*A.S.NO.204 OF 2017***IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED : 23.07.2025**

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CORAM :**THE HONOURABLE MR. JUSTICE R.SAKTHIVEL****APPEAL SUIT NO.204 OF 2017**

Raju Gounder (Died)

- 1.Kuppuswamy
- 2.Dhanapal
- 3.Indira
- 4.Selvaraju
- 5.Prema

6.The Sub Registrar

Mettur Sub – Registrar Office
Mettur Town and Post,
Mettur Taluk, Salem District.

[Appellant No.6 is transposed as
Respondent No.2 vide Order of this Court
dated February 5, 2025 made in CMP
No.20737 of 2022 in A.S.No.204 of 2017]

7.Madhammal

... Appellants /
Defendants

Vs.

1.Kala

... Respondent /
Plaintiff

2.The Sub Registrar

Mettur Taluk, Salem District.

... 2nd Respondent

*A.S.NO.204 OF 2017*

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated January 18, 2016 passed in O.S.No.32 of 2012 by the learned III Additional District Judge, Salem.

For Appellants : Ms.Deepika
for M/s.T.Jeyaramaraj
For Respondent – 1: Mr.M.Sridhar
For Respondent – 2: Mr.B.Tamil Nidhi
Additional Government Pleader

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated January 18, 2016 passed in O.S.No.32 of 2012 by the 'III Additional District Court, Salem' ['Trial Court' for brevity], the defendants therein have filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The plaintiff is the daughter of the defendants 1 and 8 and the sister of defendants 2 to 6. The Suit Properties are the ancestral properties of the plaintiffs and defendants 1 to 6, and they are in joint

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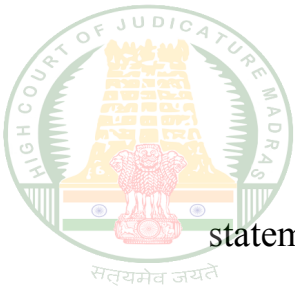
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possession and enjoyment. Though the plaintiff and the defendants 1 to 6 were living separately with their respective families, each of them contributed to the expenses incurred in agriculture and shared the income therefrom. According to the plaintiff, she is entitled to 1/7 share in the Suit Properties. The plaintiff demanded the defendants 1 to 6 for partition of the Suit Properties, but they refused. Hence, the plaintiff issued a legal notice dated April 18, 2011 demanding partition. After receipt of the notice, the defendants 1 to 6 sent a reply notice dated April 27, 2011 denying plaintiff's share in the Suit Properties. Therefore, the plaintiff was constrained to file the present Suit seeking partition and permanent injunction and consequently, put the plaintiff into separate possession.

3.1. During pendency of the Suit, on August 12, 2012, the first defendant *viz.*, Raju Gounder passed away intestate leaving behind the plaintiff and defendants 2 to 6 and 8 as his legal heirs. Thereby, the plaintiff and the defendants 2 to 6 are each entitled to 8/49 share and the 8th defendant is entitled to 1/49 share in the Suit Properties.

DEFENDANTS' CASE

4. Second defendant filed a written statement and the same was adopted by defendants 3 to 6. Sum and substance of their written



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statement is that the Suit Properties are not the ancestral properties of the plaintiff and the defendants 1 to 6. The plaintiff and the defendants 4 and 6 are not having any joint possession and enjoyment of the Suit Properties. The plaintiff got married on March 10, 1985 and the defendants 4 and 6 also got married on February 16, 1979 and June 3, 1987 respectively. At the time of their marriage, they were given Gold jewels, money and all Seervarisais by the first defendant in large and abundantly. The plaintiff is not a co-parcener to the Suit Properties since the plaintiff got married before 1989.

4.1. The plaintiff never made any demand either personally or through the Panchatyatdars before the issuance of legal notice dated November 18, 2011. However, on an occasion, the plaintiff sent a letter to the first defendant stating about her pitiful condition. Therefore, the first defendant gave her a sum of Rs.1,00,000/- from his self-earnings along with a gold chain weighing about five sovereigns.

