

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.652 OF 2019

S.GAJAGANAPATHY

APPELLANT(S)

VERSUS

S.RATHINASABABATHY (DEAD) THR LR(S) AND ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 653 OF 2019

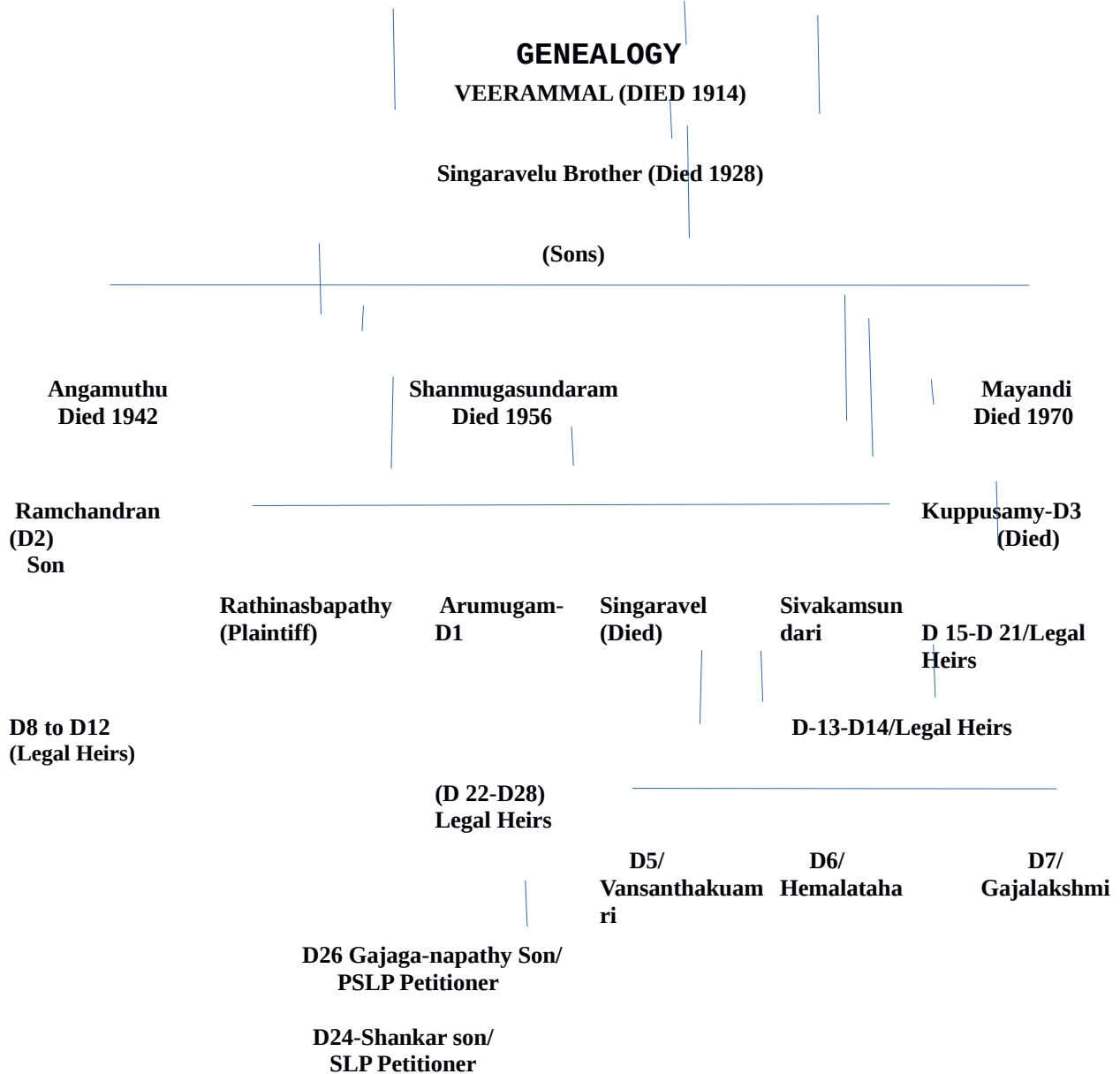
O R D E R

CIVIL APPEAL NO.652 OF 2019

We have heard learned counsel for the parties.

