**(2014) 10 MAD CK 0245**

**In the Madras High Court**

**Case No :** C.S. No. 243 of 2003

W. S. Sivachakravarthy APPELLANT

Vs

W. S. Girijasankar (Deceased) RESPONDENT

**Date of Decision :** 31-10-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 41 Rule 27, Order 6 Rule 17
Hindu Succession Act, 1956 — Section 6

**Citation :** (2014) 10 MAD CK 0245

**Hon'ble Judges :** G.M. Akbar Ali, J

**Bench :** Single Bench

# Judgement

G.M. Akbar Ali

1. Suit filed for partition and a separate possession of the 3/8th share of the schedule mentioned A to H properties and for allotment of 3/8th of share of A to H schedule properties in favour of the Plaintiffs and other consequential reliefs.

The brief facts:

One W.S. Seniappa Gramani, who died in the year 1878, was the common ancestor. He had a son named W.S. Seshachala Gramani who was happily married three wives. First wife named Valliammal; 2nd wife Rajambal and third wife Apoorpammal.

2. Seniappa Gramani, his son Seshachala Gramani and the grand sons formed a Hindu Undivided Joint Family, possessing ancestral, individual and joint family properties. As stated Seniappa Gramani died in the year 1878. Seshachala Gramani and his sons were in management of the property, more particularly, Sivakolundu, one son through the third wife thereafter, one grand son W.S.Girija Sankar were dominant males of the family. There were number of movables and immovables properties. There was a suit for Partition in the year 1957.

3. Several items of the properties were in possession and enjoyment of

Seshachala Gramani and he was managing the said properties as the eldest son and managing member of the joint family. He was also doing business on the stock exchange and share market. As stated he was first married to one Valliammal, who had four sons through him ? (1) W.S. Sivagnana Gramani (2) W.S. Sivaprakasam (3) W.S. Balakrishnan and (4) W.S. Sambandam, who died as a minor and W.S. Balakrishnan, who died as a bachelor. W.S. Balakrishnan had executed a release deed in favour of the other members. The said Seshachala Gramani left the ancestral family residence and was residing at Thiruvottiyur High Road. His elder son W.S. Sivagnanam had two wives viz., Karpagam and Ranganayaki. Karpagam had two children through whom she had three grand children. Ranganayaki had six children.

4. After the death of Sivagnanam in the year 1949, in the year 1957, Ranganayaki and her children filed a partition suit in O.S. No. 57 of 1957. The suit was filed against W.S. Seshachala Gramani and his legal heirs through his three wives. There were around 28 defendants in that suit. The genealogy during the year 1957 showing the family tree of Seshachala Gramani is produced below:

5. Various pleas were raised and various shares were claimed. The Seshachala Gramani contested the suit on the ground that the suit properties were his self acquired properties. However, pending suit, he died on 4.6.1958 and the legal heirs were impleaded. Pending suit, pleadings were amended and certain properties were brought in and in paragraph 9A of the plaint, it is stated that the said Seshachala Gramani purchased the properties mentioned there were also purchased from the joint family funds.

6. The main question before the court was whether the suit schedule properties are joint family properties of the plaintiffs and the defendants or the self acquired properties of Sesachala Gramani.

7. The nature of the properties mentioned in the paragraph 9-A of the amended plaint was also discussed. The court, ultimately found that the immovable properties found in paragraph 9-A of the plaint were not purchased by the 1st defendant Sesachala Gramani with joint family funds and that the properties are not available for partition among the members of the joint family of Sesachala gramani. As far as the other items, there was a clear finding of the joint family properties available for partition and the individual share of the plaintiffs and the defendants therein.

8. An appeal was preferred by the above said Girijasankar and Parvathi who were 2nd and 9th defendants in that suit. Applications were also filed to include certain properties as plaint schedule properties. The OSA appeal and the applications were taken together and the appeal was dismissed with modification excluding certain parties from claiming share in item Nos. 1 and 2 of the plaint schedule.

9. Further appeal was preferred before the Hon''ble Supreme Court and there was a compromise between the parties to divide the suit properties into three

 

shares. However, the plaintiff was permitted to file separate suit in respect of such of those properties which according to them have been left out. Now the present suit is filed for the properties as left out in the earlier suit CS No. 57 of 1957 claiming that the properties belong to the said W.S.Sesachala Gramani in which the plaintiff along with the 4th defendant are entitled to 3/8th share as the members of the joint family.

10. The plaintiffs 1 to 6 and the 4th defendant are the legal heirs of Ranganayaki Ammal, wife of Sivagnanam, one of the sons of Sesachala Gramani through his first wife Valliammal. Pending suit, 4th defendant died and the defendants 36 to 41 were impleaded. Similarly, the 1st defendant died and defendants 8 to 16 were impleaded as Legal heirs of the 1st defendant and there were many deaths and inclusions of the legal heirs. However, the contesting defendants are the deceased 1st defendant and his legal heirs and also the defendants 2 and 3. The 3rd defendant is a long time lessee in one of the properties. The plaintiffs would admit that many of the properties were alienated, however, questioned such alienations.

11. The contesting defendants have filed written statement denying the rights of the plaintiffs. The main contention of the 1st defendant and his legal heirs are that the suit schedule properties are not the joint family properties left by Sesachala Gramani and the order of the Hon''ble Supreme Court dated 6.8.1985 was to the effect granting liberty to the then plaintiffs to file a separate suit in respect of such of the properties, which, according to them have been left out and the same will not entitle the present plaintiffs to file the present suit.

12. According to them, many of the properties have been validly alienated by the persons who were entitled to do so and more particularly, Schedule-A property is the absolute property of D.1 and D.2 who had leased out the same to D.3.