4.2. Further, in the year 1987, the defendants 1 to 3 and 5 had partitioned all the properties of the family among themselves orally. In the oral partition, the first defendant had took cash as his share instead of



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landed properties, while the second defendant got an extent of 96 Cents in Survey No.70/2, 85 Cents in Survey No.73/3, 79 Cents in Survey No.108/6 and half-a-share in the house property in Survey No.117/4; the third defendant got an extent of 75 Cents in Survey No.84/1 and 2 Acre 37 Cents in Survey No.84/3; the fifth defendant got an extent of 39 Cents in Survey No.84/1, 1 Acre 7 Cents in Survey No.84/3, 73 Cents in Survey No.85/1E, 73 Cents in Survey No.84/6, 94 Cents in Survey No.84/6 and half share in the house property in Survey No.117/4. All the above allotments were made with specific boundaries. Though patta in respect of the Suit Properties stand in the name of first defendant, no property was allotted to him as stated *supra*.

4.3. From the date of oral partition, the plaintiff was having every knowledge of partition and separate possession of the Suit Properties by the defendants 2, 3 and 5. From the date of plaintiff's marriage *i.e.*, March 10, 1985, the plaintiff is not in joint possession and enjoyment of the Suit Properties. The defendants 2, 3 and 5 have been paying kist and other assessments for their respective shares to the authorities on the basis of the oral partition made in the year 1987. Therefore, the demand of the plaintiff to divide the Suit Properties into

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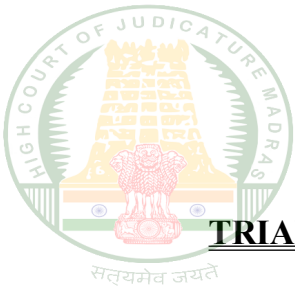
seven equal shares and allot one such share is unsustainable and against

law. Stating so, the defendants 2 and 3 to 6 sought to dismiss the Suit.

5. The seventh defendant – Sub-Registrar filed a separate written statement denying the allegations made in the plaint by the plaintiff. The seventh defendant has no connection as alleged in the plaint. Further, under Rule 55 of the Registration Act, 1908, it is not the duty of the Registering Officer to enquire into the validity of the document brought for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing parties have no right to execute the document. Stating so, the seventh defendant sought to dismiss the Suit.

PLAINTIFF'S REPLY STATEMENT

6. The plaintiff filed reply statement to the written statement filed by the defendants stating that there was no oral partition at any point of time between the defendants 1 to 3 and 5, and that no money or jewel was received by the plaintiff from the first defendant after the alleged oral partition. Thus, the plaintiff prayed to decree the Suit.

**TRIAL COURT**A.S.NO.204 OF 2017

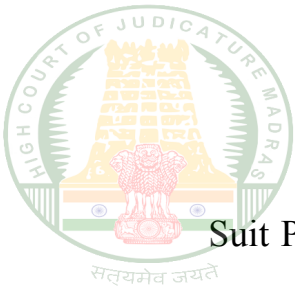
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7. Based on the above pleadings, the Trial Court framed the following issues:

- '1) *Whether the plaintiff is entitled to 8/49 shares in the Suit Properties?*
- 2) *Whether the plaintiff is entitled to get permanent injunction restraining the defendants from creating encumbrance?*
- 3) *Whether the plaintiff is entitled to get permanent injunction restraining the 7th defendant from registering any document with respect of the Suit Property?*
- 4) *Whether the plaintiff is entitled to preliminary decree as prayed for?*
- 5) *To what other relief?'*

8. At trial, on the side of the plaintiff, plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.6 were marked. On the side of the defendants, third and sixth defendants were examined as D.W.1 and D.W.2 respectively and Ex-B.1 to Ex-B.21 were marked.

9. After full-fledged trial, the Trial Court concluded that the plaintiff is a co-parcener by birth along with her father and siblings to the Suit Properties in view of the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005) and thus, the plaintiff is entitled to 1/7 share in the

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Suit Properties. Since the father passed away intestate leaving behind his 1/7 share, the plaintiff would totally be entitled to 8/49 share in the Suit Properties. The oral partition as alleged by the defendants 2 to 6 was not proved. Accordingly, the Trial Court has decreed the Suit in favour of the plaintiff granting a preliminary decree for partition in respect of 8/49 shares in the Suit Properties as well as permanent injunctions, one against the defendants 2 to 6 not to alienate and another against the seventh defendant not to register any document in respect of Suit Properties till final partition is effected.

