

V.J.Deenadayalan vs Jayamani

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Court : Chennai

Decided On : Feb-24-2025

Judge : Honourable Mr Justice R. Subramanian, Honourable Mr. Justice C.Kumarappan

Appeal No. : AS/240/2013

Appellant : V.J.Deenadayalan

Respondent : Jayamani

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on Delivered on 23.01.2025 24.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN and THE HONOURABLE MR.JUSTICE C.KUMARAPPAN A.S.Nos.240 and 267 of 2013 and MP Nos.1 and 1 of 2013 AS No.240 of 2013

1. V.J. Deenadayalan

2. V.J. Prabhu Kumar ... Appellants vs.

1. Jayamani

2. Rukmani

3. Palaniammal (Died)

4. Vinodh Prabakaran

5. Pravena

6. Saraswathi ... Respondents R3 Died, R6 is brought on record as LR's of deceased R3 vide order of Court dated 31.10.2023 made in CMP No.6440/2022 in AS No.240 of 2013 [RSMJ and NSJ]

Prayer in AS No.240/2013: This appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the decree and judgment dated 08.03.2013 passed in OS No.13 of 2007 on the file of the Court of the III Additional District Court, Erode at Gobichettipalayam. For Appellants : Mr.T. Muruga Manickam For Respondent : Mr.N.Manokaran, for 1, 2, 4 and 5 R6 - No appearance and R3 - Died AS No.267 of 2013

1. V.A.Rukmani

2. E. Jayamani ... Appellants vs.

1. Palaniammal

2. V.A. Jayabalan (Died)

3. V.G.Deenathayalan

4. V.J.Prabhukumar

5. Saraswathi ... Respondents

R5 brought on record as LR's of deceased 2nd Respondent viz (V.A.Jayabalan) vide Court order dated 10.03.2022 made in CMP No.17131 of 2019 in AS No.267 of 2013 (MKKSJ & VSGJ) Prayer in AS

No.267/2013: This appeal is filed under Order 41 Rule 1 read with Section 96 of the Code of Civil Procedure, to set aside the decree and judgment dated 08.03.2013 made in OS. No.11 of 2007 on the file of the III Additional District Court, Erode at Gobichettipalayam. For Appellants : Mr.N.Manokaran For Respondent : Mr.T. Muruga Manickam, for 3 and 4 RR1 & 5 - no appearance and R2 - Died *****

COMMON JUDGEMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.) Challenge in these Appeals is to the common judgment of the III Additional District Judge, Erode at Gobichettipalayam in OS Nos.11 and 13 of 2007.

2. While AS No.240 of 2013 is by the plaintiffs in OS No.13 of

2007, AS No.267 of 2013 is by the plaintiffs in OS No.11 of 2007. In the suit in OS No.11 of 2007, the plaintiffs, who are the daughters of V.P.Appachi Gounder and Palaniammal, sought for partition and separate possession of their 5/16th share each in the suit properties and for delivery of possession. They had inter alia contended that their father Appachi Gounder was allotted several income yielding landed properties at a partition between him and his father Palani Gounder that took place on 20.09.1950.

3. Out of the income earned from the said lands, Appachi Gounder

had purchased several other items of lands and the lands that were allotted to Appachi Gounder at the partition and the lands that were purchased by him out of the income from the ancestral nucleus were shown as A Schedule Properties. Appachi Gounder also purchased several properties in the name of the second defendant who is his only son. Those properties that were purchased by Appachi Gounder in the name of his son / the second defendant under Exhibits A8 to A15 were shown as B Schedule properties. According to the plaintiffs, on the death

of Appachi Gounder on 13.03.2006, the plaintiffs, as coparceners, would be entitled to an equal share as that of the son. Therefore, they claimed a 5/16th share each in the suit properties.

