether Suit Item No.2 is available for partition and whether the Suit is bad for non-joinder of necessary parties ?
- (iv) Whether any oral family partition or oral family arrangement took place between Ramasamy Gounder, Defendants 1 and 2 in the time period between the execution of Ex-B.2 - Partition Agreement dated January 06, 1982 and the execution of Ex-B.3 - Sale Agreement dated May 30,1989, as alleged by the 1st Defendant ?
- (v) Whether the Plaintiffs are entitled to shares in the suit properties ? If so, to what extent ?



(vi) Whether the Judgment and Decree of the Trial Court is to be interfered with?

14. For ease of exposition, the admitted relationship between the parties is shown in the below genealogical tree:



Point No.(i) - Whether the suit properties were ancestral and joint family properties in the hands of Ramasamy Gounder ?



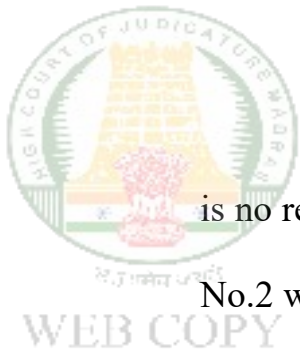
15. Case of the Plaintiffs is that the suit properties were ancestral and joint family properties in the hands of Ramasamy Gounder, who is the father of Plaintiffs, Defendants 1 and 2 and Muthayee whose legal heirs are Defendants 6 and 7. According to the Plaintiffs, they both are coparceners in view of 2005 H.S. Amendment Act. Suit properties in this case contains two items. The 1st Defendant admitted that Suit Item No.1 was ancestral in nature in the hands of Ramasamy Gounder. As regards Suit Item No.2, the 1st Defendant did not concern him with it. His case is that Suit Item No.2 was sold off twice in Court auction sales and thus, it is currently not available for partition.

16. As stated *supra*, 1st Defendant admitted that Suit Item No.1 was ancestral in nature in the hands of Ramasamy Gounder. Further, in Ex-B.2 - Partition Agreement entered between Ramasamy Gounder, Defendants 1 and 2 recorded an earlier oral partition in respect of suit properties, there exists a reference that Suit Item No.1 is ancestral property. Coming to the admissibility of Ex-B.2, a close reading of Ex-B.2 would show that its recitals are written in past tense, and that it records a past transaction and does not create any rights or interest *in praesenti*. A oral partition occurred between Ramasamy Gounder, Defendants 1 and 2 prior to Ex-B.2. The parties subsequently recorded the same *vide* Ex-B.2. They also agreed to



execute a proper Partition Deed [*Karar*] pursuant to Ex-B.2 on or before June 1, 1982. Hence, this Court is of the view that Ex-B.2 - Partition Agreement being more of a memorandum of earlier oral partition does not require stamp duty and is an admissible document in evidence. That apart, such a reference *i.e.*, reference to the effect that Suit Item No.1 is ancestral property, can also be found in Ex-B.3 - Sale Agreement whereby 2nd Defendant agreed to sell his 1/3 share in Suit Item No.1 as well as in Ex-B.4 - Sale Deed whereby after demise of father - Ramasamy Gounder, 2nd Defendant sold his 1/2 share in Suit Item No.1. Hence, this Court concludes that Suit Item No.1 was ancestral and joint family in nature in the hands of Ramasamy Gounder, who is the father of Plaintiffs and Defendants 1 & 2 and the grandfather of Defendants 3, 4, 6 and 7.

17. As regards the nature of Suit Item No.2, the burden to prove its nature lies with the Plaintiffs. The Plaintiffs failed to satisfactorily prove the same. Under Ex-A.1 - Partition Deed dated July 6, 1954, Sengoda Gounder and his then minor son on one hand, and Ramasamy Gounder and his then minor son - Thirupathi (2nd Defendant) on other hand, entered into a partition of their ancestral and joint family properties. In Ex-A.1, the Suit Item No.1 alone, which is described as 'B' schedule property therein, was allotted to the share of Ramasamy Gounder and his then minor son. There