10. Feeling aggrieved, the defendants 2 to 6 and 8 have preferred this Appeal Suit under Section 96 read with Order XLI Rule 1 of the CPC.

ARGUMENTS

11. Ms.Deepika for M/s.T.Jayaramaraj learned Counsel appearing for the appellants / defendants 2 to 6 and 8 argues that the plaintiff got married on March 10, 1985 and she was no longer in joint possession and enjoyment in any manner thereafter. The plaintiff has not adduced any document to show that she is in joint possession and

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enjoyment of the Suit Properties. The kist receipts (Ex-B.1 to Ex-B.21)

establishes the oral partition which took place in the year 1987. The Trial

Court failed to frame issue *qua* the oral partition despite clear and

categoric pleadings in the written statement by the defendants 2 to 6. The

Trial Court, without appreciating the facts and evidence, wrongly decreed

the Suit. Accordingly, she prays to allow the appeal. She relied on the

Judgment of Hon'ble Supreme Court ***V.Kalyanaswamy -vs-***

L.Bakthavatsalam, reported in ***(2021) 16 SCC 543***.

12. In response to the above arguments, Mr.M.Sridhar, learned Counsel for the first respondent / plaintiff contends that the Suit Properties are ancestral and joint family properties and the plaintiff's father Raju Gounder passed away on August 12, 2012 during the pendency of the Suit. Though the plaintiff was married before Tamil Nadu Act No.1 of 1990, since there was no partition between Raju Gounder and the second defendant before December 20, 2004, the plaintiff is entitled to the benefit of the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005) and she is a co-parcener by birth along with her father and the defendants 2 to 6. Mere payment of kist alone is not sufficient to establish oral partition. On the other hand, the plaintiff filed Ex-A.4 to Ex-A.6 -

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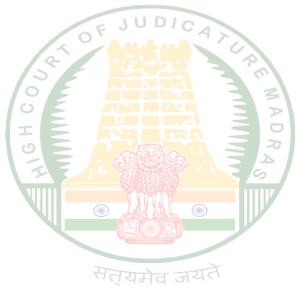
Patta standing in the name of Raju Gounder which probablizes that there was no oral partition as alleged. The Trial Court, after considering the evidence available on record, rightly decreed the Suit and there is no warrant to interfere with it. Accordingly, he prays to dismiss the appeal.

13. Mr.B.Tamil Nidhi, Additional Government Pleader appearing for second respondent / seventh defendant reiterates the averments contained in the written statement filed by seventh defendant and further submits that injunction against statutory authority cannot be granted.

DISCUSSION:

14. Heard on either side. Perused the entire evidence available on record. Upon hearing either side and perusing the evidence, the following points arise for consideration:

- (i) Whether oral partition had taken place in the year 1987 between Raju Gounder and his sons as alleged?
- (ii) Whether the plaintiff is not in joint possession and enjoyment of the Suit Properties with the defendants 2



to 6?

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(iii) Whether the plaintiff is entitled for partition, as prayed for?

(iv) Whether the Trial Court's Judgment and Decree is liable to be interfered with by this Court?

15. Admittedly, the Suit Properties are ancestral and joint family properties in the hands of father - Raju Gounder. There is no dispute between the parties with regard to the relationship between them as stated in the plaint. Further, there is no dispute with the fact that the plaintiff and defendants 4 & 6 got married before the Tamil Nadu Act No.1 of 1990.

Point No.(i)

16. The case of the defendants is that oral partition took place in the year 1987 between Raju Gounder and his sons / defendants 2, 3 and 5. It is settled law that partition need not be in writing. It may be in oral. But the burden is upon the person who sets up the plea of oral partition. In this case, the plaintiff filed Ex-A.4 to Ex-A.6 - Computerized Pattas related to the Suit Properties which stands in the name of Raju Gounder,



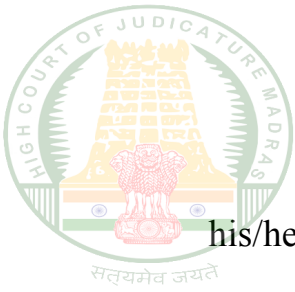
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who is the first defendant, to contend that there was no oral partition as alleged. These pattas were issued in 2012 by the Deputy Zonal Tahsildhar.