4. The suit was resisted by the defendants. The second defendant

filed a separate written statement contending that the properties that are allotted to Appachi Gounder at the partition did not yield any notable income that would have contributed for the purchase of the other properties. Appachi Gounder served as a Village Munsif for several years. The second defendant who discontinued his education at the age of 11 managed the entire family, as the father Appachi Gounder was working as a Village Munsif. His maternal grandfather Kandappa Gounder had purchased 2 acres 4 cents of land in the name of the second defendant in 1968 and therefore, the land that is situate in Pudukarai Village measuring about 2 acres 4 cents is his separate property. A claim was made to the effect that the second defendant became divided from Appachi Gounder even in the year 1980.

5. The claim that the entire suit B Schedule Properties were

purchased from and out of the joint family income was stoutly denied. It was also contended that the Income earned from the properties were expended for celebrating the marriages of the plaintiffs. It was also contended that certain properties were purchased by Appachi Gounder in the name of his daughters viz. the plaintiffs also and the non-inclusion of those properties would render the suit bad for partial partition.

6. An extent of 80 cents of land was also purchased by Appachi

Gounder on 22.04.1977 in the name of the first defendant Palaniammal and those lands should also be included in the suit for partition. He also contended that Appachi Gounder had executed a Will on 21.11.1990 bequeathing the properties to the second defendant and he has also

executed a Settlement Deed on 06.03.2006 in favour of defendants 3 and 4. Therefore, the second defendant sought for dismissal of the Partition suit. The first defendant Palaniammal filed a written statement supporting the cause of the plaintiffs. She also claimed that the properties that were purchased in her name belonged to her absolutely.

7. Not content with defending the suit for partition, the sons of the

second defendant, who were cited as defendants 3 and 4, laid a separate suit in OS No.11 of 2007, for declaration that they are the owners of the suit properties which form part of the A Schedule properties in OS No.11 of 2007 as items 3 and 4 of A Schedule, pursuant to the Settlement Deed dated 06.03.2006 executed by Appachi Gounder.

8. This suit was defended by the defendants contending that the

Settlement Deed is a document that was brought about by force and therefore, the same is not binding on the plaintiffs. It was also contended that the suit itself is a design by the second defendant in OS No.11 of 2007, who is the father of the plaintiffs in OS No.13 of 2007. It was also contended that the Settlement Deed dated 06.03.2006 is void ab initio and the same will not confer any title on the plaintiffs.

9. On the above pleadings, the following issues were framed in OS

No.11 of 2007: 1/ jhthr; brhj;Jf;fs; thjpf; kw;Wk; 2k; gpupthjppad; Tl;Lf;FLk;gr; brhj;J vd;gJ cz;ikah> 2/ mg;ghr;rp;ft[z;lh; fle;j 10/6/1999 Mk; njjp thjpfSf;F capy; vGjp itj;jJ 2k; gpupthjpiaf; fl;Lg;gLj;jhJ vd;gJ cz;ikah> 3/ thjpf; jhthp;y nfhhpa[s;sthW ghfg;gphptpid nfhu chpika[s;sjh> 4/ thjpf;Ff; fpilf;f ntz;oa ,ju ghpfhuk; vd;d>

and the additional issues were also framed on 21.02.2001: 1/ gpupthjpf; jh';fs;jhf;fy; bra;Js;s TLjy; gjpYiuapy; Twpa[s;s ft[d;lh; fpsak; counter claim bgw chpika[z;lh> gjpYiuapy; Twpa[s;sJ nghy; jhd; nk\$uhd cly; (mjhtJ)

\$^d; 1980 Mk; njjp jhd; jdpahf jhDk;. mg;ghr;rp ft[z;lUk; gphpe;J mDgtpj;J
tUtjhff; TWtJ rhpjhdh>

