

(2010) 06 MAD CK 0278

Madras High Court

Case No: A.S. No. 314 of 2000 and C.M.P. No. 14399 of 2000

Government of Tamil Nadu

APPELLANT

Vs

Gandhimathi and Others

RESPONDENT

Date of Decision: June 8, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9
- Hindu Succession Act, 1956 - Section 14(1)
- Land Ceiling Act - Section 10(1), 107, 12, 14(1), 18(1)
- Land Reforms Act - Section 18(10)

Hon'ble Judges: V. Periyakaruppiyah, J

Bench: Single Bench

Advocate: V. Ravi, Special Government Pleader AS, for the Appellant; Sanjay, for V. Nicholas, Respondents 1 to 4, for the Respondent

Final Decision: Dismissed

Judgement

V. Periyakaruppiyah, J.

The appeal is directed against the judgment and decree passed by the learned Subordinate Judge, Dharapuram in O.S. No. 98 of 1982 dated 21.12.1989.

2. The Appellants herein were the Defendants before the lower Court. The suit was filed by the Respondent/Plaintiff against the Appellants/Defendants (a) for declaration that the order of the third Respondent is null and void (b) for partition of 2/5 share in the suit property (c) to pay the costs of the suit and (d) for other relief's. The suit was decreed without costs and the Defendants have preferred the present appeal.

3. The brief facts of the case relied upon by the Plaintiff before the lower Court would be as follows:

(a) Originally the suit property belonged to one Kanni Chettiar. The said Kanni Chettiar died on 27.10.1948 leaving behind him the Plaintiffs and the first Defendant and his wife deceased Muthammal. Even though the Plaintiffs are residing in several places, they lived together in the village Soman Uthu. After the death of the said Kanni Chettiar, his wife Muthammal and the first Defendant were entitled to half share each of the suit properties. Since the first Defendant was only a minor, his mother Muthammal was looking after the entire suit properties. After attaining majority, the first Defendant got his share and enjoyed separately. Even though there was no partition deed, both the first Defendant and the mother Muthammal enjoyed the properties by mutual division to suit their convenience. They also separately cultivated their lands and mortgaged their properties.

(b) While so, the mother Muthammal died during the year 1976 leaving behind her the Plaintiffs and the first Defendant as her heirs. Thus, the Plaintiffs and the first Defendant are each entitled to 1/5th share in property of the deceased Muthammal. Thus, the Plaintiffs 1 to 4 are each entitled to 1/10th share, in the entire suit property and 2/5 share in total, and the first Defendant is entitled to 3/5th share in the suit properties. Thus, the entire suit properties are enjoyed in common by the Plaintiffs and the first Defendant.

(c) The second Defendant is administering Land Reforms in the State of Tamil Nadu through the third Defendant and during the said period, the third Defendant under his authority purported to act under Land Reforms Act passed an order dated 16.6.1979 declaring an extent of 6 acres and 25 cents (items 7 and 8 of the suit properties) as surplus u/s 18 (10 of the Land Reforms Act) as if the entire properties belonged to the Defendant as on 03.1.1979. The said order is null and void and the same is not binding on the Plaintiffs. No notice was sent to the Plaintiffs nor any enquiry held was to the knowledge of the Plaintiffs. The said order is passed in order to defeat the rights of the Plaintiffs. If the third Defendant had given notice to the Plaintiffs regarding his intention to take the suit properties as excess, the Plaintiffs would have an opportunity to put forward their lawful claim. If the third Defendant had taken proper notice and enquiry he would have verified all the registered documents of Muthammal's separate dealings. He would not declare any excess land, if the Muthammal's separate property were considered and rightly left out of the holding of first Defendant and the first Defendant is not in the family.

(d) The Plaintiffs are also cultivating the share of the first Defendant, as his leasees. On several occasions the Plaintiffs have executed lease deeds and the same are with the first Defendant. The first Defendant had also taken the signatures of the Plaintiffs on blank papers during the lease season. The Plaintiffs apprehend that the first Defendant and 3rd Defendant might have misused those papers. Under the said void orders, the third Defendant has taken steps to allot the lands to various persons. Hence, it is necessary to declare the said order as void. The Plaintiffs also issued a legal notice to the Defendants, but they did not care for the same. Hence,

the suit.

