



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3667 OF 2018

SACHIDHANANDAM
SINCE DEAD THROUGH HIS LRS. APPELLANT(S)

VERSUS

E. VANAJA AND ORS. RESPONDENTS

WITH
**CIVIL APPEAL NO(S). _____ OF 2023 @
SLP(C) NO(S). _____ @ DIARY NO(S). 7823 OF
2018.**

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

Delay condoned in filing Special Leave Petition(C) Diary
No(s). 7823 of 2018.

2. Leave granted in Special Leave Petition (C) No(s).
_____ @ Special Leave Petition(C) Diary No(s). 7823
of 2018.

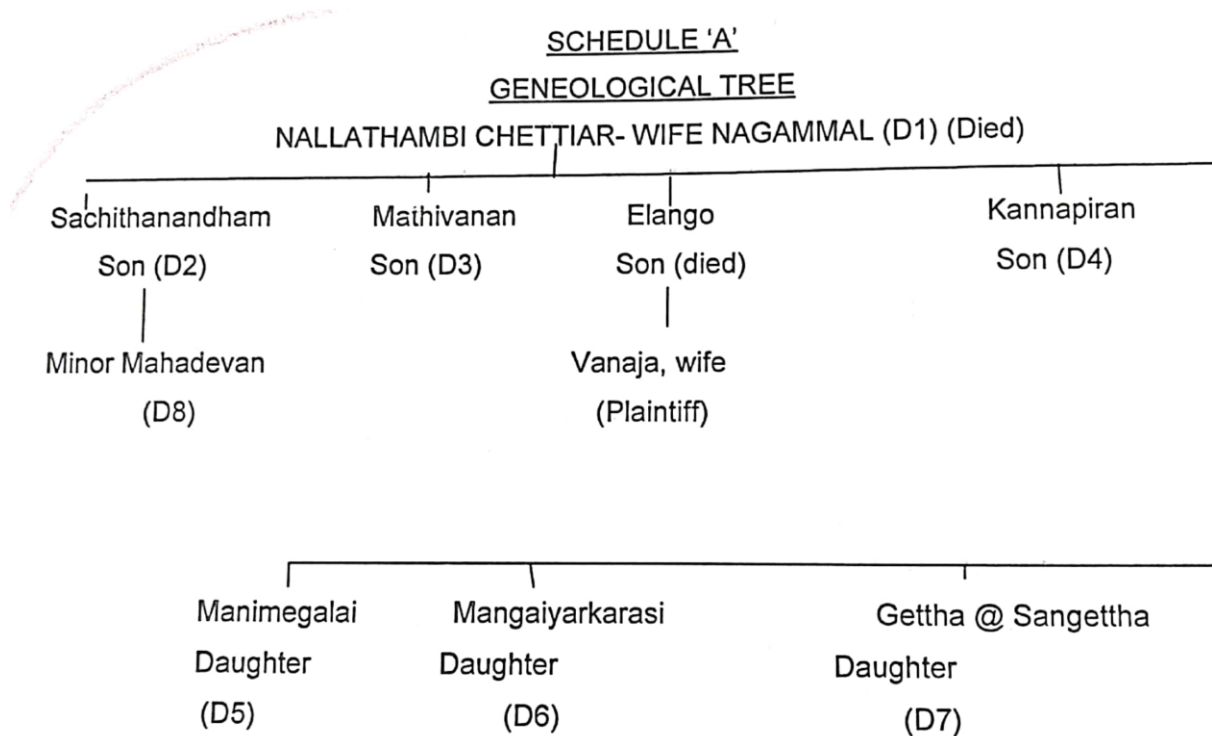
3. This appeal has been preferred by the defendant no. 2
(Sachidhanandam) assailing the legality and validity of the

judgment and decree passed by the High Court, allowing the regular second appeal in part, preferred by the plaintiff (E. Vanaja-respondent no. 1 herein).

4. Plaintiff's suit for partition was allowed by the trial Court allotting her $1/8^{\text{th}}$ share in the suit properties. On appeal by the defendant no. 2, the First Appellate Court allowed the appeal in part holding that the plaintiff/respondent no. 1 is entitled to $1/16^{\text{th}}$ share in suit 'B' and 'C1' schedule properties. At the same time, the First Appellate Court granted liberty to the plaintiff to work out her remedy for mesne profits with regard to 'C1' schedule property and items 25 to 30 in 'B' schedule properties by filing a separate proceeding under Order 20 Rule 12 of CPC. As against this, the High Court in second appeal has held that after the death of the plaintiff's husband, namely, Elangovan, and her mother-in-law, the plaintiff is entitled to $1/7^{\text{th}}$ share out of $1/8^{\text{th}}$ and $1/16^{\text{th}}$ of her mother-in-law's share in the 'B', 'C' and 'C1' schedule properties.

5. The plaintiff-respondent no. 1 is the widow and the sole heir of Elango, the third son of Nallathambi Chettiar whereas the defendants are the widow, sons and daughters and grand-

sons of the said Nallathambi Chettiar. It would be appropriate to refer the genealogical tree as mentioned in Schedule 'A' of the plaint to appreciate the relations between the parties.