The following issues were framed in OS NO.13 of 2007: 1/ thjpfs; jhthtpy; nfhHPa[s;sthW tpsk;g[ifg; ghpfhuk; bgw chpika[z;lh> 2/ thjpfs; jhthtpy; nfhHPa[s;sthW epue;ju jil cj;jut[bgw chpik cz;lh> 3/ jhthtpy; mtrpakhd jug;gpdh;fis nrh;f;fhj fhuzj;jhy; jhth ghjpf;fg;gLfpd;wjh> 4/ mg;ghr;rpf;ft[z;lhpIkPUe;J VkhW;wp jhd; brl;oy;bkd;l; vGjpf;bfhz;lhh;fs; vd;gJ cz;ikah> 5/ thjpfSf;F fpilf;f ntz;oa kw;w ghpfhu';fs; vd;d>

10. At trial, the first plaintiff in OS No.11 of 2007 viz. the partition

suit was examined as P.W.1 and three other witnesses were examined as P.Ws. 2 to 4. The first defendant in the said suit Jayabalan was examined as D.W.1 and two other witnesses were examined as D.Ws. 2 and 3. While Exhibits A1 to A26 were marked on the side of the plaintiffs and Exhibits B1 to B6 were marked on the side of the defendants. Exhibits C1 to C4 viz. the copies of the Salary Register of Appachi Gounder were marked as Exhibits C1 to C4.

11. On the evidence on record, the learned Trial Judge concluded that the suit properties are ancestral properties. He, however, dismissed

the suit on the ground that it is bad for partial partition, as the properties that were purchased in the name of the daughters viz. the plaintiffs in OS No.11 of 2007 have not been made subject matter of the Partition Suit.

12. As regards the claim for declaration, the learned Trial Judge

found that since the properties were ancestral properties, Appachi Gounder had no right to settle the said properties in favour of the plaintiffs in OS No.13 of 2007. It was also concluded the Will dated 10.06.1999 will not bind the second defendant and the Will said to have been executed by Appachi Gounder in favour of the second defendant in the Partition Suit on 21.11.1990 will also not bind the plaintiffs in the

partition suit. As a result of the above findings, the learned Trial Judge dismissed both the suits leading to these Appeals.

13. We have heard Mr. T.Muruga Manickam, learned Senior

Counsel appearing for Mr. Govi Ganesan, for the appellants in AS No.240 of 2013 and respondents 3 and 4 in AS No.267 of 2013 and Mr.N.Manokaran, learned counsel appearing for the appellants in AS No.267 of 2013 and the respondents 1, 2, 4 and 5 in AS No.240 of 2013.

14. Mr.N.Manokaran, learned counsel appearing for the appellants

in AS No.267 of 2013 viz. the daughters would vehemently contend that the Trial Court was not right in dismissing the suit for partition on the ground that it is bad for partial partition without considering the provisions of the Prohibition of Benami Property Transactions Act, 1988 which create a presumption that the properties are purchased in the name of unmarried daughters are presumed to be for their benefit. The learned counsel would also point out that non-inclusion of such properties will not affect the suit for partition. He would further contend that having

held that the properties in Schedules 'A' and 'B' are ancestral in nature, the

Trial Court was not right in dismissing the suit for partition.

15. Mr. T.Murugamanickam, learned Senior Counsel appearing for respondents in AS No.267 of 2013 viz. the son and grandsons of Appachi

Gounder would submit that the Trial Court was not right in its conclusion

that the properties purchased in the name of the second defendant Jayabalan, were also purchased from and out of the ancestral nucleus. The learned counsel would also point out that the Trial Court was not right in rejecting the Will and the

Settlement Deed which were marked as Exs.B1 and B4.

16. On the above contentions of the learned counsel for the parties, the following points emerge for determination in the Appeals.

(1) Whether the properties described in A and B Schedules to the suit in OS No.11 of 2007 could be termed as ancestral properties, in which the daughters of Appachi Gounder would acquire a right by birth;

(2) Whether the non-inclusion of the properties purchased in the name of the daughters by Appachi Gounder is fatal to the suit for partition;

(3) Whether the Wills dated 21.11.1990 and 10.06.1999 have been proved in accordance with law;

(4) Whether the Settlement Deed dated 06.03.2006 (Ex.A17) is valid; and

(5) What is the share, the plaintiffs in OS No.11 of 2007 would be entitled to?