13. On perusal of the pleadings, this court framed 26 issues.

1. Whether the plaintiffs have any interest, right or share in the suit properties?

2. Whether D1 and D2 has got any absolute right to lease out the entire "A" Schedule property?

3. Whether the Lease Agreement entered into between D1, D2 and D3 is of a fraudulent nature and if so what relief the Plaintiffs and other co-sharers are entitled to?

4. Whether D1 has got any absolute right to alienate the entire "B" Schedule property to his son,D2 and if not what relief these Plaintiffs and other co-shares are entitled to?

5. Whether ?c-i? Schedule property is available for partition among Plaintiffs and other co-sharers?

6. Whether D1 and his son, D2 have got any absolute right to alienate the entire "c-ii" Schedule properties to third parties and if not what relief the Plaintiffs and

 

other co-sharers are entitled to?

7. Whether D5 has got any absolute right to alienate the entire "D" Schedule property to D6 and D7?

8. Whether Court Deposit Money as stated in "E" Schedule property is available for partition among the Plaintiffs and other co-sharers?

9. Whether "F" Schedule property is a joint family property and if so whether it is liable for partition among the Plaintiffs and co-sharers?

10. Whether D1 and his LR''s have generated any revenue from Plaint Schedule "A, B, C(ii) and G" properties and if so whether the same can be treated as a Joint family fund for partition among the Plaintiff and other co-sharers?

11. Whether business stated in "H" Schedule is carried out with the assistance and aid of joint family fund and if so whether the same can be treated as joint family business?

12. Whether the revenue generated from "H" Schedule property is available for partition and if so what relief the Plaintiff and other co-sharers are entitled to?

13. Whether the Revenue generated from Plaint Schedule "A" property by the third defendant is liable to be shared among the Plaintiffs and other co-sharers who are not parties to the Lease agreement dt. 19.11.1970?

14. Whether D18 to D35, D45 to D48, D71 to D76 are entitled to any share in the left out properties set out in the Plaint Schedule properties "A" to "H" as they have already received some properties by way of previous settlements and if not how their share in the present suit is to be divided among the remaining members of the Joint family?

15. Is the plaintiff entitled to seek for partition of the suit schedule properties in the absence of declarative relief?

16. Is the suit barred by constructive res judicata?

17. Is the suit for accounting and mesne profits maintainable?

18. Whether the suit is barred by limitation, delay and laches?

19. Whether the suit schedule "A" property was left out property in the earlier partition suit in C.S. No. 57 of 1957 or not?

20. Whether the third parties purchasers from the sharers who are in possession and enjoyment of certain suit properties are entitled to any right or interest in the suit properties?

21. Whether the plaintiffs have made any of the purchasers of the suit, ?B?, ?C?, ?D?, and ?F? Schedules of properties as parties to the suit?

22. Whether suit properties are properly valued by the plaintiffs since they are

 

not in possession or enjoyment of any of the suit properties? And on the basis of such valuation and their share whether the plaintiffs have paid court fees for partition by metes and bounds?

23. Whether the Defendants 2, 9 and 17 have perfected their title by adverse possession to the suit properties held by them being heirs of Late W.S. Girija Shankar?

24. Whether the Plaintiffs or other defendants are entitled to claim any share in the suit properties held by the defendants 2 and 9 to 17 as heirs of Late W.S. Girija Shankar who separately earned the said properties mentioned in Plaint Schedule?

25. Whether D3 is a trespasser to Plaint Schedule "A" property and if so what relief the plaintiffs and other co-sharers are entitled to?

26. To what relief are the parties entitled to?

14. The 5th plaintiff was examined as P.W.1. The 3rd defendant was examined as D.W.1 and the 24th defendant was examined as D.W.2. Plaintiffs have marked 87 exhibits and the defendants have marked 20 documents.

15. This court heard elaborately the arguments of Mrs. S. Shalini, learned counsel for the plaintiffs, Mr. A.K. Lakshmi Narayanan, learned counsel for the 2nd defendant, Mr. N.A.K. Sarma, learned counsel for the 3rd defendant, Mr. K. Chandrasekaran, learned counsel for the 4th defendant, Mr. R.G. Annamalai, learned counsel for the defendants 9, 13, 15 and 17 and Mr. R. Thiagarajan, learned counsel for the defendants 18 to 20 and Ms.A. Smrithi & Mr. N. Kannabiram, learned counsel for the defendants 36 to 41, 56 to 61, 67 to 76.

16. The relevant issues to be decided in the suit on hand are as follows:

i) Whether plaint schedule properties "A" to "H" were left out properties in the earlier partition suit in C.S. No. 57 of 1957?

ii) Whether the defendants 1 and 2 have any absolute right over the schedule mentioned properties and more particularly, "A" schedule property?

iii) Whether the plaintiffs or any of the defendants have any right, interest or share in the suit properties and if so, to what extent?