On the other hand, the defendants 2 to 6 and 8 very much relied on Ex-B.1 to Ex-B.21 - Kist receipts spread over between 1988 and 2009 standing in the name of defendants 2,3 and 5, in support of their plea of oral partition and the pursuant possession and enjoyment of their respective allotment.

17. On the defendant's side, third defendant was examined as D.W.1 and sixth defendant as D.W.2. To be noted, D.W.1 is a party to the alleged oral partition. From the evidence of D.W.2, it is seen that her son was married to the daughter of fifth defendant / her brother. Hence, D.W.2 is an interested witness, and her evidence cannot be considered in support of the alleged oral partition.

18. Though the defendants pleaded oral partition and separate possession and enjoyment of their respective allotments, they have not let in any evidence substantiating the said plea. As seen from Ex-A.4 to Ex-A.6 - Computerized Pattas, pattas in respect of the entire Suit Properties stand in the name of Raju Gounder. When patta stands in a person's name, consequently, Chitta, Adangal, A-Register, etc., would also stand in



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his/her name. Hence, when patta stands in Raju Gounder's name, the presumption is that all the other revenue records also stand in his name unless the contrary is proved. In this case, the defendants have let in only the kist receipts as Ex-B.1 to Ex-B.21 and that could mean only that, except kist receipts, all the other revenue records stand in the name of Raju Gounder and also that the defendants 2,3 and 5 in whose favour the kist receipts stand are in joint possession and enjoyment of the Suit Properties along with Raju Gounder. These kist receipts do not prove separate possession and enjoyment. Separate patta, separate possession, demarcation by ridges, sub-divisions, separate dealings *etc.*, are some of the elements that may be recognized to prove oral partition. In this case, patta stand in the name of Raju Gounder and though the defendants plead separate possession, they have not examined any independent witness to prove the same. There is no evidence available on record to show sub-divisions, demarcation, separate dealings, *etc.* In the absence of proof of such elements, mere payment of kist alone is not sufficient to prove oral partition.

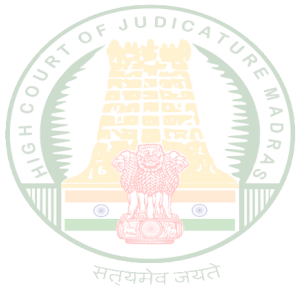
19. Even while assuming that the defendants have proved separate possession and enjoyment, it is settled law that mere separate



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enjoyment for convenience cannot be equated to partition in the eyes of law. It does not mean joint ownership has been put to an end and in its place ownership in severalty or in specie has come into existence. Separate enjoyment for the sake of convenience is one thing and partition is another in the eyes of law. There has to be some further evidence in support of partition. A Division bench of this Court in ***P.Kaliappa Gounder -vs- Muthusamy Mudaliar***, reported in ***1985 (98) LW 773*** explained the concept of partition and it would be worthwhile to refer to the same at this juncture. Relevant extract is hereunder:

"7. Before we do the analysis of factual materials, we would like to recapitulate the concept of 'partition' of a joint family. The joint ownership of a thing is the right of two or more persons to possess and use it to the exclusion of others; and the thing, with regard to which there is the joint ownership, is called 'the joint property'. In this joint property, the joint owners do not own anything in specie and every joint owner has got right, title and interest over every piece and parcel of the joint property, subject to the qualification that the quantum of his share in the whole property stands defined in theory and not on ground. Though joint owners may be content with owning lands in common, yet subsequently one joint owner or some joint owners may conceive the idea of owning the property referable to his or their share for himself or for themselves to the exclusion of the other or the others. This is the reason which motivates the move to get joint property



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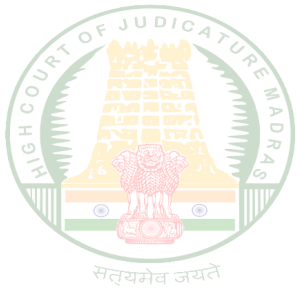


partitioned. The legal term 'partition' is applied to the division of lands or properties belonging to joint owners and the allotments amongst them of the parts referable to their shares so as to put an end to community ownership or joint ownership. Mayne says:

"In England ownership as a rule is single, independent and unrestricted. In India on the contrary, joint ownership is the rule and will be presumed to exist until the contrary is proved."