17. After hearing the Appeals, we had reserved orders on

04.11.2024, thereafter the plaintiffs in OS No.11 of 2007 had filed an application in CMP No.26357 of 2024 seeking amendment of the plaint to include the properties that were purchased in the name of the daughters as item Nos.6 and 7 of B Schedule and some other properties that were purchased in the name of Jayabalan the 2nd defendant as C Schedule properties. Palaniammal wife of Appachi Gounder died pending the Appeals. The second defendant in OS No.11 of 2007 Jayabalan also died pending Appeal and his wife was brought on record as the fifth respondent.

18. The application for amendment was allowed by us on 16.12.2024 and thereafter we heard the appeals again on merits.

(6) After the amendment was allowed yet another point that would arise for consideration is what is the extent of the presumption under Section 4 of the

19. The Trial Court has, on a consideration of the evidence on

record, reached a conclusion that the properties are all ancestral properties. The fact that there was a partition between Palani Gounder and Appachi Gounder in the year 1950 is admitted. The fact that Appachi Gounder was allotted certain properties at the said partition is also admitted. Except contending that Appachi Gounder worked as a Village Munsif, the second defendant, who seeks to claim independent title, has not let in any evidence to establish that Appachi Gounder had separate income and he had purchased his properties out of the said income. In fact the theory projected by the second defendant, the son of Appachi Gounder, that he dropped out of School at the age 11 and he started looking after the lands, is wholly unbelievable.

19.1. A perusal of Exhibits C1 to C4 would show that Appachi Gounder was only working as a temporary Village Munsif and was paid only about four rupees per day as salary and therefore, it is highly unlikely that the said salary formed the nucleus for purchase of the properties. Apart from the above D.W.2, the attesting witness to the Settlement Deed executed by Appachi Gounder has also spoken about the fact that Appachi Gounder was allotted lands at the partition between him and his father and he was cultivating the same.

19.2. Despite its best efforts, Mr.T.Murugamanickam, learned Senior Counsel appearing for the appellants in AS No.240 of 2013 is unable to make out a case for interference with the finding that the properties are ancestral properties. Moreover, the second defendant in OS No.11 of 2007 viz. Jayabalan, son of Appachi Gounder has not chosen to challenge the finding in OS No.11 of 2007 that the suit properties are ancestral properties. In the light of the above, we have no other option but to confirm the findings of the Trial Court on the nature of the property.

Point Nos.2 and 6:

20. An attempt is made to justify the non-inclusion of the

properties purchased in the name of the daughters in the suit for partition contending that the presumption under Section 4 of the Prohibition of Benami Property Transactions Act, 1988 would apply and those properties would be presumed to be properties purchased for the benefit of the daughters. Sub Section (1) of Section 3 of the Prohibition of Benami Property Transactions Act, 1988, prohibits a person from entering into a benami transaction. Sub Section 2 of Section 3 the Prohibition of Benami Property Transactions Act, 1988, carves out an exception and enables the person to buy properties in the name of his wife or unmarried daughter and once such properties are purchased in the name of the wife or unmarried daughter. The provision enacts a rebuttable presumption to the effect that the properties were purchased for the benefit of the wife or unmarried daughter. The presumption being a statutory presumption is a rebuttable presumption.

20.1. The Prohibition of Benami Property Transactions Act, 1988 was enacted in the year 1988 subsequently, the Hindu Succession Act, 1956 was amended in the year 2005 making daughters as coparceners. Section 4 of the Prohibition of Benami Property Transactions Act, 1988

bars a suit or a claim to enforce a right in respect of a property held

benami. Sub Section 3 of Section 4 of the Prohibition of Benami Property Transactions Act, 1988 again carves out an exception and permits suits for recovery of properties held in the name of a coparcener in a Hindu undivided family. Therefore, a daughter in whose name the properties were purchased by the father becomes a coparcener on enactment of the Hindu Succession Amendment Act, 39 of 2005.