4. The first Defendant was Set exparte, by the lower Court.

The contentions of the third Defendant adopted by second Defendant before the lower Court are summed up thus:

(a) The Defendants state that the suit is not maintainable in law and on facts. The first Defendant held agricultural lands to an extent of 20.50 std acres. The third Defendant had, after conducting due enquiry, passed an order u/s 9 (2) (b) of the Land Ceiling Act on 22.8.1973 and the draft statement was also published in the gazette. Aggrieved by the said publication, the land owners filed their objections. After considering the said objections, the final statement u/s 12 of the Act was published in the Gazette. A notification u/s 18(1) of the Act was published in the gazette declaring an extent of 6.25 acres as surplus.

(b) Thereafter, Form "C" pertains to the assignment of surplus lands was also issued. After receiving the applications within the time prescribed, the "D" notice inviting objections from the public for assignment to the persons applied for assignment was issued and the same was published in the village. Since no objections were received from any body, the Special Tahsildar (L. Ref) enquired the applicants and submitted his report. After examining the report submitted by the Special Tahsildar, the Authorised Officer (L. Ref) Erode has passed an order assigning the surplus lands to three persons. Thus, the deed of assignment in form "F" was also issued to the assignees. After issuance of form "F", the land owners had threatened the assignees by not allowing them to enter upon the land and creating troubles to the assignees.

(c) The villagers of Chinnakkampalayam including the land owner S.K. Natarajan, sent a petition to the assignment officer stating that proper publication for the assignment of surplus lands was not made in the village and requested to publish another notice. Moreover, the Plaintiffs have also applied for assignment of the lands. Since the said applications were not received in time, they were rejected. When all attempts to get back the land have failed, the land owner instigated the Plaintiffs, who are his sisters, to file the present suit, that too, even after the assignment of the said lands to landless poor.

(d) Even though the appeal and Revision provisions are available against the order of assignment, the Plaintiffs and the first Defendant have not utilised the same. The Defendants state that as per Section 107 of the Land Ceiling Act, no civil Court shall have jurisdiction to decide or deal with any question which is by or under the Land Ceiling Act required to be decided or dealt with by the Authorised Officer, Land Tribunal or Land Commissioner or other authority. The suit is barred by limitation. Therefore, they prayed for dismissal of the suit.

5. During a full fledged trial, the lower Court had examined the fourth Plaintiff as P.W.1 and marked Exs.A1 to A12 on the side of the Plaintiffs and D.W.1 and D.W.2 were examined and Ex.B1 was marked on the side of the Defendants and had come to a conclusion of decreeing the suit. Aggrieved by the said judgment and decree, the Defendants 2 & 3 have preferred the present appeal.

6. Heard Mr. V. Ravi, the learned Special Government Pleader appearing for the Appellants/ Defendants and Mr. Sanjay, the learned Counsel for the Respondents 1 to 4/Plaintiffs.

7. On a careful perusal of the pleadings, the evidence of both sides before the lower Court, the judgment and decree passed by the lower Court, the grounds in the appeal memo and the arguments advanced on either side, this Court could see that the following points are necessarily to be decided in this appeal:

1. Whether the suit filed by the Plaintiff for partition and separate possession of the properties is not maintainable in view of Section 107 of the Land Reforms (Ceiling) Act?

2. Whether the order passed by the third Defendant on 16.06.1979 in 245/MR/1/17.70 is null and void and without any jurisdiction?

3. Whether the Plaintiffs are entitled for partition and separate possession of their 4/10 share from the suit properties?

4. Whether the judgment and decree passed by the lower Court are liable to be set aside and the appeal is allowable?

5. To what relief the Appellant is entitled for?

8. The learned Counsel for the Appellant, the Addl. Govt. Pleader (Spl.) would submit in his argument that the Court below has failed to note that the Authorised Officer (Land Reforms) has properly initiated proceedings relevant to the suit properties as per the provisions of land reforms (Fixation of Ceiling) Act and also failed to draw its attention to the Section 107 of the said Act. He would further submit in his argument that the draft statement made u/s 10(1) of the act had been served on the pattadar/Plaintiffs on 31.10.1970 itself, and the objections raised by them were promptly rejected by the officer and if the Plaintiff had any grievance over the said order, they have to prefer the remedies under the said act, since the Civil Court have no jurisdiction to interfere with the domain of the Authorised Officer. He would also bring it to the notice of this Court that u/s 107 of Land Reforms (Fixation of Ceiling) Act the Civil Court has no jurisdiction and therefore, the suit filed by the Plaintiffs for declaration that the order passed by the Authorised Officer was null and void, cannot be adjudicated by the Civil Court. He would further submit in his argument the correct remedy is to prefer the appeal before the Appellate Authority as prescribed in the Act and therefore, the Plaintiff who had chosen the wrong forum, should not have been awarded with the relief's by the lower Court and the final

order containing statement that 3.12 acres in F.S. No. 264/1E and 3.12 acres in F.S. No. 264/3 A 2 were declared as surplus lands and the said order was also served on the pattadar concerned. He would further submit in his argument that the judgment and decree passed by the lower Court was without jurisdiction and therefore, the suit has to be dismissed.