17. Issue No:1 to 3

The earlier suit, in O.S. No. 57 of 1957, there were three schedule of properties. Schedule-I contained 12 items of immovable properties. Schedule ? II and III are movable properties which relate to Shares. Pending suit by way of amendment Paragraph-9-A was added including 4 items of properties which are as follows:

i) Lands in No. 28, Santhankadu Village bearing S. No. 222/1, 213/1, 205/1, 203/2 extent of 0.81 cents

 

ii) House No. 1/18, 2/18, Mint Subbarayalu Naidu St,

iii) House No. 4, Krishnappa Naicken Agragaram

iv) 1/65, Pidariar Koil St., G.T. Madras

18. However, the above four properties were not included in the schedule of the properties. It remained only in paragraph 9-A of the plaint. In the Trial court''s original judgment in C.S. No. 57/1957, these properties were dealt with, particularly, the properties mentioned in Paragraph-9-A. Sadasivam, J., the learned Single Judge of this Court has held as follows:

a. Plaintiffs have pleaded that the 1st defendant has with the joint family funds purchased lands in Sathankadu village and houses Nos. 1/18 and 2/18, Mint Subbaraya Naidu St, No. 4, Krishnappa Naicken Agraharam and 65/1 Pidariar Koil Street in the name of 7th defendant (Girijasankar), who is the grand son of Rajammal, the 2nd wife of Seshachala Gramini;

b. Ex.D.17 is the original sale deed dated 26.8.1926 in favour of Rajammal in respect of Nos. 1/18 and 2/18 Mint Subbaraya Naidu Street, and there is no evidence to show that Seshachala Gramini paid the consideration for the purchase of the properties.

c. Ex.D.18 is a sale certificate dated 3.2.1927 in respect of No. 65/1 Pidariar Koil ST., in favour of Rajammal;

d. Ex.D.19 is a sale certificate dated 1.3.1927 in favour of Rajammal in respect of No. 4, Krishnappa Naicken Agraharam

e. Palaniammal D/o. Rajammal purchased lands in Sathankadu village under Ex.D.23 dated 19.9.1928.

f. Therefore, the immovables properties mentioned in Paragraph-9A of the plaint were not purchased by the 1st defendant (Seshchala Gramani) with the joint family funds and the properties are not available for partition.

19. In effect, the court has held that these properties belonged to Rajammal and her daughter Palaniammal, who had settled the property in favour of Palaniammal''s son and daughter, viz; Girijasankar and Parvathi, respectively who were D.7 and D.8.

20. As far as the immovable properties in Schedule I are concerned, the Court held that the plaintiffs therein viz., the legal heirs of Sivagnanam, S/o Seshachala Gramini through his first wife Valliammal are entitled for 1/2 share in the joint family properties viz., item No. 1, two houses viz., Nos. 4 and 5 of Thulasi Linga Gramini street, Item No. 2 which is called as Samadhi Thottam, item No. 3, house and ground bearing Door No. 55, Ramanuja Kuttam St, Washermanpet, Item No. 5 House and ground No. 247 to 250 TH Road, Washermanpet, Item No. 6 ? house and ground bearing Door No. 10 to 12 Venkatakrishna Street, Item No. 7 ? door no:1/6, Venkatakrishnan st,

 

Washermanpet, Item No. 8 ? door No. 19, Muthugramini st, Chetpet, Item No. 9 ? Door No. 17, Muthugramini st, Chetpet, Item No. 11- door No. 55, Thiruvattiyur High Road, Washermenpet, Item No. 12 ? ground in 2A, Ammaiyappa Mudali St, Washermenpet. Item No. 4 was declared as the property belonged to defendants 10 to 20 who are the legal heirs of Apporvammal, who is the third wife of the Seshachala gramini and Item No. 10 belonged to the defendants 21 to 23 who are also the legal heirs of Apporvammal.

21. However, the judgment was contested in the appeal in the original side. The points raised before the appellate forum were,

(i) whether Rajammal and Apporvammal are the legally wedded wives of Seshachala gramini entitling their children and their descendants to a share in his properties whether self acquired or ancestral?

(ii) Was Palaniammal, D/o. Rajammal born to Seshachala Gramani?

(iii) Are the items in schedule I other than items 1 and 2 and the securities in the other schedules, ancestral properties or the self acquired properties of Seshachala Gramani?

(iv) Is the 7th defendant (Girijashankar) entitled to a separate right in the shares in schedule B to the preliminary decree?

22. Ultimately, after deciding the issues, which are not now relevant, the appellate court modified the decree of the trial court by excluding from the partition, the plaintiffs therein (viz., the legal heirs of Sivagnanam, son of Seshachala Gramini and defendants viz, 10, 21 and 26 to 28 with regard to 1/2 share in the items found to be ancestral items viz., plaint schedule item Nos. 1 and 2. In other aspects, the decree of the lower court was confirmed.

23. To come to this conclusion, the Appellate Court would state, " It would follow from the circumstance of the death of Seshachala after the suit was filed that his one half share in the ancestral items, plaint items 1 and 2, has to be distributed in accordance with the principles laid down in Section 6 of the Hindu Succession Act. The result is that it will exclude the sons of Seshachala and their sons, who have already separated from him during his life-time, namely, the group consisting of (defendants 10,21 and 26 to 28). It will also exclude the plaintiffs and the second defendant, because the plaintiffs by virtue of their having filed a suit for partition, and the second defendant, must be treated as having become separated in status from the date of the plaint".

24. There was also a mention about applications filed to include some of the properties for partition. However, the Court dismissed those applications to include those properties and the relevant portion is as follows:

In effect, if the additional documents now sought to be filed are to be received in evidence at the appellate stage the suit will have to be remanded for re-hearing on the question of (a) the extent of ancestral properties which Seshachala had when he attained majority and (b) what items of those properties now remain available for division. Some of them might have been alienated by Seshachala himself. In such a case the alienees will have to be made parties to the partition suit before an effective decision could be given. In effect, it would mean that a litigation that has already, lasted for 12 years would have to be prolonged for a much longer period before an effective adjudication could be made on the points raised. As mentioned already, the reasons given for the belated attempt to bring more properties into the plaint schedule and also to add more properties to those which Seshachala had at the time of his attaining majority are not at all adequate for justifying the grant of relief under Order XLI Rule 27 Civil Procedure Code. We, therefore, reject the prayer contained in these interlocutory applications for reception of additional documents and the consequential amendment of the plaint. Consequently we have to proceed on the basis that the ancestral properties now available for division are items 1 and 2 of the Plaint Schedule I and that the properties which Seshachala had with him as ancestral properties when he attained majority are only those which he admitted were in his possession, viz., items 1 to 5 mentioned in the Schedule to his written statement in the prior suit of 1922.

