

(2009) 01 MAD CK 0308**Madras High Court****Case No:** A.S. No. 278 of 1995

K.V. Subramaniam

APPELLANT

Vs

Nagalakshmi, Kunjammal (died)
and Others

RESPONDENT

Date of Decision: Jan. 12, 2009**Citation:** (2009) 6 CTC 144**Hon'ble Judges:** V. Periya Karuppiah, J**Bench:** Single Bench**Advocate:** T. Dhanyakumar, for the Appellant; R. Thiagarajan, Advocate for Respondent
No. 3., for the Respondent**Final Decision:** Dismissed**Judgement**

V. Periya Karuppiah, J.

This Appeal is directed against the Judgment and decree passed by the learned Subordinate Judge, Udumalpet in O.S. No. 300 of 1989 dated 21.11.1994. The Appellant is the First Defendant in the Suit. The Suit was filed by the deceased First Plaintiff, who was the husband of the Second Plaintiff, for partition on his 1/7 share in the suit properties and for separate possession of the same.

2. The Suit was decreed except two items of immovable properties and movable jewels described in "D" schedule properties. Aggrieved by the said decision of the lower Court, the First Defendant has preferred this Appeal.

3. The brief facts of the case stated by the Plaintiffs in the Plaintiff are as follows :

The Plaintiff and the Defendants 1 to 6 are the sons and daughters of late Y. Venkatarama Iyer and Muthulakshmi Ammal. One of the sons by name Jayaraman died as bachelor in the year 1965. The genealogy of family tree is schedule "A". Venkatarama Iyer and three sons effected a partition of the joint family properties as per partition deed, dated 31.12.1960. Venkatarama Iyer died in the year 1962. As per the Hindu Succession Act, 1956, the properties of late Venkatarama Iyer

devolved upon the Plaintiff and Defendants 1 to 6. Muthulakshmi Ammal died in 1979 prior to the institution of the Suit.

3.1. After the demise of Jeyaraman, his property devolved upon his brothers and sisters since he died as bachelor. Some of the properties had been sold by the First Defendant fraudulently and the same was not binding on the Plaintiff. The properties described in "C" Schedule are the properties of late Jayaraman and they are also available for partition. The First Defendant was managing all the properties described in the schedule except house at Kaniyur and land at Kodathur Village, Udumalpet. These properties were managed by the Plaintiff.

3.2. The mother Muthulakshmi Ammal had purchased two houses in "D" Schedule properties in her name and the same was let out to Tenants on monthly rent basis and she was enjoying the said properties along with other properties and died intestate. The jewelleries, which are described in "D" schedule properties, were also left by her at the house of the First Defendant since she was living through out her life with the First Defendant and the First Defendant was having the possession of her jewels mentioned in "D" schedule and he is liable to account for the Plaintiff as well as others. It is also the case of the Plaintiff that the First Plaintiff was entitled to 1/7 share in the said properties also since he is one of the heirs of the deceased Muthulakshmi Ammal. There are some shares standing in the name of Muthulakshmiammal and the Plaintiff is entitled to a 1/7 share in these items.

4. The case of the First Defendant before the lower Court is as follows:

The First Defendant denied the statement that the properties had devolved upon the Plaintiff and Defendants 1 to 6 and his wife Muthulakshmiammal. He stated that Muthulakshmiammal enjoyed the properties of late Jeyaraman. He also denied the statement that the properties had been sold by him fraudulently without the knowledge of the Plaintiff. He pleaded that the two houses at Kaniyar Village was constructed by him from and out of his income. None of the allegations are admitted so far as this Defendant is concerned.

5. The case of the Thirteenth Defendant before the lower Court is as follows:

This Defendant states that K.V. Jeyaraman was holding 123 shares and he died as a bachelor. His mother Muthulakshmi Ammal approached them to declare her as a legal heir of the deceased bachelor and also produced a Succession Certificate. Since her shares were not mentioned in the Succession Certificate, they wrote a letter to her advising her to produce Extension (Succession) Certificate. But they did not receive any reply from her. They also stated that a sum of Rs. 549.40 being the dividend from 1986 was lying with the company. They stated that they have no knowledge about the allegations in the Plaintiff.

6. The lower Court had conducted the full-fledged trial by examining the Second Plaintiff as P.W.1, First Defendant as D.W.1, and admitted Exs.A1 to A52 and Ex.B1

and had scrutinised the evidence produced on either side and decreed the Suit filed by the Plaintiffs leaving two items of immovable properties and jewellery mentioned in "D" schedule properties.