9. He would again submit in his argument that according to the said Act, an individual can hold 15 standard acres but the pattadar was in possession of 19.046 standard acres on the notified date and therefore, the action taken by the third Defendant was in order. He would submit in his argument that whenever a declaration is made regarding such surplus lands those lands would vest with Government and therefore, the relief sought for by the Plaintiffs cannot be afforded in respect of those items of properties. He would further submit in his argument that the said order was also published in gazette and action was already taken to distribute to the said surplus lands to the landless poor and patta was also issued to three poor persons namely N. Subramnian belonging to Backward Class, N. Chinnappan belonging to Scheduled Caste and C. Palanisamy belonging to Scheduled Caste and they also took possession of the land on 23.08.1979. He would further submit in his argument that the Plaintiffs have been instigated by the first Defendant to launch a claim if possible as an afterthought.

10. He would also submit in his argument that the Plaintiffs themselves have participated in the assignment proceedings and they sought for assessment of the surplus lands and on their failure and to get surplus lands through assignment, they have also taken this method to achieve their objects. He would further submit that Section 107 of the Act, even though replaced by Section 77(G), was in force at the time of the filing of the suit and therefore, the judgment and decree passed by the lower Court which is a Civil Court has to be set aside and the appeal has to be thus allowed.

11. The learned Counsel for the Respondents 1 to 4 would submit in his argument that the third Defendant Authorised Officer did not initiate the proceedings in accordance with law and he had not given notice to all the persons who are having title to the suit property but had given notice only to the first Defendant who was enimical towards the Plaintiff. He would further submit in his argument that the said non-ceiling of notice to the lawful owners of the property will be without any jurisdiction, affecting the fundamental principles of judicial procedures. He would further submit in his argument that the properties were originally belonged to one Kannichettiyar, who died on 27.10.1948, and on his death his widow Muthammal, the mother of the Plaintiff and first Defendant along with first Defendant inherited the suit properties as per the rights available under the then under Act and thereafter, upon the introduction of Hindu Succession Act on 17.06.1956, the right held by the said Muthammal ripen into an absolute right and thereby, she had equal right with her son the first Defendant and continued to be in joint possession with

her son till her death happened on 23.02.1976. He would further submit in his argument that the said Muthammal had also mortgaged certain properties along with the first Defendant, her son and established her right over the properties left by Kanni Chettiyar. The said Muthammal was also one of the rightful owners of the suit properties and the proceedings initiated by the third Defendant under the Land Reforms (Fixation and Ceiling) Act was not given notice to the said woman but it had taken place with a connivance of the first Defendant. The long delay in giving notice to the said Muthammal would render the entire proceedings before the third Defendant void. After the death of said Muthammal on 23.02.1976, the Plaintiffs being her daughters and the first Defendant inherited the properties belonging to the said Muthammal and thus, the Plaintiff stepped into the shoes of late Muthammal and they are deemed by aggrieved parties by the act of third Defendant. He would further submit in his argument that the Civil Courts are having jurisdiction, whenever, the right to property has been disturbed by an act of any person, including the Government, without following the procedures mentioned in the said Act. He would further submit in his argument that the third Defendant, if really interested in finding the truth as to whether the holding of the first Defendant was exceeding the limits contemplated under the Act, he would have enquired about the rightful person and if accordingly, any notice is given to the deceased Muthammal who was alive then, the third Defendant would not have found surplus lands to be taken by the Government under the provisions of the said Act. Even, if we construe that Section 107 of the Act is applicable to the present case, the jurisdiction of the Civil Court is attracted by virtue of basic violation affecting the rights of Muthammal and after her death, the rights of the Plaintiffs. The said Muthammal was not made as a party to the said proceedings and therefore, the Plaintiffs who are claiming the right on the foot of Muthammal need not go for any appeal as prescribed under the said Act.

12. He would draw the attention of the Court to catena of the judgments of the Hon'ble Apex Court in support of his case. Accordingly, he cited a judgment reported in [Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others](#), .