20.2. Once the daughter becomes a coparcener by virtue of the amendment of the substantial enactment viz. the Hindu Succession Act, 1956 the presumption enacted under Section 3 of the Prohibition of Benami Property Transactions Act, 1988 will have to necessarily take the back seat. Therefore, it will not be open for daughters in whose names the properties have been purchased by the father to contend that those properties are outside the scope of a suit for partition invoking the presumption enacted by Section 3 of the Prohibition of Benami Property Transactions Act, 1988. Probably that is the reason why the Prohibition of Benami Property Transactions Act, 1988 was amended extensively and the exceptions carved out by Sections 3 and 4 were removed from the Act, by the Amending Act, 43 of 2016.

20.3. By the Amending Act, 43 of 2016, the definition of a Benami Transactions has been widened and the same reads as follows: (9) benami transaction means,-

(A) a transaction or an arrangement-

(a) where a property is transferred to, or is

held by, a person, and the consideration for such

property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by-

(i) a Karta, or a member of a Hindu undivided

family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee,

executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the

name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or

sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect

of a property where the person providing the consideration is not traceable or is fictitious; Explanation.-For the removal of doubts, it is hereby declared that benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53-A of the Transfer of Property Act, 1882 (4 of 1882), if, under any law for the time being in force,-

(i) consideration for such property has been

provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;

(ii) stamp duty on such transaction or arrangement has been paid; and

(iii) the contract has been registered.

20.4. From the above definition, it could be seen that the statutory presumption enacted by the 1988 Act, now stands abrogated. Therefore, we find that the Trial Court was right in concluding that the non-inclusion of the properties that stood in the name of the daughters viz. the plaintiffs in the suit for partition is fatal to the suit. However, as we have pointed out earlier those properties have also been made subject matter of the suit by filing an Application for amendment in CMP No.26357 of 2024 and the said amendment has also been allowed and therefore, the defect stands cured.

Point No.3:

21. Both the parties have set up two different Wills. While the

plaintiffs would rely upon a Will of the year 1999 which has been marked as Ex.A16, the second defendant would rely on a Will dated 21.11.1990 marked as Ex.B1. While Ex.A16 is a registered document, Ex.B1 is an unregistered Will. The plaintiffs have examined P.W.2, the attesting witness to the Will dated 10.06.1999. The Trial Court has excluded the

Wills on the ground that the properties have been held to be joint family properties. The Trial Court, as rightly pointed by Mr.Manoharan, has overlooked Section 30 of the Hindu Succession Act,1956 which enables the Male Hindu to dispose of his interest in the co-parcenary property by way of a Will.

21.1. We have examined the evidence of the attesting witnesses of both the wills. P.W.2 is the attesting witness to Ex.A16, though it is a registered Will, it is incumbent upon the propounders viz. the plaintiffs in the partition suit to prove the Will in accordance with Section 68 of the Indian Evidence Act. The evidence of P.W.2 to say the least is wholly insufficient and it does not comply with the requirements of Section 68 of the Evidence Act. The attesting witness had very categorically deposed that Appachi Gounder had not executed the Will out of his own volition. Even in the chief-examination, he has not stated that he saw Appachi Gounder affixing a signature to the Will. In cross-examination he has specifically stated as follows: ///khkhtplk; <!;tud; jd; kidtpf;F brhj;J vGjpitf;fntz;Lk; vd;Wk; ,y;iybad;why; ehd; Jujp tpLntd; vd;Wk; mjw;F gae;J bfhz;Ljhd; vGjpitj;jhh; vd;W brhd;dhy; rhpjhd;/ ///

21.2. This portion of the evidence by itself demonstrates that the Will dated 14.11.1999 said to have been executed by Appachi Gounder in favour of the plaintiffs in OS No.11 of 2007 was not executed out of his own free will and therefore, the same is not a valid document.