7. The lower Court had framed the following issues for that purpose:

1. Whether the Suit was defective due to partial partition asked for in the Suit?
2. Whether the Plaintiffs are entitled to 1/7 share in the "B", "C" and "D" Schedule of suit properties?
3. Whether the Defendants 12 and 13 are to be directed to transfer the 1/7 share of the Plaintiff in the shares held by them? Whether the Defendants 12 and 13 should be directed to pay the share amount to the Plaintiff?
4. Whether the First Defendant has to be directed to render accounts regarding the income derived from him from the suit properties.
5. Whether the First Defendant has to be directed to hand over 1/7 share of the Plaintiff from and out of the immovable properties?
6. Whether the 13th Defendant is a necessary party?
7. To what relief the Plaintiffs are entitled for?
8. The lower Court had found all the issues in favour of the Plaintiffs except the share in the jewellery mentioned in "D" schedule properties and two items in item No. 1 of the "B" schedule properties.
9. Heard Mr. D. Dhanyakumar, the learned Counsel for the Appellant and Mr. R. Thiagarajan, learned Counsel appearing for the First Respondent
10. On a careful consideration of the pleadings, the evidence adduced before the lower Court on either side, the judgment and decree of the lower Court and arguments advanced on either side, I could find the following points for consideration in disposing the Appeal:
 1. Is the Second Plaintiff as Legal Representative of the First Plaintiff entitled to partition of 1/7 share in the suit properties except two items in Survey Nos. 616 and 617, a jewellery in "D" schedule properties?
 2. Whether the Suit is bad for partial partition?
 3. Is the First Defendant not liable to render any account to the Plaintiffs and to other share?
 4. Whether the judgment and decree of the lower Court are liable to be set aside?
 5. To what relief the Appellant is entitled for?

11. For convenience sake, the ranks of the parties before the lower Court are being used in this judgment.

12. Point Nos. 1 and 2: The case of the Plaintiff before the lower Court was that the First Plaintiff, First Defendant and one Jeyaraman were the sons and the Defendants 2 to 7 were the daughters of one Venkatarama Iyer and Muthulakshmi Animal. The said father Venkatarama Iyer, the First Plaintiff, the First Defendant and the said Jeyaraman had effected partition of the joint family properties as per Partition Deed, dated 31.12.1960 and they enjoyed the properties in pursuance of the said Partition Deed. Subsequently, Venkatarama Iyer died intestate in the year 1962 leaving the First Plaintiff, the Defendants 1 to 6, mother Muthulakshmi Animal and yet another brother Jeyaraman as his heirs and the property left by Venkatarama Iyer devolved upon the sons and daughters and wife of Venkatarama Iyer as per Hindu Succession Act.

12.1. Thereafter, the said brother Jeyaraman died as a bachelor. The property belonging to the said Jeyaraman devolved upon mother Muthulakshmi Ammal and she held the properties derived from her husband Venkatarama Iyer and deceased bachelor son Jeyaraman and was in possession of the said properties. Thereafter, the said mother Muthulakshmi Ammal also died intestate in the year 1979 leaving the First Plaintiff and the Defendants 1 to 7 as her legal heirs and they are entitled to the said properties under Hindu Succession Act. The said properties allotted to Venkatarama Iyer and Jeyaraman in the partition deed, dated 31.12.1960 had devolved upon the First Plaintiff and the Defendants 1 to 6 equally.

12.2. Apart from that, the mother Muthulakshmi Ammal had purchased two houses in "D" Schedule properties in her name and the same were let out to Tenants on monthly rent basis and she was enjoying the said properties along with other properties and died intestate. The jewelleries, described in "D" schedule properties, were also left by her at the house of the First Defendant since she was living through out her life with the First Defendant and the First Defendant was having the possession of her jewels mentioned in "D" schedule. It is also the case of the Plaintiff that the First Plaintiff was entitled to 1/7 share in the said properties also as one of the heirs of the deceased Muthulakshmi Ammal.

12.3. The First Defendant had not disputed the Partition Deed, dated 31.12.1960, but had stated that the property in which the First Plaintiff living was also to be partitioned since the funds were given to the First Plaintiff by the father and, therefore, the said property would also possess the character of joint property. Apart from that, he would also contend that the First Plaintiff was also in possession of Nanja land to an extent of 2 acres 18 cents in Survey No. 385 of Kadathur Village and, therefore, the Suit is bad for partial partition and the First Plaintiff was also liable to render account for the income derived by him from the properties kept in his possession.