13. Yet another judgment reported in [Gurbax Singh Vs. The Financial Commissioner and another](#), . He can also draw the attention of the Court to a judgment reported in [Balawwa and Another Vs. Hasanabi and Others](#), . The judgment of Punjab and Haryana High Court reported in 2004 AIHC 4829 has also been cited for the aforesaid purpose.

14. He would further submit in his argument that the first Defendant had obtained signatures in so many papers from the Plaintiff and such papers should have been utilised for claiming the assignment of the surplus land from the Government by way of assigning and the said submission would not bind the Plaintiffs, since they are claiming the right over the said property under her mother deceased

Muthammal as her legal representatives. He would further submit in his argument that even otherwise, the Plaintiffs' statutory right cannot be infringed by the proceedings of the third Defendant and there cannot be any estoppel against the rights flowing out of the statute. Therefore, the lower Court has got ample jurisdiction to consider about the sustainability and maintainability of the proceedings held by the third Defendant and the judgment and decree passed by the lower Court are within the jurisdiction and therefore, not liable to be interfered with. Therefore, he would request the Court to dismiss the appeal and to confirm the judgment and decree passed by the lower Court.

15. I have given anxious thoughts to the arguments advanced on either side.

Point 1 and 2:

For convenience the ranks of parties before the lower Court are maintained in the discussion. The suit was filed by the Plaintiffs for declaration that the order passed by the third Defendant in the suit filed by the Plaintiff for partition and separate possession of the properties is not maintainable in view of Section 107 of the Land Reforms (Ceiling) Act was null and void and without any jurisdiction since there was no notice issued to Muthammal, the mother of the Plaintiff who was also interested in the suit properties for taking surplus land if any and the findings reached by the third Defendant and the subsequent proceedings taken by the authorities on the basis of its order are all null and void and it would not bind the Plaintiffs right over the properties. The case of the Plaintiffs that the property was originally belonged to Kanni Chettiyar was not disputed. The relationship of the Plaintiffs and the first Defendant with the said Kanni Chettiyar is also not disputed. The case put forth by the Plaintiffs that Muthammal was the wife of Kanni Chettiyar was also not denied.

16. According to the evidence of P Ws we could see that the Kanni Chettiyar was dead on 27.10.1948, and his death certificate was produced as Ex.A1. Similarly, we could see that Muthammal, the wife of Kanni Chettiyar and the mother of the Plaintiffs and the first Defendant died on 23.02.1976, her death certificate is produced as Ex.A2. There is no dispute that the properties were originally belonged to the said Kanni Chettiyar. PW1's evidence would also go to prove the same.

17. On the date of death of Kanni Chettiar in the year 1948, the right of a widow was a restricted one. But, however it was enlarged by the provisions of Section 14(1) of Hindu Succession Act provided the said Muthammal was in constructive possession of the said properties of her husband. As far as this case is concerned, the said Muthammal had executed a sale deed along with the first Defendant to one Vedamuthu and Kamalam and it is produced as Ex.A5. Therefore, we could see that the said Muthammal was dealing with the properties of her own with regard to the properties derived from Kanni Chettiar in the year 1959. Therefore, we could safely come to a conclusion that the said Muthammal had also jointly possessed and enjoyed the properties devolved upon her on the death of Kanni Chettiar in the year

1948. Therefore, the suit properties which were belonging to Kanni Chettiar should have been held by the first Defendant and the Muthammal jointly. Ex.A7 was produced by the Plaintiffs, as the proceedings of the third Defendant in finding the surplus lands. In the said proceedings it can be easily found that no notice was issued to the said Muthammal at the time of initiating the proceedings, in Ex.A7. Subsequently, the said Muthammal died and no doubt the Plaintiffs and the first Defendant were the legal heirs of the deceased Muthammal. Even after her death, it has not been brought to the notice of the Plaintiffs about the land reform proceedings. It has been categorically admitted by DW1 that whenever, the proceedings have been initiated u/s 9(2) of the Land Reforms Act, notice should have been issued to all the persons interested in the said properties. He had categorically admitted that no notice was issued to the Plaintiffs, as per the said mandatory requirement. It has also been admitted by DW1 that during the initiation of the said proceedings, the wife of Kannichettiar i.e. Muthammal was also alive and she died only on 23.02.1976 and no notice was issued to the said Muthammal. He had also categorically admitted that since D1 name was present in revenue record, notice was issued only to the first Defendant. Therefore, it is clear from the evidence of DW1 that no notice was issued either to Muthammal or to the Plaintiff in respect of the proceedings initiated u/s 92 of the Act. The Defendants have produced Ex.B1 an application dated 13.06.1979, sent by his fourth Plaintiff to assign the excess land. The said application was admitted in evidence subject to objection. According to Ex.B1, the fourth Plaintiff had applied for the assignment of the surplus land. It was argued by the learned Additional Government Pleader that she herself had applied for assignment and therefore she could not know about the land reforms proceedings and on that score itself the order passed by the third Defendant should be upheld. Ex.B1 was in relation to the assignment of lands. Whether the said application, even if true, would estop the Plaintiffs from claiming any relief before the Court, is the question. The right of the Plaintiffs over the suit properties were derived under the provisions of Hindu Succession Act. It is a statutory right and it cannot be affected by way of any estoppel. It is an admitted fact that no notice was sent either to Muthammal or to the Plaintiffs at the initiation of the land reforms proceedings. Therefore, the Plaintiffs right derived under the statute cannot be defeated by the way of any submission for the assignment of the lands.

