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A.S.No.684 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2026

CORAM

THE HONOURABLE MR . JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

A.S.No.684 of 2023

&

C.M.P.No.24100 of 2023

1. G.Chandrasekar

2. G.Murali

... Appellants

Versus

1. G.Annamalai

2. S.Meenatchi

... Respondents

First Appeal filed under Section 96(1) of CPC against the preliminary decree and judgment dated 20.07.2023 in O.S.No.09 of 2016 on the file of Principal District Judge, Tiruvannamalai.

For Appellant : Mr.N.Karthikeyan

For Respondents : Mr.S.Parthasarathy
Senior counsel
for Mr.K.Muthukumarasamy



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JUDGMENT

(Judgment of the Court was made by **N.SATHISH KUMAR, J.**)

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Challenging the judgment and decree of the trial Court passing a preliminary decree and directing division of property into four equal shares and allotment of each one such share to the plaintiff and third defendant, the appellants/defendants 1 and 2 are before this Court.

2. The parties are referred to by their respective ranks in the trial Court.

3. The brief facts of the case is as follows:

The suit properties originally owned by one Vachala Ammal, who is the first wife of Govindhan, namely the father of the parties to the suit. Through the first wife Vachala Ammal, Govindhan had four sons viz., Chandrasekaran, Anandhan, Murali and Krishnamoorthy and one daughter by name Vijaya. Said Vachala Ammal left a registered Will dated 21.03.1965 bequeathing suit 'A' schedule property absolutely to the four sons born to her and it is also indicated in the Will that till last son attains majority, the property shall be maintained by her husband Govindhan and after the last son attains majority, the father has to release the property in favour of four sons. In the same Will, bequeath has also been made in



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favour of her only daughter in respect of suit 'B' schedule property. The plaintiff is the son of Govindhan, born through his second wife. It is the case of the plaintiff that two of the sons born to Vachala Ammal viz., Anandhan and Krishnamoorthy were died on 29.05.1973 and 07.08.1979 respectively as bachelors. Therefore, their father being Class II legal heir was the only person succeeded their share in the property as according to the plaintiff, his father Govindhan become entitled to half share in the suit 'A' schedule property on the death of Anandhan and Krishnamoorthy as bachelors. Said Govindhan had executed a settlement deed on 26.06.2015 bequeathing 1/4th share in favour of the plaintiff and another 1/4th share in favour of the third defendant and they became absolute owners of the property. Therefore, the plaintiff filed the above suit seeking partition of suit 'A' schedule property.

4. It is the contention of the first defendant in the written statement that the suit property was acquired by their mother Vachala Ammal and she had executed a Will dated 21.03.1965. In the said Will it is clearly stated that the children born to the second wife should not get any right in the property. Therefore, their father executing the settlement deed in favour of



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the plaintiff and third defendant is against the intention of the testatrix.

Hence, they disputed the allotment of shares to the plaintiff.

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5. The second defendant filed a written statement stating that suit is not maintainable for non-joinder of necessary parties. Two of the sons born to testatrix viz., Anandhan and Krishnamoorthy died on 29.05.1973 and 07.08.1979 respectively. According to the second defendant, there is a specific clause in the Will to the effect that no property should be given to the children born to the second wife of said Govindhan and therefore, Govindhan has no legal right to execute the settlement deed in favour of his sons born through the second wife.

6. The third defendant had, in fact, supported the case of the plaintiff.

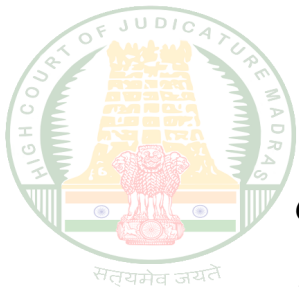
7. Based on the above pleadings, the trial Court framed the following issues and Additional Issues:

Issues:

- i) Whether the plaintiff is entitled to the relief of $\frac{1}{4}$ share in the suit property as prayed for?*
- ii) To what other relief?*

Additional Issues:

- i) Whether the settlement deed alleged to be executed by*



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Govindhan in favour of plaintiff and 3rd defendant dated

26.06.2015 is valid?

*ii) Whether the Govindhan has got any right under the Will
executed by 1st wife?*

iii) To what other relief plaintiff is entitled?