25. An appeal was preferred to Hon''ble Supreme Court. In Civil Appeal No. 68 of 1971, two orders were passed. Order dated 26.7.1985 reads as follows:

At the hearing of this case learned counsel for the parties submitted that there may be a decree in the following terms in modification of the decree of the High Court:

In the properties mentioned in Plaint Schedule except with regard to items 4 & 10, in regard to the other properties there shall be a declaration that they are joint family properties, the plaintiff and defendant No. 2 as one group having 1/3rd share and defendants Nos. 10 to 21 as one group having 1/3rd share.

The remaining 1/3 share shall be divided among the persons mentioned and in the manner laid down in para 4 of the high Court decree on the original side Civil Suit No. 57 of 1957 dated May 2, 1963.

The plaintiffs are permitted to file separate suit in respect of such of the properties as according to them have been left out" Having heard learned counsel for the parties, we feel that the terms mentioned above are in consonance with law and that there should be a decree passed accordingly. We, therefore direct that there shall be a decree in the above terms. The decree of the High Court stands modified accordingly. There will be no order as to costs.

and order dated 6.8.1985 reads as follows

And the appeal above-mentioned being mentioned before the Court on the 6th day of August, 1985, UPON hearing counsel, This Court DOTH in modification of its order dated 26th July, 1985 above-quoted, pass the following order:

There shall be a preliminary decree in the following terms in lieu of the decree of the High Court.

The properties mentioned in Plaint Schedule-I(except items 4 and 10) shall be treated as joint family properties in the lands of the plaintiff and defendants No. 2 as one group and defendants Nos. 7,8,10 and 21 as one group, each group having 1/3rd. The remaining 1/3rd will be divided in the manner laid down in para 4 of the Trial court decree.

The Plaintiffs will be at liberty to file a separate suit in respect of such of the properties, which according to them, have been left out.

26. In effect, the 2nd order is the final order which declared the properties mentioned in plaint schedule I (except items 4 and 10 ) shall be treated as joint family properties in the hands of the plaintiff and 2nd defendant as one group i.e., the legal heirs of Sivagnanam, S/o Seshachala Graimini through the 1st wife Valliammal as one group; the defendants 7, 8, 10 and 21 as one group ? each group is having 1/3 share. The remaining 1/3 share to be divided in the manner laid down in paragraph 4 of the trial court decree i.e., it will be divided into 8 shares and (i) the plaintiffs 1 to 6 and defendants 2, 3, 24 and 25 shall be entitled to one share; (ii) defendants 4 and 5 each are entitled to one share; (iii) defendants 7 and 8 are jointly entitled to one share; (iv) defendants 26 to 28 jointly entitled to one share; (v) defendants 10 to 20 are jointly entitled to one share and (vi) the defendants 21 to 23 jointly entitled to one share.

27. The parties have no quarrel in these aspects.

28. The present suit is the second round of litigation for partition for Schedule "A" to "H". The plaintiffs have drawn the support from the order of the Apex Court which states that " The plaintiffs are permitted to file separate suit in respect of such of the properties, as according to them, have been left out".

29. The preliminary objection by the defendants is to the effect that the present plaintiffs are not the plaintiffs in the earlier suit. Adverting to this plea, this court finds that the present plaintiffs are the legal heirs of Ranganayaki, the 2nd wife of Sivagnanam, who is the son of Seshachala gramani born through his first wife Valliammal.

30. The earlier suit was also filed by the same plaintiffs. These plaintiffs have filed a petition in CMP No. 3835 of 1969 in OSA No. 90 of 1963 to include item Nos. 13 to 25 in Schedule I by amending the plaint under Order 6 Rule 17 of Civil Procedure Code and Order 24 Rule 8 of Original side Rules.

31. Likewise, the 4th defendant therein filed an application No. 957 of 1965 for adding in Item No. 13 bearing S. No. 222 ? 2 acres 4 cents in patta No. 118 of Sathankadu village, Saidapet Taluk; In item No. 14 in Schedule I ? 74 cents in S. No. 147; in item No. 15 ? 67 cents in S. No. 148 in the same village viz., Sathankadu village. This said applicant Gnanambal is the first daughter of Valliammal, the 1st wife of Seshachala Gramini.

 

32. As stated earlier, these applications were dismissed by the appellate court in OSA No. 90 of 1963, however, given life to by a compromise decree. Therefore, the objection that the plaintiffs are not entitled to bring a separate suit in respect of such of the properties which according to them have been left out for partition, is not sustainable, provided they are able to prove that the present properties were also available for partition which were omitted in the earlier partition. The said right is also subject to the claim made by the defendants viz., their individual rights in the property.

33. Schedule A relates to 2 acres 4 cents of land comprised in S No. 222/1 in Sathankadu village. Though there was a mention about the lands in Sathankadu village bearing S. Nos. 222/1, 213/1, 205/1, 203/2 in the earlier suit, the trial court has held that these properties are not available for partition.

34. Nevertheless, by application No. 957 of 1965, the 4th defendant therein had attempted to bring in the land to an extent of 2 acres 4 cents in S. No. 222 of Sathankadu village alone. In S. No. 147 of the same village of 76 cents and S. No. 148 of the same village of 67 cents were also mentioned in the same application. These three properties correspond to the present plaint schedule "A", "C (i) " and "C (ii)".