18. Now, we have to see as to whether the claim of Plaintiffs could be accorded or is liable to be dismissed as barred u/s 107 of the Act. Section 107 of the Act would run thus:

107. Bar of Jurisdiction of Civil Courts:

Except as otherwise provided in this Act, no civil court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by the authorised officer, Land Board, the Land Commissioner, the Land Tribunal or other authority.

19. According to the said section that the question which have to be dealt with by the authorised officer, Land power and Land Commissioner, the land tribunal or other authorities cannot be decided by the Civil Court. No doubt, the domain of the authorised officer would be as to whether the properties held by the person is more than the standard acres as stipulated in the said act. Any such order passed by the authorities cannot be questioned by the person to whom the notice was given, since Section 107 would be a bar.

20. As laid down by the Honourable Apex Court reported in [Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others](#), . The following passage is applicable to the present case.

33. ...It was pertinently added that this exclusion of the jurisdiction of the Civil Court would be subject to two limitations. First, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. The second is as regards the exact extent to which the powers of statutory tribunal are exclusive. The question as to whether any particular case falls under the first or the second of the above categories would depend on the purpose of the statute and its general scheme, taken in conjunction with the scope of the enquiry entrusted to the tribunal set up and other relevant factors....

21. The yet another judgment of the Honourable Apex Court reported in [Gurbax Singh Vs. The Financial Commissioner and another](#), . would run as follows:

19. ...It is true that where the special tribunal or authority acts ultra vires or illegally, the civil court has by virtue of Section 9 of the CPC power to interfere and set matters right. As was laid down by the Judicial Committee of the Privy Council in Secretary of State v. Mask and Co., if the provisions of the statute have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the civil courts have jurisdiction to examine those cases. This rule was reiterated by the Supreme Court in State of Kerala v. N. Ramaswami Iyer and Sons....

22. Similar view was expressed in yet another judgment of Honourable Apex Court reported in [Balawwa and Another Vs. Hasanabi and Others](#), . The relevant passage would run as follows:

8. ...it is difficult to hold that the Tribunal had the jurisdiction to grant the said relief so as to oust the jurisdiction of the civil court, u/s 48 A, the Tribunal can only grant the relief of declaring the occupancy right in favour of an applicant provided the preconditions for the same are satisfied, namely, that the land was in the possession of the tenant concerned on the relevant date. That being the position and the Tribunal under the Land Reforms Act not having the jurisdiction to grant relief of partition, the civil court itself has the jurisdiction to entertain the suit for partition. The first contention of the learned Counsel for the Appellants is, therefore, devoid of

any force....

23. The aforesaid judgment of Hon"ble Apex Court would go to show that when the proceedings of Authorised Officer is "ultra vires" and against the procedures be followed in accordance with statute, such an act can be questioned before the Civil Court, despite the jurisdiction is barred. Section 9 of CPC is applicable and operative then and the Civil Court will have the jurisdiction. In the instant case, the evidence of DW1 would go a long way to show that there was no notice issued to the mother Muthammal or after her death to the Plaintiffs in respect of the proceedings for ascertaining the surplus lands. Therefore, the basic requirements for conducting a judicial procedure was not followed by the third Defendant. Therefore, the entire proceedings are shattered and "ultra vires". The rights of the Plaintiffs being derived from statutory provisions cannot be defeated by a defective procedure followed by the third Defendant.