8. On the side of the plaintiff, two witnesses were examined as PWs 1 and 2 and Exs.A1 to A11 were marked. On the side of the defendants, DWs 1 to 3 were examined and Exs.B1 to B3 were marked.

9. The trial Court, based on the evidence and materials available on record and considering the scope of Section 8 of the Hindu Succession Act has passed the preliminary decree dividing the property into four equal shares and allotment of each one such share to the plaintiff and third defendant. Challenging the same, the present appeal has been filed by Defendants 1 and 2.

10. The learned counsel for the appellants/defendants 1 and 2 submitted that Hindu Succession Act will not apply to the case on hand since the intention of the testator overrides the provisions of the Hindu Succession Act. According to learned counsel, the property should have been dealt with as per Section 30 of the Hindu Succession Act, 1956 rather than Section 8.



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The learned counsel further submits that when the intention of the testatrix is

very clear in the Will that the children born through the second wife should not get any share in the property, on the death of the two children born through first wife, the property should go to the other two brothers and the father will not get any title as per law. It is his further contention that the property should have been dealt with under Section 29-A of the Hindu Succession Act, 1956. According to learned counsel, the property will devolve as per survivorship and not by way of succession. Hence, it is his contention that the trial Court is not right in granting the relief. In support of his submission, learned counsel has placed before this Court a Judgment of the Supreme Court dated 08.07.2024 in Civil Appeal Nos.3780 to 3781 of 2020 [*Shashidhar and Others Vs. Ashwini Uma Mathad and Another*].

11. Per contra, the learned Senior counsel appearing for the respondents/plaintiff and third defendant would submit that admittedly the property belonged to Vachala Ammal, the mother of defendants 1 and 2, the said Vachala Ammal bequeathed the suit 'A' schedule property in favour of her four sons. However, as the possession was not immediate, her husband was managing the property. The vesting will take place the moment the executor dies as per Section 119 of the Indian Succession Act, 1925.

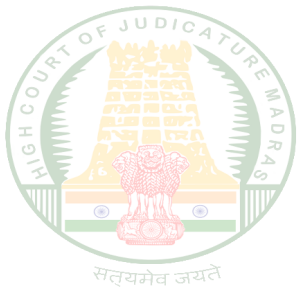


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Admittedly, two of the sons died as a bachelor. Vesting has already taken place on the date of the death of the testator, the property in their hands is their absolute property. After their death, the father being the Class II legal heir, as per Section 8 of the Hindu Succession Act, he alone is entitled to share. Only on the said right, Govindhan has executed the settlement deed in favour of the plaintiff as well as third defendant in the suit and on that basis, they claim partition. Therefore, the trial Court applied the correct law granted the preliminary decree as stated above. Aggrieved over the same, the present appeal came to be filed.

12. In the light of the above submission, the points that arise for consideration in this appeal are as follows:

- i) Whether the father of the plaintiff derived right under law to execute the settlement deed in favour of the plaintiff and third defendant?
- ii) Whether the property in the hands of sons of Vachala Ammal is coparcenary property or their absolute property?
- iii) To what other relief the parties are entitled?



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13. Admittedly, the suit properties were originally owned by Vachala Ammal, the first wife of Govindhan. It is also not in dispute that through the first wife, said Govindhan had four sons, viz., Chandrasekar, Anandhan, Murali and Krishnamoorthy and one daughter by name Vijaya. The Will was executed on 21.03.1965. It is a registered Will and the execution of Will by said Vachala Ammal is also not in dispute. The said Will has been marked as Ex.A1. The said Vachala Ammal died on 02.04.1965. A careful perusal of the Will makes it very clear that 'A' schedule properties were bequeathed to four sons absolutely and 'B' schedule property was given to the only daughter Vijaya. The instant suit is concerned only with regard to 'A' schedule property. The recitals in the Will further indicate that since the four sons were minor at the time of executing the will, her husband Govindhan was appointed as the Manager to manage the property and the specific intention of the testatrix can be gathered from the recitals of the Will that the moment the last son attains majority, the entire management of the property shall be handed over to four sons. The recitals further indicate that the vesting has taken place already and only the possession has been postponed. In this regard, it is useful to refer to Section 119 of the Indian