21.3. Adverting to the Will dated 21.11.1990 scribe of the said document has been examined as D.W.3. The document is an unregistered Will. Of course D.W.3 has filed a proof affidavit, wherein he has stated the requirements of Section 68 of the Evidence Act, but however in his cross-examination he has admitted that Palaniammal and Appachi Gounder had filed suits against him and they have obtained decrees against him.

21.4. Apart from the above, the attesting witnesses to the document have not been examined. It is claimed that they are dead, no evidence has been produced to show that they are actually dead. Even in the proof affidavit, D.W.3 Palanisamy has not given the date of death of the attesting witnesses. The evidence of D.W.3 does not inspire the

confidence of the Court. If a propounder of a Will seeks to take advantage of Section 69 of the Evidence Act, he will have to necessarily establish that the attesting witnesses are either dead or cannot be brought before Court at a reasonable expense. There is no evidence to that effect and hence the attempt of the second defendant to prove the Will under Section 69 of the Evidence Act cannot be permitted. We therefore, conclude that the Will dated 21.11.1990 has also not been proved in accordance with law.

Point No.4:

22. This relates to the Settlement Deed said to have executed by

Appachi Gounder in favour of the plaintiffs in OS No.13 of 2007. The said instrument is dated 06.03.2006, we have affirmed the findings of the Trial Court with the properties are coparcenary properties. Therefore, the Appachi Gounder had no absolute right over the properties. Upon enactment of Hindu Succession (Amendment) Act, 39 of 2005, the daughters have also become coparceners. Therefore, Appachi Gounder had only 1/4th share in the suit properties and he had no right to settle the entire property in favour of his grandsons.

22.1. While a coparcener is permitted to deal with his share in the property by way of a testamentary instrument gifting away of a property by a coparcener unless it is made in expectation of marriage is not permitted. Even that gift made in expectation of the marriage should be only a reasonable portion of the property. Hence, we affirm the findings of the Trial Court that the Settlement Deed dated 06.03.2006 is invalid.

Point No.5:

23. From the discussion above, we have reached the conclusion

that the properties described in Schedules A and B including items 6 and 7 of B Schedule and C schedule which has been included by way of amendment or ancestral properties belonging to Appachi Gounder and his family. The plaintiffs and the second defendant are the coparceners at the time of the death of Appachi Gounder in 2006. Therefore, the plaintiffs, the second defendant and Appachi Gounder, who each be entitled to 1/4th share in the suit properties.

23.1. On the death of Appachi Gounder, his 1/4th share would devolve on his wife the first defendant and the children, the plaintiffs and the second defendant. Therefore the plaintiff would each be entitled to the remaining 1/16th share would go the first defendant.

23.2. On the death of the first defendant, the said 1/16th share would devolve again on the plaintiffs and the second defendant. Each of them would get 1/48th share, if that 1/48th share is added to the 5/16 which they already possess, the plaintiffs and the second defendant would each be entitled to 16/48th equivalent to 1/3rd share. Therefore, the plaintiffs and the first defendant would each be entitled to 1/3rd share in the suit A,B and C Schedule properties.

24. In fine, the Appeal in AS No.267 of 2013 is allowed and the

suit in OS No.11 of 2007 will stand decreed declaring that the plaintiffs and the second defendant are each entitled to 1/3rd share in the suit A, B and C Schedule properties to the said suit. AS No.240 of 2013 will stand dismissed confirming the judgment and decree in OS No.13 of

2007. Considering the relationship between the parties, the parties will

bear their own costs. Consequently the connected miscellaneous petitions are closed. (R.SUBRAMANIAN, J .) (C.KUMARAPPAN, J.) 24.02.2025 jv Index : Yes Internet : Yes

Speaking order

Neutral Citation: Yes To

1. The III Additional District Court, Erode at Gobichettipalayam.
2. The Section Officer, V.R. Section, Madras High Court, Chennai 104.

R.SUBRAMANIAN, J.

and

C.KUMARAPPAN, J.

jv A.S.Nos.240 and 267 of 2013 and MP Nos.1 and 1 of 2013 24.02.2025

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