2. Facts in brief giving rise to the dispute can be capitulated as under :-

3. Dispute pertains to premises bearing Door No. 2, Venkatachala Naicken Street, Rayapuram, Chennai-13. The said property belonged to one Veerammal, who died in the year 1914. The genealogy tree of the parties is as under :-



4. The Plaintiff, S. Rathinasbapathy, the grandson of Veerammal filed a suit claiming for the following main reliefs :-

1. *Directing division of the suit property into twelve equal shares by metes and bounds;*
2. *For allotment of separated possession of 11 shares to the plaintiff;*
3. *Directing 1/12th share of the 1st Defendant over*

the suit property to the plaintiff for Rs.1273/- and 1/3 under Section 9 of the Partition Act;

4. *For appointment of a Commissioner to effect Partition of the suit property by metes and bounds and fore sale of the 1/12th share of the 1st Defendant to the plaintiff.*

5. Some of the defendants (respondents herein) filed their written statement expressing no objection in the suit being decreed as prayed for in the plaint. Other defendants contested the claim of the plaintiff on various grounds.

6. The Trial Court on the basis of pleadings framed the following five issues:-
 1. *Whether it is correct that the Defendants 2 to 7 had released their respective shares in the suit property, in favour of the plaintiff?*
 2. *Whether it is valid that the 1st defendant has the half share in the suit property?*
 3. *Whether the plaintiff is entitled to purchase the 1/12th share in the suit property from the 1st defendant for Rs.1,273/-?*
 4. *Whether the plaintiff is entitled to the share as prayed for in the plaint?*

5. *What other reliefs?*

7. On the basis of the pleadings and on consideration of oral and documentary evidence brought on record by the parties, the Trial Court decreed the suit by passing a preliminary decree. The decree of the Trial Court was based on the following main findings:-

- i. *The plaintiff being a suthra, is not entitled to select the life of renunciation and the plea made by the D24 and D26 cannot be accepted.*
- ii. *The function adopting D 26, has not been proved and merely because of the marriage invitation of D26, Video cassettes of the marriage and CD of the Marriage marked as EX. B5 to B7 did not substantiate the said plea.*
- iii. *The plaintiff through Ex. A5 and A6 release deeds, has proved is entitled to 11/12th share in the suit property and the first defendant alone is entitled to 1/12th share in the suit property. Accordingly, the Trial Court granted preliminary decree dated 23.10.2002 in favour of the Plaintiff for 11/12th Share.*

8. Defendant no.26 (appellant herein), S. Gajaganapathy, filed first appeal challenging the preliminary decree.

The said appeal was contested by the plaintiff (respondent herein) alone.

9. During the pendency of the appeal, many of the parties expired and their legal heirs were brought on record through substitution.

10. The lower appellate Court framed the following two points for determination :-

1. *Whether the Trial Court findings that the plaintiff is entitled to get partition that too 11/12 share is correct? Or not?*
2. *Whether the appeal has to be allowed? Or not?*

11. The first appeal came to be allowed vide judgment and order dated 24.01.2008 and the preliminary decree passed by the Civil Court, Chennai dated 23.10.2002 was set aside and the plaintiff-respondent was held entitled to half share in the suit property and the legal heirs of Defendant no.1 (respondent nos.18 & 19 herein) were jointly held entitled to the remaining half share in the suit property.