35. In CMP No. 3835 of 1969 filed by the present plaintiffs in the earlier appeal OSA No. 90 of 1963, there were 12 items, but the survey numbers and the description do not tally with any of the properties mentioned in Schedule "A" to "H". However certain documents of title has been filed in respect of these properties in the present suit and therefore let us deal with the present schedule of properties one by one.

36. Schedule A: According to the plaintiffs, Ex.P.17 is a sale deed executed in favour of Sesachala Gramini in respect of "A" schedule property. However, the extent of the land is shown as 1 acre 64 cents in Sathankadu village in S. No. 222.

37. Ex.P.18 is a notice under Land Acquisition Act for acquisition of certain properties. The 1st item of the property was in the names of Palanimmal and Girijasankar in S. No. 203 to an extent of 3 acres and 16 cents. The 2nd item is in the name of Sesachala Gramini, Sivakolundu Gramini, Sivapooshana Gramini and Girijashankar of 2 acres 4 cents in S. No. 222/1. The 3rd item stands in the name of Rajammal, Sesachala Gramini, Sivakolundu gramini, Sivabushanam Gramini and Arumuga Chettiar being the mortgagee in S. No. 224 to an extent of 1 acre 75 cents. For S. No. 222/1, the corresponding patta is patta No. 118 as evidenced under Ex.P.20.

38. This court has already seen that by inserting paragraph-9-A in the original plaint in C.S. No. 57 of 1957, the lands in Sathankadu village were attempted to be brought in as ancestral properties. This court has also seen that the trial court in the earlier suit had found that Palaniammal D/o. Rajammal has purchased lands in Sathankadu village under Ex.D.23 dated 19.9.1928 . She had executed

 

Ex.D.4 in favour of defendants 7 and 8 (Girijasankar and Parvathy) in respect of lands in Sathankadu purchased by her under Ex.D.23.

39. It seems that, apart from purchase by Seshachala Gramini in the year 1904 under Ex.P.17, 1 acre 64 cents in S. No. 222, Palaniammal had also purchased lands as early as 1928 in Sathankadu village. Similarly, Rajammal has also purchased lands in Sathankadu village but the said document was not produced in the earlier proceedings. This was discussed because Rajammal had executed Ex.D.3 in favour of Girija Shankar and Parvathy in respect of the properties mentioned in paragraph-9A and similarly, Palaniammal had executed Ex.D.4 in favour of Girijasankar and Parvathy in respect of the lands in Sathankadu village purchased by her under Ex.D.23. ( Ex.D.23, Ex.D.3 and Ex.D.4 marked in the earlier suit).

40. Therefore, leaving aside the the properties of Rajammal and Palaniammal, the property under Ex.P.17 an extent of 1 acre 64 cents in Sathankadu village in S. No. 222/1 has to be treated as the property of Seshachala Gramini, not included in the earlier suit and which is available for partition among the legal heirs of Seshachala Gramini. The extent of this land also to be considered as 2 acres and 4 cent on the strength of Ex.P18 and Ex.P20 in Patta No. 118.

41. Schedule B: As far as "B" schedule properties are concerned, it relates to S. No. 202/2 and 202/3 of Sathankadu village. This property is not mentioned in Application No. 957 of 1965 or in Application No. 3835 of 1969. Under Ex.P.44 dated 22.11.1920, Sesachala Gramini had purchased S. No. 202/2 40 cents and S. No. 202/3 30 cents. This relates to suit Schedule B. However, in 1973, Girija Sankar, the 1st defendant has sold S. No. 202/1, 2 and 3 - 77 cents to the 2nd defendant, his son. In the said Sale Deed, he has not stated how he obtained title. However, he would state that the said properties and other properties including "A", "C" and "F" schedule properties were leased out to one Munusami and he has surrendered the lease as early as 16.11.1970 and thereby he had obtained possession and enjoyment. Ex.P.46 Adangal would show Seshachala Gramini was the owner of the property. Ex.P.47, the encumbrance would show the release deed by Munusami in favour of the 1st defendant and the sale by the 1st defendant to the 2nd defendant.

42. Schedule C: Ex.P.48 relates to "C" schedule properties under a sale deed dated 10.9.1912. Seshachala Gramini has purchased this property from the sons of Narayana Mudaliar. There are two items of property under this sale deed. A notice issued under Land Acquisition Act dated 19.5.1965 under Ex.P.41 would indicate that S. No. 147-A was the estate of Seshachala Gramini. However, this property was dealt by the defendants 1 and 2 by sale deed dated 24.7.1972 under Ex.P.50. They have sold the same to one Girija Syndicate, a registered Partnership Firm. Under Ex.P.51, this (ii)item in "C" schedule property has been promoted by the said Girija Syndicate and layouts were formed. These two items (i) and (ii) of C schedule property, were also attempted to be included in the earlier suit through Application No. 957 of 1965. Under Ex.P.20 Kist receipt for

 

patta No. 9 relates to S. No. 147A2 and 148. The plots were sold to various purchasers who are not parties to the suit. It is submitted that another property of the 1st and 2nd defendants were given as security to the purchasers.

43. Schedule D. Under Ex.P.54 dated 6.10.1920 Seshalchala Gramani has purchased certain properties from one Ranganatha Chettiar in S. No. 1239 of 97 cents; S. No. 1242 of 72 cents; 1243 of 73 cents. These properties were dealt by one K. Punithavathi under Exs.P.55 and P.56. She claims that she is the daughter of one Gnanambal to whom Seshachala Gramini has given the property for her pawn expenses. She has also filed an affidavit being the 29th defendant in the earlier suit in C.S No. 57 of 1957 under Ex.P.59.