12.4. It is also denied by the First Defendant that there were no jewels left by mother Muthulakshmi ammal. Similarly, the First Plaintiff did not leave any articles at the house of the First Defendant and, therefore, the jewels could not be divided with other properties.

13. The learned Counsel for the Appellant/First Defendant would submit in his argument that the evidence adduced by the Defendants were not appreciated properly and, therefore, the lower Court had come to a wrong conclusion that the house at Gandhi Nagar, Udumalpet was not purchased by late Venkatarama Iyer and Muthulakshmi ammal. He would further submit in his argument that Ex.B1, counter foil of the cheque itself was sufficient to prove that funds were provided by his father towards the purchase of the said house at Gandhi Nagar, Udumalpet and therefore, the said property should have been considered as the property belonging to the father Venkatarama Iyer and it would also have been included in the partition.

13.1. He would also submit in his argument that the lower Court had miserably omitted to include the property in Survey No. 385, the first item of "B" schedule and made it available for partition. He would also submit that the properties situate in Survey No. 350 and 351 were absolutely belonging to the First Defendant but it was directed by the lower Court to be allotted on equitable ground at the time of final decree Petition and, therefore, the said direction had made those properties available for partition among the sharers are not correct.

13.2. He would further contend that the decision reached by the lower Court that the Plaintiff is entitled to 1/7 share in the suit properties including the item Nos. 1 and 3 and the immovable properties in "D" schedule were not supported by evidence. Similarly, he would also submit that the First Defendant should not have been directed to render account as P.W.1 herself had admitted that he was receiving the Plaintiff's share on rental income from the First Defendant and no amount is due in that record. He would therefore, request the Court that the decision of the lower Court reached in issues framed therein should have been found in favour of the First Defendant and thereby, the Appeal may be allowed.

14. Per contra, the learned Counsel appearing for Second Plaintiff/First Respondent would submit in his argument that the lower Court had correctly come to the finding that the house at Gandhi Nagar, Udumalpet was purchased by the First Plaintiff, out of his funds, after the partition took place between the father Venkatarama Iyer, the First Plaintiff, the First Defendant and the deceased brother Jeyaraman and, therefore, it could not be a joint family property. Similarly, he would submit that the lower Court after going through the documents produced on the side of the Plaintiffs towards the payment of loan amount obtained by the First Plaintiff towards housing loan for the house at Gandhi Nagar, Udumalpet, had decided correctly that it was belonging to the First Plaintiff which is also perfectly alright.

14.1. He would also submit that the First Defendant had put up constructions in two properties in Survey Nos. 350 and 351 in "B" schedule properties and had decided to allot the same towards his share at the time of final hearing proceedings, considering the expenditure made by him in the said property available for partition. It cannot be contended that the said vacant site were also belonging to the First Defendant. He would further reply that the partition effected between father Venkatarama Iyer, First Plaintiff, the First Defendant and the deceased Brother Jeyaraman in Ex.A.52 was an admitted one and the said properties comprised in Survey Nos. 350 and 351 were allotted to the father in the said partition and, therefore, the First Defendant cannot claim individual right over the said property.

14.2. He would further submit that the case of the parties to the effect that the father Venkatarama Iyer, brother Jeyaraman and Mother Muthulakshmi ammal were dead in testate in the year 1962, 1965 and 1979 respectively would naturally make the properties standing in the name of all the three persons, be available for partition upon the legal heirs of those persons and the lower Court had detailedly considered the same and passed the judgment, Therefore, the plea of partial partition and the claim of individual right over the properties of the joint property cannot be sustained and the judgment and decree of the lower Court has to be confirmed and the Appeal may be dismissed.

14.3. I have given anxious consideration to the arguments advanced on either side.

15. The pleadings of both parties and the evidence adduced on either side would go to show certain admitted facts like the partition, which took place, in between the father Venkatarama Iyer, deceased brother Jeyaraman, the First Plaintiff and the First Defendant and deceased mother Muthulakshmi Ammal had inherited the properties of father along with other heirs and thereafter, the properties of late Jayaraman through intestate succession. Admittedly, mother Muthulakshmi also died intestate. The properties allotted to Venkatarama Iyer and the immovable properties purchased by Muthulakshmi Ammal mentioned in "B" schedule and "D" schedule respectively were not disputed. The reason for excluding the properties from partition in Survey Nos. 616 and 617 in Kadathur Village, described in "B" schedule item No. 1, was that those properties were disposed by father Venkatarama Iyer himself during his lifetime.