While individual property appears to be the rule in the West, corporate property appears to be the rule in the East. Though passage of time and change of notions have shaken up this concept both in theory and in practice, yet, in our country and in particular in rural areas, joint ownership is allowed to persist by sufferance of custom and convenience until the bone of contention crops up.

8. Partition is the intentional severance of the joint ownership by an unequivocal expression of an intention to bring out severance in the eye of law and further implementing it by actual division by metes and bounds. What was held in common as a single property gets converted into a holding in severalty and in specie. Joint ownership turns into ownership in severalty and in specie. It is true that 'partition' is not a transfer. But there must be the element of conversion of the joint ownership into ownership in severalty and in specie. Therefore, the essence of partition is that the joint ownership is put an end to and the joint owners come to hold the property in severalty and each in his own individual right. In this country,



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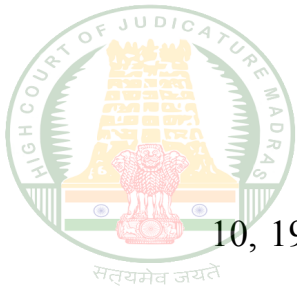


it is common that not only coparceners of a joint Hindu family but also individuals join or continue together to own property in common. If this common ownership is to be put an end to not only in theory but also in practice, there must be primarily severance of the joint ownership in the eye of law, followed up by actual physical division. We make it clear that in the present case, we are not concerned with the concept of a bare unequivocal expression of an intention to separate to bring about a division in status in a joint Hindu family. It is not unusual for parties holding properties jointly or in common to have separate enjoyment of portions for the sake of sheer convenience. But such separate enjoyment of convenience cannot be equated to partition in the eye of law and in fact, so as to say that the joint ownership has been put an end to and in its place ownership in severalty or in specie has come into existence. Separate enjoyment for the sake of convenience is one thing and partition in the eye of law is another. The latter carries with it the legal incidents of mutating the joint ownership. The latter has to pass through and satisfy a more rigorous test in law and on facts."

20. As evident from the above narrative, in this case, though pleaded, the theory of oral partition is not satisfactorily proved by the defendants. Point No.(i) is answered accordingly in favour of the plaintiff and against the defendants.

Point No.(ii)

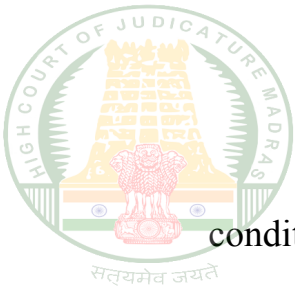
21. Admittedly, the plaintiff was given in marriage on March



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10, 1985 and the Suit Properties are ancestral and joint family properties in the hands of Raju Gounder. As decided in Point No.(i), there was no registered partition or oral partition as alleged before December 20, 2004. Hence, the moment the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005) was introduced, the plaintiff's right of co-parcenary by virtue of her birth was given enforcement and the plaintiff became a co-parcener to the Suit Properties entitled to equal share to that of her brothers. Similarly, the other daughters of Raju Gounder, namely defendants 4 and 6, are each entitled to equal share in the Suit Properties with their father and brothers. Hence, the plaintiff and the defendants 2 to 6 are co-parceners having equal interest in the Suit Properties. Hence, the plaintiff is deemed to be in joint possession and enjoyment along with the defendants 2 to 6. Hence, the Court Fee paid under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, is justified [See *Neelavathi -vs- N.Natarajan*, reported in *AIR 1980 SC 691*].

22. The defendants would contend that the plaintiff got married on March 10, 1985 and at the time of her marriage, she was given Gold jewels, money and all *Seervarisais* by the first defendant in large. The defendants would further contend that thereafter, considering her pity

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condition, the first defendant gave her a sum of Rs.1,00,000/- from his self-earnings and a gold chain weighing about five sovereigns. This Court is of the view that extensive spending on the marriage as well as the *Seer* (சீர்), cannot be used as a defence to deny the plaintiff of her co-parcenary rights over the Suit Properties. Thus, Point No.(ii) is also answered accordingly in favour of the plaintiff and against the defendants 2 to 6.