is no reference with respect to Suit Item No.2 in Ex-A.1. If really Suit Item

No.2 was an ancestral and joint family property as alleged by the Plaintiffs, the parties would have at least mentioned about it in Ex-A.1. On the other hand, Ex-A.1 recites that there is no other property for partition between the parties thereto. Further, Ex-B.5 is the petition filed seeking delivery by Sengottaiyan being a Court Auction purchaser of a portion of Suit Item No.2. Ex-B.6 is an objection petition filed under Order XXI Rule 95 of CPC by 8th Defendant - Santhamani not to record delivery in Ex-B.5 - Petition. Ex-B.7 is the petition filed by 8th Defendant - Santhamani seeking to set aside the Court auction sale confirmed on April 20, 1991 in favour of Sengottaiyan. It could be seen from a cumulative reading of Ex-B.5 to Ex-B.7 that the first wife of Ramasamy Gounder, namely Kaliammal, filed a Suit in O.S. No.388 of 1943 for maintenance in 1943 and brought some properties for Court auction sale in which one Sengottaiyan purchased Suit Survey No.114/4 forming a portion of Suit Item No.2 and later sold it to Selvarani, the daughter of 2nd Defendant. It could be further seen that, Suit Item No.2 faced yet another Court auction sale, in which one C.P. Duraisamy purchased the entire or major extent of Suit Item No.2 and later sold to 8th Defendant herein. From the limited evidence available on record, it could be inferred that Suit Item No.2 is a separate property of Ramasamy Gounder. Otherwise, Defendants 1 and 2 would have filed an



intervening petition in the Court auction sales. Under such circumstances, this Court is of the view that Suit Item No.2 is not an ancestral and joint family property but a separate property of Ramasamy Gounder. **Point No. (i) is answered accordingly.**

Point No.(ii) - If Point No.(i) is answered in affirmative, whether the Plaintiffs qua daughters are coparceners each entitled to equal share in the suit properties on the same footing as the sons viz., the Defendants 1 and 2 ?

18. Point No.(i) was answered affirmatively *qua* Suit Item No.1 alone. Under Point No.(ii), not only the Plaintiffs, but it must also be seen whether the Defendants are coparceners. Admittedly, the Plaintiffs and Defendants 1 and 2 are born through the second wife of Ramasamy Gounder namely Sellammal. The factum of second marriage is not in dispute. In order to decide whether the Plaintiffs and the Defendants 1 and 2 are coparceners, the question whether the marriage between Sellammal and Ramasamy Gounder, being a marriage in the presence of first wife is valid, is to be considered first.

19. Ex.B.5 is the petition filed by Sengottaiyan, being one of the Court auction purchaser, seeking delivery of possession of a portion of Suit



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Item No.2. Ex.B.6 is the objection petition filed by the 8th Defendant - Santhamani under Order XXI Rule 95 of CPC, opposing the petition in Ex.B.5 and Ex.B.7 is another petition filed by her seeking to set aside the Court auction sale that was confirmed on April 20, 1991 in favour of Sengottaiyan. It could be seen from Ex-B.5 to Ex-B.7, that the first wife - Kalammal filed a Suit in O.S. No.388 of 1943 seeking maintenance. This leads to an inference that as early as in 1943 there was a strained relationship between Ramasamy Gounder and his first wife - Kalammal.

20. Further, the Plaintiffs herein filed an earlier Suit in O.S. No.61 of 2010 against the Defendants 1 and 2 herein seeking partition in respect of Suit Item No.1 herein. The plaint in the earlier Suit was filed on April 14, 2010 and has been marked as Ex-B.9. In the cause title of that plaint, the age of the 2nd Defendant herein has been mentioned as 60 years, which implies that the 2nd Defendant was born in or around 1950. In the present plaint filed on December 21, 2012, the Plaintiffs have stated the age of the 2nd Defendant herein to be 63 years, which implies that the 2nd Defendant herein would have been born in or around 1949. These are with respect to the year of birth of 2nd Defendant. As regards the year of birth of 1st Defendant, in the earlier Suit, the 1st Defendant's age has been mentioned as 53 Years implying he was born in or around 1957 and in the present



plaint, his age has been mentioned as 57 Years which implies that he was born in or around 1955. This also shows that there was an age gap of about 4 years between them. For ease of understanding, the above information is tabulated as follows:

<i>Particulars</i>	<i>Earlier Suit (O.S. No. 61 of 2010)</i>	<i>Present Suit</i>
Date of plaint	April 14, 2010	December 21, 2012
Mentioned Age of 2 nd Defendant	60 years	63 years
Implied year of birth of 2 nd Defendant	Around 1950	Around 1949
Mentioned Age of 1 st Defendant	53 years	55 years
Implied year of birth of 1 st Defendant	Around 1957	Around 1955
Age difference between 1 st and 2 nd Defendants	About 4 years	

21. Further, on a lighter note, the 2nd Defendant was a party to Ex-A.1 - Partition Deed, which was executed in 1954. This shows that he was born before 1954. As stated *supra*, it could be inferred that the 2nd Defendant was born in or around the 1949-1950 period, which leads to a further inference that his parents got married about a year prior to that. To be noted, the standard of proof in a civil case is preponderance of probabilities and not proof beyond reasonable doubt. On a comprehensive reading of all the above information, it could be inferred that the marriage between Ramasamy Gounder and his second wife - Sellammal, happened before 1949. As per the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 (w.e.f. March 29, 1949) bigamous marriage is invalid only after



1949. Until then, a Hindu could legally marry for the second time, in the presence of his first wife. There was no bar against it. Hence, the marriage between Ramasamy Gounder and his second wife - Sellammal is a legally valid one. The Plaintiffs and Defendants 1 and 2 are born in a legal marriage and are legitimate children. Thus, during the lifetime of Ramasamy Gounder, he along with Defendants 1 and 2 formed a coparcenary, which consisted of the ancestral and joint family property in Suit Item No.1.

22. Now this Court shall consider whether the Plaintiffs are coparceners. Tamil Nadu Act No.1 of 1990 came into force on March 25, 1989. If the marriages of the Plaintiffs had taken place on or after March 25, 1989, then they will be deemed to be coparceners under the said Act.

23. In the present plaint, which was filed in 2012, age of Plaintiffs are stated to be 47 and 45 Years respectively. Further, the age of 1st Plaintiff's children viz., Defendants 3 and 4, are stated to be aged 37 and 34 Years respectively, which indicates that they were born in or around 1973 and 1976 respectively. This means the marriage of the 1st Plaintiff happened before 1973. Further, in Ex-B.9 - Plaint in the earlier Suit filed in 2010, age of 2nd Plaintiff's child namely 5th Defendant herein is said to be 20 Years, which implies that her child was born in 1990. The 2nd Plaintiff in



her evidence as P.W.1 has deposed that she was blessed with her child four years after her marriage, which points out that her marriage must have been in or around 1986. For better understanding of the above, reference may be made to the following table:

Particulars	1 st Plaintiff	2 nd Plaintiff
Children and their ages	Defendants 3 & 4 - 37 and 34 years (as stated in present plaint, 2012)	Defendant 5 - 20 years (as stated in Ex-B.9 - earlier plaint, 2010)
Implied year of birth of children	Around 1973 and 1976	Around 1990
Implied year of marriage	Before 1973	Around 1986 (child born four years after marriage, as per evidence of P.W.1)

24. Though the present plaint is cleverly silent on the marriage dates of the Plaintiffs, it could be inferred from the materials on record that both the Plaintiffs got married before 1989. Therefore, they both are not entitled to the benefit of Tamil Nadu Act No.1 of 1990.

25. Be that as it may, the Plaintiffs' case is that they are coparceners in view of in view of Section 6 of the H.S. Act as amended by the 2005 H.S. Amendment Act. It is settled legal position that irrespective of the date of demise of father, daughters are coparceners by birth and are at equal footing with the sons. Thus, irrespective of date of demise of Ramasamy Gounder, Plaintiffs are coparceners in view of the amended



Section 6. **Point No.(ii) is answered accordingly.**

Point No.(iii) - Whether Suit Item No.2 is available for partition and whether the Suit is bad for non-joinder of necessary parties ?

and

Point No.(iv) - Whether any oral family partition or oral family arrangement took place between Ramasamy Gounder, Defendants 1 and 2 in the time period between the execution of Ex-B.2 - Partition Agreement dated January 06, 1982 and the execution of Ex-B.3 - Sale Agreement dated May 30,1989, as alleged by the 1st Defendant ?