16. When the evidence of both parties are perused, it could be confirmed further that the "C" schedule properties were held by brother Jeyaraman, who died as bachelor, left his only heir, Muthulakshmi Ammal and the said Muthulakshmi Ammal was living with the First Defendant till her last breath and the First Defendant had put up constructions in Survey Nos. 349 and 350 of Kaniyur Village mentioned in item "B" and "C" schedule and thereafter, she had passed away intestate leaving the properties along with "D" schedule house and other immovable properties, to be inherited by her legal heirs, viz., First Plaintiff and Defendants 1 to 6.

17. It is the case of the First Defendant that he had purchased the property in the name of mother Muthulakshmi Ammal, benami and had put up constructions in the said property of his own. Even if it is so, the burden is very heavy on the person who asserts that the property was purchased in the name of the mother Muthulakshmi Ammal, benami. It is an admitted case that mere was no such pleading at all. Therefore, the properties, which are standing in the name of Venkatarama Iyer, as detailed in "B" schedule property, except the items sold by father himself during his lifetime are certainly to be held as joint property belonging to the First Plaintiff, Defendants 1 to 6, mother Muthulakshmi Ammal and the deceased brother Jeyaraman on the date of death of father in the year 1962 and thereafter, the brother of the First Plaintiff and the Defendants 1 to 6, namely, Jeyaraman, died intestate as bachelor in the year 1965. His only heir was the mother Muthulakshmi Ammal to inherit his properties. Therefore, the properties held by Jeyaraman through partition, Ex.A52, and the properties derived by him from father on the death of the father would devolve upon the mother Muthulakshmi Ammal. The mother Muthulakshmi Ammal also held self acquired properties, along with inherited properties from son and husband died in the year 1979 without executing any document of will or settlement. Therefore, the properties held by mother Muthulakshmi Ammal derived from her husband Venkatarama Iyer, purchased on her own and derived from her deceased son Jeyaraman, were all inherited by the First Plaintiff, the Defendants 1 to 6 equally.

18. The lower Court had found that the jewels as mentioned in "D" schedule belonging to mother were not available for partition as the Plaintiff did not prove the existence of those jewels available with the First Defendant. Similarly, it was also found by the lower Court that the alleged keeping of jewels belonging to the First Plaintiff at the house in Kaniyur village was also not proved. The Second Plaintiff as legal heir of the First Plaintiff did not file any Cross-Objection against the said findings of the lower Court.

19. In the light of the facts and the evidence adduced on either side, I could safely come to a conclusion that the properties mentioned in "B" schedule except two items sold by father, "C" schedule and "D" schedule properties except the jewels referred therein are all liable for partition between the First Plaintiff and the Defendants 1 to 6 equally. The shares said to have been possessed by the 13th Defendant in the name of the deceased Jeyaraman were also liable to be shared between the First Plaintiff and the Defendants 1 to 6 on the same lines as found in respect of the immovable properties of Jeyaraman. Therefore, "B" and "C" schedule properties except in S.Nos. 616 and 617 in item No. 1 of "B" schedule properties and the jewels referred in "D" schedule properties are liable to be partitioned equally between the First Plaintiff and the Defendants 1 to 6.

20. During the pendency of the Suit, the First Plaintiff died and the Second Plaintiff was impleaded as the sole legal heir of the First Plaintiff.

21. During the pendency of this Appeal, the Second Defendant/Second Respondent, Kunjammal died and the Respondents 8 to 14 were impleaded as the Legal Representatives of the deceased Second Defendant/Second Respondent. Therefore, the Second Plaintiff is entitled to succeed the estate of the First Plaintiff and the Respondents R8 to R14 are entitled to the succeed the share of the deceased Second Defendant/Second Respondent Kunjammal.

22. As regards the partial partition is concerned, the property stated to have been omitted in the Suit was one house property standing in the name of the First Plaintiff at Gandhi Nagar, Udumalpet. The evidence would go to show that the said property was purchased by the First Plaintiff after the partition between the father Venkatarama Iyer, First Plaintiff, the First Defendant and the deceased brother Jeyaraman.