44. Schedule E: "E" schedule is a decree amount lying in Court Deposit for which there is no documents.

45. Schedule F: Under Ex.P.64 dated 7.8.1940, the 1st defendant obtains item No. 1 of Schedule "F", property under an indenture from the District Board of Chengalpet District. However, this property was sold in favour of one Pachiammal under Ex.P.65 dated 30.10.1970.

46. As far as item Nos. 2 and 3 of "F" Schedule are concerned, there is no document to show that the property was purchased by Seshachala Gramini or by the 1st defendant or by any members of the family. However, under Exs.P.66 and P.67, the defendant 1 and 2 have dealt with item No. 3 of "F" schedule property. This property was also given as security to the various third party purchasers of the plots in item (ii) of C schedule.

47. Schedule G: As far as item "G" is concerned, it relates to premises bearing Nos. 247 to 253. However, door Nos. 247 to 250 alone were item No. 5 in Schedule-I of the earlier suit in C.S. No. 57 of 1957. According to the plaintiffs, when item No. 5 of Schedule I to the earlier suit was brought on sale, the 1st defendant had purchased the property including premises bearing Nos. 251 to 253. Rightly or wrongly these properties were sold through court action.

48. Schedule H: Schedule-H relates to Cement Dealership business standing in the name of the 2nd defendant for which there is no documentary evidence. Therefore, Schedule "A" to "D" seems to be in the name of Sesachala Gramini which were not dealt in the earlier suit in C.S. No. 57 of 1957 but there was an attempt to bring them in the appellate stage which was turned down. However, the contesting defendants would state that these properties are not available for partition as they have already been dealt in the earlier suit.

49. When the suit was filed in the year 1987, there were only 7 defendants and due to passing of time and also due to the death of many of the parties, on both side, now out of six plaintiffs only three are alive and there are 76 defendants and many of them also died.

50. Originally, the defendants 1 to 3 were the contesting defendants, who were dealing with the schedule mentioned properties. The 3rd defendant is a lessee in

 

respect of "A" schedule property. The lease period was for 25 years which started in the year 1970. The other defendants are almost either direct sharers or legal heirs of many of the sharers. The sharers, who claims through defendants 1 and 2, are opposing the suit for partition and some of the defendants are sailing along with the plaintiffs. Since the 1st defendant died before filing his written statement, the statement filed by the 2nd defendant and the legal heirs of the 1st defendant viz., defendants 8 to 16 as one group, which has to be considered first.

51. Before adverting to the defence, the genealogy has to be looked into. The genealogy as early as 1963 (when the judgment was delivered in C.S. No. 57 of 1957) has to be taken into consideration as there is no dispute over it. As stated earlier, Seniappa Gramani as the common ancestor and his son Seshachala Gramini, was the Kartha of the family, is not in dispute. He had three wives and the plaintiffs and defendants are their descendants.

52. In the earlier suit in C.S. No. 57 of 1957, the rights of the parties as admitted by them to their respective shares has come to a finality by the order of the Hon''ble Supreme Court dated 6.8.1985 in Civil Appeal No. 68 of 1971. The legal heirs of Sivagnanam, a son through Valliammal, the 1st wife of Seshachala Gramini were granted 1/3 share as a group. One Sivakolundu, Siva Bushanam ( Sivasubramaniam), were born to Apurvammal, the 3rd wife of Seshachala Gramini. Girija Sankar and his sister Parvathi, the defendants 7 and 8 therein were born to Palaniammal, the daughter of Rajammal, who is the 2nd wife of Seshachala Gramini. They form one group, and were granted 1/3 share.

53. The remaining 1/3 was ordered to be divided into 8 shares and the group I along with two female members of Sivagnanam''s family were entitled one share; one Gnanambal and Jagadambal, the daughters of Valliammal, the 1st wife of Seshachala Gramini were each entitled to one share; one Shenbagavalli and his brother Ramachandran, who was the 9th defendant were jointly entitled to one share; the defendants 7 and 8 jointly entitled to one share; defendants 26 to 28 therein, who are the legal heirs of one Sivaprakasam, another son of Seshachala Gramini, through Valliammal, the 1st wife of Seshachala Gramini were jointly entitled to one share; defendants 10 to 20 and 21 to 23, the legal heirs of apporvammal, were jointly entitled to remaining two shares.

54. Now, let us see the effect of the order passed by the Hon''ble Supreme Court which gave liberty to the plaintiffs to file a separate suit for the left out properties. The defendants 2 and 3 alone were contesting that the present suit is hit by res judicata. Though the bar under Order II Rule 2 of Civil Procedure Code was not claimed, this Court opines that legal bar is also to be looked into.

55. As stated earlier, the defendants 2 and 3 alone have filed written statement, challenging the inclusion of "A" schedule property stating that it was a part of property in paragraph-9A of the plaint in C.S. No. 57 of 1957. However, this court is not inclined to accept such plea. This court has already demonstrated the

 

four items in paragraph 9-A as dealt by the Single Judge of this court. Therefore, S. No. 222/1 was not the property dealt by in the earlier suit. This property was attempted to be brought in by an application filed by one of the defendants which was not considered by the Division Bench, but the Hon''ble Supreme Court has given a liberty.

56. A partial partition is not accepted in law. Under Order II Rule 2 of Civil Procedure code, there cannot be a subsequent suit for left out properties, if some of the properties are left out in the earlier suit, unless there is a leave by the court.

57. The order passed by the Apex Court amounts to such a leave granted to file a separate suit for the left out properties. Therefore, the suit is maintainable on that ground and there is no res judicata.