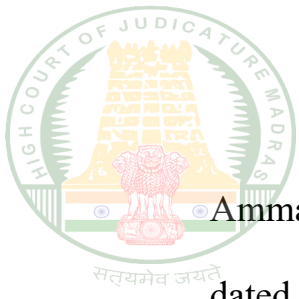
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Succession Act, 1925, which reads as follows:

“119. Date of vesting of legacy when payment or possession postponed.- *Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the Will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest.”*

14. The above provision makes it clear that even before the possession is taken over by the legatee, in event of legatee dies, his interest shall pass on to the legatee's representative. Unless a contrary intention is shown specifically in the Will, as per Section 119, the vesting is immediate on the death of executor of the Will. Admittedly, the testatrix died on 02.04.1965, immediately after the execution of the Will. As we find that there is no contrary intention appeared in the Will to postpone the vesting, it has to be held that vesting of the property was immediate on the death of the testatrix. Therefore, merely because possession was not enjoyed by the minors at the relevant point of time, it cannot be said that the legatees are not become absolute owners. As per the above provisions, all the four sons of Vachala

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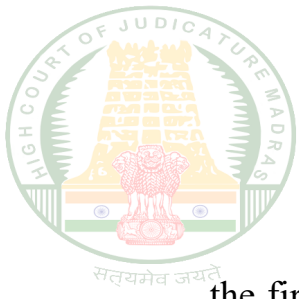
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Ammal become absolute owners on her death in view of the registered Will dated 21.03.1965.

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15. Now in the light of the above position, we have to analyse the contention of the learned counsel for the appellants.

16. It is an admitted fact that two sons of Vachala Ammal, namely Anandhan and Krishnamoorthy died on 29.05.1973 and 07.08.1979 respectively as bachelors. These facts are not in dispute. Once the property is vested on the date of death of the testatrix, the character of the property in the hands of the legatees will be their absolute properties in view of the testament executed by their mother. Therefore, on their death, even as per Section 119 of the Indian Succession Act, even the legatee dies before taking possession of the property, his interest in the property will pass on to his representative. The parties are admittedly governed by Hindu law and hence, the succession is governed by the Hindu Succession Act. As per Section 8 of the Hindu Succession Act, if any male Hindu dies intestate, his property shall devolve according to the provisions of Chapter II, firstly upon the Class I legal heirs, secondly, if there is no Class I legal heirs, then upon the heirs being the relatives specified in the Class II of the Schedule.



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17. Admittedly, the father is Class II legal heir to the sons placed in

the first entry in Class II. As per Section 9 of Hindu Succession Act, those in the first entry in Class II shall be preferred to those in the II entry. Therefore, Govindhan, the father of the parties being the Class II legal heir, he was placed in the I entry in the schedule as a Class II legal heir and he alone become entitled to derive interest in the property left by two of his sons. Accordingly, he derived right over $\frac{1}{2}$ shares through his two sons who died as bachelors. He dealt with the said share by way of settlement in favour of the plaintiff and third defendant in the suit and based on the said settlement, the instant suit has been filed for partition. Therefore, we do not find any merit in this appeal. as Govindhan, being the father derived right as per law. Though joint possession could not be handed over in view of the settlement and only for the purpose of taking possession, rightly the partition suit has been filed for division of suit 'A' schedule property among the sharers. Therefore, we are of the view that the trial Court has properly appreciated the evidence and decided the issue applying the correct position of law. The judgment cited by the learned counsel for the appellant is no way connected with the facts of the present case and in fact in the said judgment also Hon'ble Supreme Court held that any property acquired by



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way of testament cannot be included as a joint family property. In fact the

said judgment is in favour of the respondents herein. We find no merits in

the appeal and the same is liable to be dismissed.

Accordingly, this appeal is dismissed and the judgment and decree of the trial Court dated 20.07.2023 in O.S.No.09 of 2016 is confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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

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Index: Yes/No

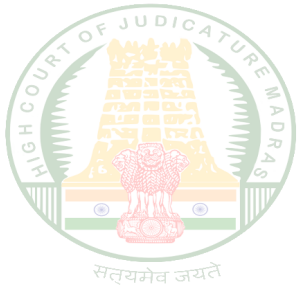
Neutral Citation: Yes

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To

The Principal District Judge

Tiruvannamalai



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