23. The evidence of P.W.1 (Second Plaintiff) would go to show that the First Plaintiff was a member in the house building society and he had obtained a loan through the said society for the purpose of purchasing the said property at Gandhi Nagar. She had produced Ex.A3, the pass book of the society in order to show that the First Plaintiff had paid all the instalments towards the payment of house building loan obtained from the society. She also produced Exs. A4 to A51, the receipts for repayment of loan amount.

24. On the other hand, the First Defendant had deposed that the father Venkatarama Iyer had paid a sum of Rs. 1315/- through a cheque and the counter foil of which was Ex.B1 and subsequently, he paid a sum of Rs. 2,500/- for the construction of the house. The said payment of Rs. 2,500/-was not substantiated by the First Defendant. It was not disputed that the said cheque Ex.B1 was given by father for a sum of Rs. 1,315/- only after partition was effected between the First Plaintiff, First Defendant, deceased brother Jeyaraman and father through Ex.A52. The said amount of Rs. 1,315/- could have been given by father to the First Plaintiff as a gift in token of love and affection. Unless, it is pleaded by the First Defendant that father had purchased the property in the name of the First Plaintiff, benami, by providing hands through Ex.B1 and had also held the possession of the said property and other documents in his custody and if sufficient evidence had been adduced to that effect, it can be considered as the property of Late Venkatarama Iyer available for partition between his heirs. Or it could have been pleaded that the First Plaintiff had blended the said house property along with other properties left by Venkatarama Iyer with the First Defendant and other co-sharers, then only, the said property could get the colour of joint property. Neither the pleas nor evidence were placed before the Court to bring the house property at Gandhi Nagar, Udumalpet standing in the name of the First Plaintiff as the property belonging to all co-owners to be partitioned in between them.

25. Per contra, the First Defendant himself had admitted that the First Plaintiff had paid the instalments payable to the society every month. Therefore., the documents

produced as Exs.A3 to A 51 would go a long way to show that the property was the self acquired and absolute property of the First Plaintiff.

26. In these circumstances, the plea of partial partition fails and the claim of the First Defendant in this regard cannot be sustained. Accordingly this point is decided against the First Defendant.

27. Point No. 3: The claim of the First Defendant was that the First Defendant was in possession of the properties belonging to Venkatarama Iyer, brother Jeyaraman and mother Muthulakshmi Ammal and was said to have received the rents and income from the said properties to which the First Plaintiff and the Defendants 2 to 6 were also entitled to.

28. The lower Court had also found that the First Plaintiff and after his death Second Plaintiff was in possession and enjoyment of the joint properties to the extent of three acres 96 cents and was receiving the income from the same and, therefore, the Second Defendant was also liable to render accounts regarding the income from these property. There was no dispute on the remaining properties which were in the possession and enjoyment of the First Defendant.

29. According to the First Defendant, when he was sharing the income from the rented premises with the First Plaintiff, he need not render any account. There was no Receipt produced by the First Defendant for the said payments towards the sharing of the income from the suit property. It is not the case of the First Defendant that he had paid or shared the income derived by him with all the co-sharers. Therefore, there is no reason for deviation from the finding of the lower Court that the First Defendant was liable to render account. Accordingly, this point is also decided against the First Defendant.

30. Point No. 4: While submitting the arguments it was brought to the notice of this Court that the decree drafted in terms of the judgment of the lower Court was not proper and Survey No. 385 to an extent of 2 acres 18 cents as comprised in item No. 1 of "B" schedule was not included in the decree even though the Court had ordered partition of 1/7 share of the Second Plaintiff in respect of that property also. Therefore, it was submitted that the said property may also be incorporated in the decree by modifying the said decree through amendment.

31. On a careful perusal of the decree passed by the lower Court, the said Survey No. 385 to an extent of 2 acres 18 cents was not included in item 1 of "B" schedule. Hence, in para 1 of B schedule item 1 after the words , the following line should be added:

and after the end of the paragraph, the following paragraph should be added:

On such amendment, the decree drafted by the lower Court is perfectly in consonance with the judgment passed. Therefore, the said modification alone is ordered and in other respects, the Appeal preferred by the Appellant/First

Defendant is deserves for dismissal. Accordingly, the Appeal is dismissed except the modifications ordered in the decree. Considering the relationship between the parties, there will be no order as to costs in this Appeal.