26. According to 1st Defendant, *vide* Ex-B.2- Partition Agreement, which is an un-registered document, father - Ramasamy Gounder and his sons - Defendants 1 and 2 recorded an earlier oral partition in respect of the suit properties. Ex-B.2 is admissible in evidence for the reasons adduced *supra*. Further case of 1st Defendant is that in the said earlier oral partition, major portion of Suit Item No.2 was allotted to him, however he could not enjoy the same peacefully as it was sold off in Court auction twice and therefore, Ramasamy Gounder, Defendants 1 and 2 entered into an oral family arrangement whereby the parties agreed to split Suit Item No.1 equally. His further case is that after the oral family arrangement and after the demise of Ramasamy Gounder, 2nd Defendant sold his ½ share in Suit Item No.1 in favour of 1st Defendant, making 1st Defendant the absolute owner of Suit Item No.1.



27. As stated *supra*, Ex.B.5 is the petition filed by Sengottaiyan, being one of the Court auction purchaser, seeking delivery of possession of a portion of Suit Item No.2. Ex.B.6 is the objection petition filed by the 8th Defendant - Santhamani under Order XXI Rule 95 of CPC, opposing the petition in Ex.B.5 and Ex.B.7 is another petition filed by her seeking to set aside the Court auction sale that was confirmed on April 20, 1991 in favour of Sengottaiyan. A conjoint reading of Exs.B.5 to B.7 would reveal that Kaliammal, the first wife of Ramasamy Gounder had instituted a suit for maintenance in O.S. No.388 of 1943 which was decreed in her favour. Then she initiated execution proceedings and brought certain properties to Court auction sale. In the said auction, Sengottaiyan purchased Survey No.114, forming part of Suit Item No.2, and subsequently conveyed the same to Selvarani, the daughter of the 2nd Defendant. It further emerges that Suit Item No.2 was subjected to yet another Court auction sale, in which one C.P. Duraisamy became the purchaser, who thereafter sold the property to the 8th Defendant. There is no *prima facie* evidence available on record to show that the plaintiffs are in joint possession and enjoyment of the Suit Item No.2. With the limited evidence available on record, this Court concludes that Suit Item No.2 has been completely sold off in Court auction sale and that it is not available for partition. Further, Sengottaiyan and C.P. Duraisamy, being the Court auction purchasers, and Selvarani



(daughter of 2nd Defendant) and the 8th Defendant being the subsequent purchasers from the Court auction purchasers are necessary parties to the Suit. Sengottaiyan, C.P. Duraisamy and Selvarani have not been added as parties to the Suit. Hence, the Suit is bad for non-joinder of necessary parties. **Point No.(iii) is answered accordingly.**

28. From Ex-B.2 - Partition Agreement, it could be seen that in the earlier oral partition recorded in Ex-B.2, a small portion of Suit Item No.1 was allotted to Ramasamy Gounder as life estate and after his lifetime, it was to fall into the hands of 1st Defendant. It could further be seen that, the remaining major portion of Suit Item No.1 was allotted to 2nd Defendant and a major portion of Suit Item No.2 was allotted to 1st Defendant. As per the Partition Agreement, the parties shall enter into a Partition Deed [*Karar*] pursuant to the Partition Agreement on or before June 1, 1982. However, from a cogent and conjoint reading of the documents in Ex-B.2 and Ex-B.5 to Ex-B.7, it could be inferred that before a Partition Deed could be executed between them, the property allotted to 1st Defendant being major portion of Suit Item No.2, was sold off through process of Court, that too twice and eventually, Suit Item No.2 fell into the hands of the daughter of 2nd Defendant and the 8th Defendant. Hence, no Partition Deed could be executed. It is probable and natural that in these