24. According to the provisions of Hindu Succession Act the mother Muthammal was entitled to the properties held by Kanni Chettiar along with first Defendant and after her death, the Plaintiffs are entitled to the said properties by virtue of the same provisions of the said Act and the said rights of Plaintiffs were not considered by the third Defendant and such statutory rights shall not be defeated by virtue of any proceedings held by the third Defendant under Land Reforms Act. If really notice were issued in the proceedings u/s 9 (2) of the act, the right of Muthammal or the rights of Plaintiffs were considered at the time of passing the order declaring the surplus land. There may not be any surplus lands since the said Muthammal or the Plaintiffs would also have the shares in the properties left by Kanni Chettiar. Therefore, the initiation of the proceedings and the procedures held by the third Defendant is ultra vires and basically erroneous and it is affecting the rights of the Plaintiffs. Moreover, this Court is dealing with the validity of the procedure held by the third Defendant and it is not deciding with any issue to be decided by the Authorised Officers. No doubt, the relief of partition sought for by the parties cannot be granted by the authorised officer. The appellate authorities constituted under the said act cannot also grant any declaratory relief or the relief of partition sought for by the Plaintiffs. The Plaintiffs were not parties to the proceedings held u/s 9 (2) of the said Act and therefore, they cannot also agitate the right before the Authorised Officer or any other appellate authorities under the said Act. Therefore, the principles laid down by the Honourable Apex Court in the aforesaid judgments are squarely applicable to the present case and the Civil Court has got jurisdiction to entertain the dispute and to pass orders. Therefore, Section 107 is not applicable to the present case and the suit is maintainable as admitted by DW1 that there was no notice issued either to Muthammal or to the Plaintiffs in respect of the proceedings initiated u/s 9 (2) of the act and therefore, the entire proceedings without impleading the said Muthammal or the Plaintiffs who are also the owners of the properties having derived lawful rights in the properties, are certainly not valid from its initiation. Accordingly, both points are decided against the Appellants.

25. Point. 3:

In the discussion held above it has been categorically found that the original owner Kanni Chettiar died in the year 1948 leaving behind his wife Muthammal, son and the first Defendant and the Plaintiffs 1 to 4. According to the evidence available, the widow of Kanni Chettiar namely Muthammal derived right over his properties for residence and also for maintenance in the year 1948. The said right of Muthammal was alive and she had the said right ripen into an absolute estate by virtue of provisions of Section 14(1) of Hindu Succession Act. We have already dealt with the dealing of the property by the said Muthammal along with the first Defendant during her life time as Ex.A6. Therefore, we could see that the said Muthammal, the mother of the Plaintiffs held the properties derived from her husband Kanni Chettiar along with her first Defendant and enjoyed them jointly. It is also an admitted fact that the said Muthammal died in the year 1976 leaving the Plaintiffs and the first Defendant as her legal heirs. Therefore, the said Muthammal was found entitled to 1/2 share in the property left by Kannichettiar and the first Defendant was having 1/2 share and the said half share belonging to Muthammal devolved upon the Plaintiffs 1 to 4 and the first Defendant equally, when her death took place in the year 1976. Therefore, the Plaintiffs 1 to 4 and the first Defendant would take 1/5 share equally in the said 1/2 share of the property derived by Muthammal from out of the estate of her husband Kanni Chettiar. indisputably the whole of suit properties belonged to Kanni Chettiar and thereafter, they were held by Muthammal and the first Defendant and after the death of Muthammal, they devolved upon the Plaintiffs and the first Defendant as per law. Accordingly, we could see that the first Defendant would have a share of $\frac{1}{2} + \frac{1}{10}$ and the Plaintiffs are each having $\frac{1}{10}$ share in the properties. Therefore, the Plaintiffs are collectively found to have been entitled to $\frac{4}{10}$ share of the suit properties. In the aforesaid circumstances, the Plaintiffs are found entitled to the partition and separate possession of suit property. Accordingly, this point is decided against the Appellant.

26. Point. 4:

In view of my findings reached in points 1 to 3 that the Plaintiffs are entitled to the relief's sought for, as asked for by them before the lower Court and the lower Court had also come to the similar conclusion and decreed the suit filed by the Plaintiff. This Court sees nothing to interfere with the judgment and decree passed by the lower Court and accordingly, the judgment and decree passed by the lower Court are confirmed and therefore, the appeal is not allowable. Accordingly, this point is also decided against the Appellant.

27. Point. 5:

In view of my findings reached in the aforesaid points, the judgment and decree passed by the lower Court are confirmed and accordingly, the appeal is dismissed with costs.

28. In fine this appeal is dismissed with costs. Consequently, connected Civil Miscellaneous Petition is also dismissed.