Point No.(iii)

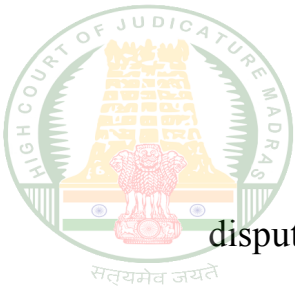
23. As already stated *supra*, the plaintiff and defendants 4 & 6 are a co-parceners entitled to equal share in the co-parcenary properties on par with their brothers under Section 6 of the Hindu Succession Act, 1956 as amended by the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005). Hence, during the lifetime of Raju Gounder, the plaintiff is entitled to 1/7 share in the Suit Properties. Admittedly, Raju Gounder passed away intestate on August 12, 2012 leaving behind his wife – Madhammal / defendant 8, three sons and three daughters (defendants 2 to 6 and plaintiff) as his legal heirs. Hence, after the demise of Raju Gounder, his 1/7 share shall devolve under Section 8 of the Hindu Succession Act, 1956 upon the defendants 2 to 6 and the plaintiff as 1/49 each. Hence, the plaintiff is entitled to $1/7 + 1/49 = 8/49$ share and to that



extent, the plaintiff is entitled to a Preliminary Decree for partition. Point No.(iii) is answered accordingly in favour of the plaintiff and against the defendants 2 to 6.

Point No.(iv)

24. As elaborated above, the plaintiff and the defendants are co-parceners and the plaintiff is entitled to 8/49 share in the Suit Properties. The Trial Court is right in concluding that the plaintiff is entitled to the benefit of Act 39 of 2005 and that the plaintiff is a co-parcener by birth in respect of the Suit Properties along with her father and siblings. However, the Trial Court is not justifiable in granting permanent injunction against the defendants 2 to 6 and the seventh defendant in respect of the entire extent of the Suit Properties. Right to property is a Constitutional right guaranteed under Article 300-A of the Constitution of India and the co-parceners are entitled to deal with their own share as per law subject to Section 6 of the Hindu Succession Act, 1956. Hence, such a blanket injunction cannot be granted in respect of the entirety of the Suit Properties. A limited injunction against the defendants 2 to 6 and 8 can only be granted in respect of the plaintiff's share. Further, the seventh defendant being a statutory authority and the



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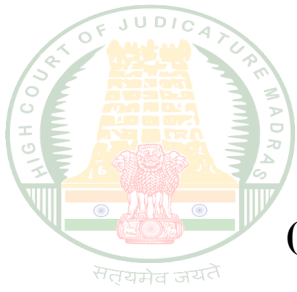
dispute between the parties being a private dispute, injunction cannot be granted against the seventh defendant. In all other aspects, the Judgment and Decree of the Trial Court is correct and there is no warrant to interfere with the same. Point No.(iv) is answered accordingly.

25. The case law relied on by the learned Counsel for the defendants is not applicable to the facts and circumstances of this case.

CONCLUSION

26. Resultantly, the Appeal Suit is partly allowed and the Judgment and Decree of the Trial Court is modified in the following terms:

- (i) The plaintiff is entitled to 8/49 share in the Suit Properties and a Preliminary Decree is passed to that extent;
- (ii) The defendants 2 to 6 and 8 are restrained from alienating / encumbering the Suit Properties so as to cause prejudice to the plaintiff's 8/49 share in it, until complete partition is effected;



(iii) The Suit is dismissed *qua* seventh defendant.

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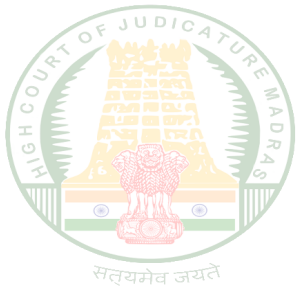
27. Considering the relationship between the parties, there shall be no order as to costs.

23.07.2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To

The III Additional District Judge
Salem.



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R. SAKTHIVEL, J.

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