circumstances, the parties viz., father - Ramasamy Gounder and his two sons - Defendants 1 and 2, entered into a fresh oral family partition or oral family arrangement whereby the remaining property viz., Suit Item No.1 was split equally between the parties. In other words, the earlier oral partition recorded in Ex-B.2 as a memorandum did not fructify and could not be sustained as 1st Defendant was deprived of the property thereby allotted to his share in view of the two Court auction sales. The documentary evidence in Ex-B.2, Ex-B.5 to Ex-B.7, makes probable the case of the 1st Defendant that a family arrangement was entered into as Suit Item No.2 allotted to him was sold off in Court auction sales.

29. The alleged oral family arrangement is further supported by the documentary evidence in Ex-B.3 and Ex-B.4. Ex-B.3 is the Sale Agreement dated May 30, 1989 executed by 2nd Defendant agreeing to sell his 1/3rd share in Suit Item No.1 in favour of 1st Defendant. Pursuant to Ex-B.3 - Sale Agreement, 2nd Defendant executed Ex-B.4 - Sale Deed in favour of 1st Defendant in respect of ½ share in Suit Item No.1 instead of 1/3 share. This is because the father - Ramasamy Gounder passed away in the interregnum and according to the 1st Defendant, father's 1/3 share in Suit Item No.1 devolved upon Defendants 1 and 2, making them each entitled to ½ share. While the latter part regarding the Ramasamy



Gounder's share devolving upon Defendants 1 and 2 is not acceptable for reasons to be stated *infra*, it could be gathered from a conjoint reading of Ex-B.3 and Ex-B.4 that an oral family arrangement took place in which the parties split Suit Item No.1 equally among them. If not, there is no probable reason for 2nd Defendant to execute Sale Agreement in respect of his 1/3 share in Suit Item No.1 and following the demise of Ramasamy Gounder, execute Sale Deed in respect of ½ share in Suit Item No.1. There is no pleadings and proof to suggest the contrary. In these circumstances, in view of the pleadings and the documentary evidence in Ex-B.2 to Ex-B.7, this Court concludes that the 1st Defendant has established the alleged oral family arrangement held after Ex-B.2 - Partition Agreement and before Ex-B.3 - Sale Agreement. **Point No.(iv) is answered accordingly.**

Point No.(v) - Whether the Plaintiffs are entitled to shares in the suit properties ? If so, to what extent ?

30. As stated *supra*, the Plaintiffs are coparceners in view of the amended Section 6 of the H.S. Act. But their coparcenary rights are enforceable only with effect from September 9, 2005. As held under Point No.(i), Suit Item No.1 is an ancestral and joint family property. Further, as held under Point No.(iv), the 1st Defendant has established the oral family partition / oral family arrangement held before 1989, when the Plaintiffs



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were not coparceners. As the oral family partition / oral family arrangement took place before December 20, 2005, it is saved under sub-section 5 of amended Section 6 of the H.S. Act [See *Vineeta Sharma -vs- Rakesh Sharma*, reported in (2020) 9 SCC 1]. Therefore, the same is binding on the Plaintiffs.

31. However, as per the oral family partition / oral family arrangement, Suit Item No.1 was divided equally among Ramasamy Gounder, Defendants 1 and 2, which means Defendants 1 and 2 are each entitled to only 1/3 share and the father - Ramasamy Gounder was entitled to 1/3 share in it. It is settled position of law that in oral family partition / oral family arrangement, that is to say oral partition or oral arrangement between father and children, where ancestral and/or joint family properties are partitioned, the property allotted to the share of the father takes up the character of separate property in his hands *qua* his legal heirs / branch [vide *Commissioner of Income Tax, Madras -vs- P.L.Karuppan Chettiar*, reported in 1993 Supp (1) SCC 580; *Commissioner of Wealth Tax -vs- Chandra Sen*, reported in AIR 1986 SC 1753; *Yudhishter -vs- Ashok Kumar*, reported in AIR 1987 SC 558; and *Sneha -vs- K.Sakthivel*, reported in 2024 SCC OnLine Mad 1792. In other words, Ramasamy Gounder was allotted 1/3 share in Suit Item No.1, which was an ancestral