6. The plaintiff preferred a suit for partition claiming 1/8th share, or such shares as the Court thinks fit, in the suit properties described in schedules 'B', 'C' and 'C1' as also for mesne profits. It was the case of the plaintiff that 'B' schedule properties are self-acquired properties of Nallathambi Chettiar, whereas the 'C' schedule properties have been purchased by defendant nos. 1 to 4 from the income earned from the 'B' schedule properties and 'C1' schedule properties are also joint

family properties, therefore, the plaintiff is entitled to 1/8th share in all the properties.

7. The defendants admitted the relationship between the parties. According to them, the plaintiff can claim a share in respect of her deceased husband's share in the joint family properties. It was stated that on the date of the death of the plaintiff's husband, his 1/8th share in the estate of Nallathambi Chettiar devolved equally on his wife, the plaintiff herein and his mother (Elangovan's mother) who died during the pendency of the suit. Thus, the plaintiff is entitled only to 1/16th share in 'B' schedule properties. In respect of 'C' schedule properties, it was the case of the defendants that except for items 15 and 16 standing in the name of the plaintiff's deceased husband, other properties do not belong to the joint family. No part of the income from the joint family properties has been utilized for the purchase of properties in the individual names of defendant nos. 2 to 4 and 8.

8. Both parties have led evidence, oral and documentary before the trial Court basing upon which the trial Court held that the defendants have not established the veracity of the

Will dated 01.02.2000 executed by the deceased-1st defendant (Nagammal), therefore, they are not entitled to claim the rights in respect of the properties mentioned in the Will. The trial Court categorically held that the properties mentioned in schedule 'B' and 'C' are jointly family properties and the plaintiff is entitled to her share therein to the extent of 1/8th. The First Appellate Court held that the plaintiff/respondent is entitled to 1/16th share in suit 'B' and 'C1' schedule properties. In respect of 'C' schedule properties, it was held by the First Appellate Court that the same are not joint family properties and, thus, are not liable for partition.

9. The second appeal was heard by the High Court on the following substantial questions of law:-

"(a) In view of the admission of DW1 that the properties were purchased from out of the joint family income, whether the lower appellate court has erred in modifying the decree and judgment of trial court?

(b) When the Will under Ex. B12 was not proved as per law, whether the finding of lower appellate court regarding truth of Ex.B12 tenable in law?

(C) Whether the dismissal of suit filed by the plaintiff in respect of the items of properties

standing in the name of D1 to D4 and D8 is sustainable?"

Basing on the evidence available on record, the High Court found that the properties and the business of the joint family continued to be in joint possession of both the parties and, therefore, the status of the joint family both, backwards and forward must be taken into account by the Court. The High Court eventually held that all the plaint schedule properties are joint family properties.

10. Having examined the pleadings, evidence and the judgments rendered by the courts below, we do not find any perversity in the findings recorded by the High Court holding that all the suit properties are joint family properties. However, in view of the provisions contained in Sections 15 (1)(a) and 16 of the Hindu Succession Act, 1956¹, the High Court is not correct in allotting 1/16th share to the plaintiff out of the share of her mother-in-law in the 'B', 'C' and 'C1" schedule properties.

11. Sections 15 and 16 of the Act need to be referred which are re-produced hereunder:

¹ (for short, 'the Act')

15. General rules of succession in the case of female Hindus.-(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

16. Order of succession and manner of distribution among heirs of a female

Hindu.—The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:—

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) to section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death."

12. Sections 15 and 16 of the Act provide that the property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16. Section 15(1)(a) provides that such devolution shall be firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. The rule for distribution of the intestate

property of a female Hindu and order of succession is provided under Section 16 of the Act according to which, the order of succession among the heirs of a female Hindu referred to in Section 15 shall be firstly, as per rule 1 thereof, among the heirs specified in sub-section (1) of Section 15 of the Act.

13. A combined reading of Section 15(1)(a) and Section 16 of the Act would make it manifest that the property of a female Hindu dying intestate shall devolve, firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. Therefore, the plaintiff being the widow of the pre-deceased son does not have the first right or entitlement to receive any share in the share of her mother-in-law.

14. For the foregoing reasons, we allow Civil Appeal No. 3667 of 2018 in part. The impugned judgment rendered by the High Court shall stand modified only to the extent that the plaintiff-respondent no. 1 is not entitled to 1/16th share in the share of her mother-in-law in the suit properties. The judgment and

decree passed by the High Court is, thus, affirmed subject to the above modification.

15. Resultantly, the civil appeal arising out of SLP(C) Diary No(s). 7823 of 2018 filed by the plaintiff stands disposed of in the above stated terms.

16. The parties shall bear their own costs.

.....J.
(B.R. GAVAI)

.....J.
(HIMA KOHLI)

.....J.
(PRASHANT KUMAR MISHRA)

NOVEMBER 06, 2023
NEW DELHI.