12. The lower appellate Court while reversing the preliminary decree passed by the Trial Court, after analyzing the oral and documentary evidence, recorded the

following findings :-

- (i). Ex A5 and A6 relied on by the Trial Court is not an acceptable one as except the said documents, none of the documents would show the property was enjoyed by Angamuthu and Mayandi/ their legal heirs.
- (ii) A7 to A20 also did not disclose any title or enjoyment of the property by Angamuthu and Mayandi.
- (iii) Ex B1 copy document number 944/1915 issued by District Registrar, Chennai reveals Shanmugasundaram and his sons at that point of time, are the owners of the property and executed the charge decree.
- (iv) Ex A8 - list of documents in OS No. 147/1932.along with Ex A 4 - legal notice dated 11/4/1945 would reveal there was a litigation between Shanmugasundaram, Angamuthu and Mayandi.
- (v) In the light of Ex B 1 the property is to be partitioned between plaintiff and D1 alone.
- (vi) No document has been filed to show that the D26 became the adopted son of the plaintiff.
- (vii) Mere renunciation by the plaintiff will not stop the person to derive right or title in the property and partition. The First appellate court concluded the plaintiff is entitled to ½ share and the first defendant entitled to share. Since first defendant died his legal heirs namely D22 to D28 are jointly entitled to half share in the property. The first appellate court has disposed of the appeal by judgment and decree dated 24/08/2008, accordingly.

13. The plaintiff-respondent no. 1 herein, challenged the judgment and decree of the lower appellate Court before the High Court by filing a second appeal. The appellant herein filed a cross objection in the second appeal.

14. The High Court framed the following substantial questions of law:-

“(i) Whether the suit properties are to be treated as the Hindu joint family properties or the self-acquired properties of Singaravelu, and whether the first appellate Court properly appreciated the evidence and treated the suit properties as the Hindu joint family properties, despite the admitted factual position that Veerammal was the original owner of the suit properties; from whom her brother Singaravelu inherited the same? and that there is no evidence to establish that those properties were treated as Hindu joint family properties?”

(ii) Whether both the Courts below were justified in rejecting the plea of adoption as put forth by D26 in the wake of oral and documentary evidence, including the CD-Ex.B6?

(iii) Whether there is any perversity or illegality in the judgments and decrees rendered by both the Courts below?”

15. The High Court vide the impugned judgment and order, modified the judgment and preliminary decree passed by the Trial Court by observing as under:-

"55. I am fully aware of the fact that normally in second appeals, the findings of fact would not be interfered with, but here there is total perversity and illegality committed by both the Courts below in rendering the findings Ignoring the real facts before them.

56. It was sought to be canvassed on the side of the plaintiff that D.W.2 the mother of D26 stated that D26 happened to be his foster son. When close relationship exists between the plaintiff and D1, the physical nearness of D26 with his biological mother would not run counter to the theory of adoption. Normally after adoption there should be detachment from the biological family on the part of the adopted son and he should be taken into the fold of the adoptive parents. In this case, the adoptive father is none but the younger brother of D1 and they were living in one and the same house. In such a case, simply because D.W.2 deposed that she had also stayed in the same place with D26, would not run against the theory of adoption. Precisely there is nothing to indicate that such adoption was invalid on the alleged ground that P.W.1 had a biological son at the time of adoption of D26. In fact the deposition of D.W.2 would not in any way support the contention of the plaintiff.

57 In view of the ratiocination adhered to above, I am of the view that the cross-appeal filed by D26 should be allowed, setting aside the findings of both the Courts below and the substantial question of law (il) is answered in favour of D26 and as against the plaintiff.

58. Since D26 is stated to be the adopted son of Rathinasabapathy, in the share of 1/12 allotted to D1, D26 is not entitled to any share, in other words, the other legal heirs of D1 would get the benefit of D1's 1/12 share. To that effect, the trial Court's judgment and decree shall stand modified. Accordingly, the preliminary decree shall follow.

59. In the result, the second appeal and the cross appeal are disposed of to the extent indicated as under:

(i) The first appellate Court is wrong in construing the suit properties as the Hindu joint family properties and in allotting half share in favour of the plaintiff and half share in favour of D1 and his heirs.