and joint family property as held under Point No.(i), in the oral family partition / oral family arrangement and hence, the same was separate property in his hands *qua* his legal heirs. He passed away on May 2, 1990 leaving behind his two wives, daughter - Muthayee, Plaintiffs and Defendants 1 and 2. Upon his demise, succession opened under Section 8 of the H.S. Act [See ***Karuppan Chettiar's Case*** (cited *supra*)] and his 1/3 share in Suit Item No.1 shall devolve upon his legal heirs. Accordingly, his wives together became entitled to 1/6 share [as per Rule (1) of Section 10 of the H.S. Act], Muthayee was entitled to 1/6 share, and Plaintiffs and Defendants 1 and 2 were also each entitled to 1/6 share, all in his 1/3 share Suit Item No.1. They all are thus co-heirs / co-owners and thus deemed to be in joint possession and enjoyment of the Suit Item No.1. It is to be noted here that though the first defendant mortgaged and redeemed Suit Item No.1, and also has revenue records in his favour, he did not take the plea of ouster and adverse possession. Plea of ouster and adverse possession cannot be inferred. On the other hand, it has to be specifically pleaded and proved. In this case, there is no sufficient evidence available on record to prove that the co-heirs / co-owners including Plaintiffs were ousted from Suit Item No.1. For the same reason, Ex-B.4 - Sale Deed executed by 2nd Defendant in favour of 1st Defendant is valid only in respect of his 1/3 share and the 1/6 share devolved upon him under Section



8, and not his alleged $\frac{1}{2}$ share. **Point No.(v) is answered accordingly.**

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Point No.(vi) - Whether the Judgment and Decree of the Trial Court is to be interfered with?

32. The Trial Court erred in dismissing the Suit. It failed to appreciate the fact that property allotted to father in oral family partition or oral family arrangement between him and his sons is separate property in his hands *qua* his legal heirs and upon his demise, it would devolve under Section 8 of the H.S. Act. In the said manner, each of the Plaintiffs would be entitled to $\frac{9}{144}$ share in Suit Item No.1, Defendants 1 and 2 would be each entitled to $\frac{57}{144}$ share in it and Defendants 6 and 7, being the legal heir of Muthayee, will together be entitled to $\frac{12}{144}$ share in it. The 2nd Defendant cannot lay a claim over the $\frac{1}{6}$ share devolved upon him as he had sold his interest in Suit Item No.3 and in view of Section 43 of the Transfer of Property Act, 1882, 'feeding grant by estoppel' would apply. Moreover, he did not file written statement and did not contest the Suit. Hence, the 2nd Defendant's $\frac{57}{144}$ share would fall into the hands of 1st Defendant. In other words, 1st Defendant would be entitled to $\frac{114}{144}$ share in Suit Item No.1. For ease of understanding, the above information is tabulated as hereunder:



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Party	Share in Suit Item No.1
Plaintiff 1	9/144
Plaintiff 2	9/144
1st Defendant	114/144
Defendants 6 & 7 (together)	12/144

33. To the above extent, the Judgment and Decree of the Trial Court is liable to be interfered with. **Point No.(vi) is answered accordingly.**

CONCLUSION:

34. Resultantly, the Appeal Suit is allowed in part. The Trial Court's Judgment and Decree are set aside *qua* Suit Item No.1 and the Suit is partly decreed. The Plaintiffs are each entitled to 9/144 share in Suit Item No.1 and to that extent, a Preliminary Decree is passed. The Trial Court's Judgment and Decree *qua* Suit Item No.2 is sustained. In view of the facts and circumstances of this case, there shall be no order as to costs in this Appeal Suit.

[N.S.K., J.] [R.S.V., J.]

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Index : Yes / No
Speaking Order : Yes
Neutral Citation : Yes
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The Sessions (Fast Track Mahila) Judge,
Namakkal.



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A.S.NO.980 OF 2020

N.SATHISH KUMAR, J.

AND

R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN

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