58. The second defendant has not stated anything about the devolution of the property more particularly of the schedule "A" and "B" either in favour of the 1st defendant or in his favour. As stated earlier, "A" and "B" schedule property originally stands in the name of Seshachala Gramini by sale deed dated 5.2.1904 under Ex.P.17 and sale deed dated 22.11.1920 under Ex.P.44. "A" schedule was leased out by the defendants 1 and 2 to the 3rd defendant. They fail to demonstrate that how the property was devolved on them by Seshachala Gramini. "B" schedule property was dealt by the defendants 1 and 2 and they fail to prove how this property also devolved on the 1st defendant from Seshachala Gramini.

59. Similarly, "C" (i) and (ii) Schedule was purchased by Seshachala Gramini as early as 1912. This was dealt by the defendants 1 and 2 in the year 1972. Again there is no proof that Seshachala Gramini has conveyed his title to the defendants 1 and 2.

60. As far as "D" schedule property is concerned, it was purchased by Seshachala Gramini by sale deed dated 6.10.1920 under Ex.P.54. However, under Ex.P.55, one Punithavathi, (D.5), who is the grand daughter of Seshachala Gramini through Gnanambal, sold the properties to defendants 6 and 7, who are third parties, claiming the property as that of her mother, gifted by Seshachala Gramini. The defendants 6 and 7 have not filed any written statement.

61. "E" schedule is a decree amount lying in Court Deposit.

62. "F" schedule property purchased by the 1st defendant by a sale deed dated 7.8.1940 under Ex.P.64. Though the plaintiffs have claimed that the 1st defendant has purchased the property from and out of the income of the joint family properties, there is no specific proof and moreover, it is also evident that he was doing business on his own. Therefore, "F" schedule property is not available for partition.

63. As far as "G" schedule property is concerned, as stated earlier, door Nos. 247 to 250 were subjected to earlier suit which in court auction went to the hands of

 

defendants 8 to 26. However, the claim of the plaintiff is that door Nos. 251 to 253 were also sold in the court auction and the same was purchased by the 1st defendant from the income of the joint family properties therefore to be divided. However, this court is not inclined to accept such contention. Therefore, it is not available for partition. As far as "H" schedule property is concerned, there is no proof to show that it is a property available for partition.

64. The 2nd defendant in his written statement has not adverted to the properties "A" to "E". Interestingly, the 3rd defendant, who is a lessee, in Schedule "A" is vehemently contesting about the rights of the parties. There is an attempt to show that under sale deed dated 5.2.1904, Seshachala Gramini purchased only a lesser extent than what is available now.

65. When the defendants 1 and 2 have not claimed anything of their own in schedule "A", the lessee''s right is restricted to the lease. However, Mr. Annamalai, the learned counsel who appeared for D9, D.13, D.15 and D.17 tried to impress upon this court that FMB sketch relating to S. No. 222/1 would show a different picture. This court is not inclined to accept the said argument .

66. The written statement of 9th defendant, 13th defendant, adopted by the defendants 11, 14, 15 and 16, who are the descendants of the 1st defendant are only to the effect of safeguarding "G" schedule property. In fact, 9th defendant would state that "A" schedule property is available for partition, whereas, "B" to "H" are not available for partition. The same ground is adopted by the other legal heirs of the 1st defendant.

67. As stated earlier, "B" "C" and "D" were proved to be purchased by Seshachala Gramini, but dealt by the defendants 1 and 2 and also by the 5th defendant, who is the grand daughter of Seshachala Gramini, through first wife. Her mother Gnanambal was 4th defendant in the earlier suit. She has not filed a written statement in the present suit and remained ex-parte. Therefore, schedule "B", "C" and "D" are also available for partition and "E" schedule is the court deposit for which there is no documents. However if it is available parties are entitle to it. It is already decided that "F", "G" and "H" are not available for partition.

68. Mr. R. Thiagarajan, learned counsel, who appeared for the 24th defendant would also sail along with the plaintiffs. 56th defendant has filed a detailed written statement, adopted by the defendants 49 to 55 and 62 to 70. Defendants 71 to 76 have adopted the written statement filed by 24th defendant.

69. This court finds that the written statement filed by 56th defendant is factually and legally correct in its entirety except for the properties in Schedule "G". However, the defendants 56 to 61; 62 to 66 belonged to one branch. The present genealogy of the legal heirs of Seniappa and Sheshachala Gramani is as follows:

70. Conclusion:

 

As stated earlier, there are 26 issues framed in this suit. This court has considered the main three issues as stated above. However, to deal with each issue, they are answered as follows:

(a) As far as Issue No. 1 is concerned, as per the discussions held above, out of 8 schedule of properties "A" to "H", the properties available for partition are:

"A", "B", "C" and "D". The plaintiffs and the legal heirs of the 1st defendant are entitled for various shares which will be declared below.

(b) As far as Issue No. 2 is concerned, The defendants 1 and 2 have no absolute right to lease out the entire "A" schedule property and even if they have leased out, it was only on behalf of the joint family.

(c) As far as Issue No. 3 is concerned, the lease agreement is not a fraudulent action. However, the 3rd defendant is bound by the decree of this Court regarding "A" schedule property and he has no independent right over them and he is liable to hand over the vacant possession.

(d) As far as Issue No. 4 is concerned, since it is already found that "B" schedule property is the property of Seshachala Gramini, either the 1st defendant or the 2nd defendant has no right to alienate the property.

(e) As far as Issue No. 5 is concerned, "C" "(i)" schedule property is available for partition.