(ii) The cross-appeal filed by D26 stands allowed, setting aside the findings of both the Courts below by holding that D26 is the adopted son of the plaintiff.

(iii) Since D26 is held to be the adopted son of the plaintiff/Rathinasabapathy, in the share of 1/12 allotted to D1, D26 is not entitled to any share, in other words, the other legal heirs of D1 would get the benefit of D1's 1/12 share. To that effect, the trial Court's judgment and decree shall stand modified. Accordingly, the preliminary decree shall follow."

16. Having considered the contentions advanced on behalf of contesting parties and the material placed on record, we are of the considered opinion that the finding recorded by the High Court holding that the appellant herein (Defendant no. 26) to be the adoptive son of the plaintiff has attained finality as the same has not been

challenged. Further, the finding of the Trial Court that the property in question is not a joint family property, as affirmed by the High Court, is not liable to be interfered with, and the same stands affirmed.

17. In view of the above, we do not find any reason or good ground to interfere with the impugned judgment and order.

18. The appeal, accordingly, stands dismissed. Pending application(s), if any, stand disposed of.

19. Learned counsel for the appellant is right in contending that though he could not have claimed any share in the joint family property but having been declared as an adoptive son, he has a right in the share of the property received by the plaintiff.

20. However, it is left open to the appellant herein to work out his remedies as may be available to him in law as an adoptive son of the plaintiff in respect of the property which came in the share of the plaintiff, S.Rathinasbapathy.

21. The dismissal of this appeal and the impugned judgment and order shall not stand in the way of such claim being made by the appellant herein and, if any, such claim is made by him, the same shall be decided on its own merits in accordance with law.

CIVIL APPEAL NO.653 OF 2019

1. We have heard learned counsel for the parties. We see no good ground to interfere in the impugned judgment and order confirming the finding of the Trial Court that the property in dispute is not a joint family property.

2. The appeal, accordingly, stands disposed of. Pending application(s), if any, shall also stand disposed of.

.....J.
(KRISHNA MURARI)

.....J.
(SANJAY KUMAR)

**NEW DELHI;
26th APRIL, 2023**

ITEM NO.102

COURT NO.13

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 652/2019

S.GAJAGANAPATHY

Appellant(s)

VERSUS

S.RATHINASABABATHY (DEAD) THR LR(S) AND ORS

Respondent(s)

(IA No. 3/2016 - PERMISSION TO FILE ANNEXURES)

WITH

C.A. No. 653/2019 (XII)

(IA No. 1/2012 - CONDONATION OF DELAY IN FILING)

Date : 26-04-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KRISHNA MURARI

HON'BLE MR. JUSTICE SANJAY KUMAR

For Appellant(s) Mr. M. Sathyanarayanan, Sr. Adv.
Mr. V. Balaji, Adv.
Mr. R Mohan, Adv.
Mr. Asaithambi Msm, Adv.
Mr. Rakesh K. Sharma, AOR

For Respondent(s) Mr. A. Sirajuddin, Sr. Adv.
Mr. Danish Zubair Khan, Adv.
Mr. Sumit Kumar, AOR
Mr. Hemant Kumar, Adv.

Mr. Rajesh Pathak, Adv.
Mr. Shirsh Kumar, Adv.
Mr. Parmod Kumar, Adv.
Mr. S. R. Setia, AOR

UPON hearing the counsel the court made the following
O R D E R

CIVIL APPEAL NO.653 OF 2019

The appeal stands dismissed in terms of the
signed order. Pending application(s), if any, stand

disposed of.

CIVIL APPEAL NO.653 OF 2019

The appeal stands disposed of in terms of the signed order. Pending application(s), if any, shall also stand disposed of.

(Geeta Ahuja)
Assistant Registrar-cum-PS

(Beena Jolly)
Court Master

(Signed Order is placed on the file)