(f) As far as Issue No. 6 is concerned, "C" "(ii)" schedule property declared to be the property of Seshachala Gramini and either the 1st defendant or the 2nd defendant has no right to alienate the property. However, plots have been promoted and sold out to third parties, who are the parties to the suit. Item No. 3 in "F" schedule has been given as "security" to the third party purchasers. Therefore, at the time of division, the principle of equity to be applied.

(g) As far as Issue No. 7 is concerned, "D" schedule property is declared to be available for partition and therefore, the alienation by the 5th defendant to the defendants 6 and 7 are not valid, however, if the 5th defendant gets any share, principle of equity to be applied.

(h) As far as issue No. 8 is concerned, As far as "E" schedule is concerned, there is no document to show the court deposit, however, if the parties are able to prove that there is a court deposit, the said amount to be divided among the parties as per the decree of this court.

(i) As far as issue No. 9 is concerned, "F" schedule property is not available for partition and therefore, it is decided against the plaintiffs.

(j) As far as issue No. 10 is concerned, the revenue generated either by the 1st defendant or by his legal heirs is not proved. Therefore, there is no joint family fund available for partition.

(k) As far as Issue No. 11 is concerned, "H" schedule property is not proved to be the joint family business and not available for partition.

(l) As far as issue No. 12 is concerned, there is no proof to show that revenue was generated from schedule "H" property and the issue is decided against the plaintiff.

(m) As far as issue No. 13 is concerned, though it is proved that the property was leased out to third defendant, considering the various disputes and the rights of the parties and also in the absence of any proof for revenue generation, this issue is decided against the plaintiffs.

(n) As far as issue No. 14 is concerned, the rights of the parties are decided in accordance with the decree of this court and therefore, this issue is decided accordingly.

(o) As far as issue Nos. 15 to 18 are concerned, as discussed earlier, the plaintiffs are entitled to seek for partition for the left out properties and the suit is not barred by either limitation or res-judicata. The relief of mesne profits is not granted and the issues are decided accordingly.

(p) As far as issue No. 19 is concerned, Schedule "A" is declared to be the property left out in the earlier partition suit in C.S. No. 57 of 1957 and this issue is decided accordingly.

(q) As far as issue Nos. 20 and 21 are concerned, item 2 in Schedule "C" was plot out and sold to various third parties, who were not parties to this suit. However, their interests are protected by a security given to them in item No. 3 of Schedule "F" and the principle of equity to be applied.

(r) As far as issue No. 22 is concerned, This issue was not canvassed and therefore, the valuation of the suit is proper.

(s) As far as issue No. 23 is concerned, the defendants 2,9,17 have not come forward to examine themselves for producing any evidence to claim adverse possession. Therefore, these issues are decided against them.

(t) As far as issue Nos. 24 and 25 are concerned, it is already decided that schedule "A" to "D" are available for partition between the plaintiffs and the other defendants except the 3rd defendant and the defendants 6 and 7. Therefore, the issue is decided accordingly.

71. However, the final order of the Supreme Court is to the effect that the plaintiffs therein, the decedents of Sivaganam, son through the first wife, who are the plaintiffs herein, and 4th defendant( now through LRs) form one branch. The deceased first defendant, now represented by his legal heirs, who was the grand son through the second wife and his sister parvathy and also two other legal heirs of the third wife constitute the second branch. Each entitled to 1/3 share and remaining share to be divided into eight shares and distributed.

72. The Plaintiffs 1,5 and 6 and also the fourth defendant, now represented by

 

D36 to 41 shall be entitled to 1/3 share. It will be appropriate to divide 1/3 into four parts and the plaintiffs to take three parts and D36 to 41 to take one part.

73. W.S.Grija Shankar and Parvathy to share 1/3 along with W.S.Sivakolundu and W.S.Sivabhushanam. This can be dived into four parts and allotted to each head.

(i) W.S.Grija Shankar is now represented by D2 to D13 and one Puranthara devi who died leaving behind D14 to 16. D10 also died leaving behind D42 to 44. D11 died leaving behind D17.

(ii) W.S.Parvathy died leaving behind D68 to 70.

(iii) W.S. Sivakolundu died leaving behind D18 to 27. D.20 died leaving behind D71to 76 and D21 died leaving behind D30 to 35.

(iv) W.S.Sivabhushanam died leaving behind D28 and D29. D29 died leaving D45 to 48. All the above have to share in accordance with line of succession.

74. The remaining 1/3 is to be divided into eight parts and to be distributed as follows.

1. first part; Pltfs 1,5 and 6 and D4 and D67. D4 succeeded by D36 to 41.

2. second part; D5.

3. third part; to D49 to 55

4. fourth part; to D56 to 61 and D62 to 66

5. fifth part; W.S.Grija shankar and Parvathy now to D2 to 13 and Puranthara devi (represented by D14 to 16 and D10 represented by D42 to 44 and D11 represented by D17)

6. sixth part; Parvathy, Thayumanasamy and Sulochana the legal heirs of Sivaprakasam ( they are not impleaded as parties but entitled to)

7. seventh part; to the legal heirs of Sivakolundu now represented by D18 to 27. ( D20 died represented by D71to 76- D21died represented by D30 to 35)

8. eighth part; to the legal heirs of Sivabushanam now represented by D28 and D29 (D29 died represented by D45 to 48.

75. As far as issue No. 26 is concerned, The suit is partly allowed and a preliminary decree for partition is passed for dividing the schedule "A" to "D" properties in to three shares and allot 1/3 to the plaintiffs and the 4th defendant, now represented by D36 to D41 and also allot 1/8 share in another 1/3 share and the remaining to the other defendants as observed above. The other reliefs are dismissed. No costs.

 