



2026 INSC 757

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No. 12190 of 2025

Maragadham

...Appellant

versus

Periyaraja and others

...Respondents

J U D G M E N T

SANJAY KUMAR, J

1. Successful before the Trial Court, the appellant-plaintiff failed in appeal before the First Appellate Court and, thereafter, in second appeal before the Madras High Court. Ergo, she is before us.

2. Parties shall, hereinafter, be referred to as arrayed in the suit.

3. Original Suit No. 697 of 1996 was filed by Maragadham, the plaintiff, before the District Munsiff, Tirupattur, seeking declaration of her title; recovery of possession; and consequential reliefs in relation to certain extents of land in different survey numbers of Mallapalli Village, Tirupattur Taluk, Vellore District. She asserted title over the suit properties under the registered gift settlement deed, bearing Document No. 871 of 1990, dated

12.1990 executed in her favour by her grandfather, Kuttiyappa Goundar, defendant No. 1. She claimed that she was put in possession thereof but was divested of the same by defendant Nos. 1 to 4 in the year

1995. She alleged that defendant Nos. 1 to 4 then inducted Nandimalai, defendant No. 5, into possession to cultivate the suit lands. She asserted that the defendants failed to handover possession of the property to her despite her entreaties and, accordingly, instituted the suit seeking the reliefs as aforesaid.

4. Her claims were contested by Periyaraja and Muniammal, defendant Nos. 2 and 3, and their son, Vijayakumar, defendant No.4. Muniammal, defendant No.3, is none other than the daughter of Kuttiyappa Goundar, defendant No.1, through his first wife, Muniyammal. It was her case that her father, defendant No.1, had no rights over the suit properties and, therefore, the gift deed executed by him did not bind her. She also denied that possession was delivered to the plaintiff pursuant to the said gift deed. She asserted that the suit properties belonged to her mother, Muniyammal, by virtue of the sale deed dated 05.01.1949 and the gift settlement deed dated 03.01.1949, executed in her favour by her father, Ammakara Goundar. She stated that her mother died about 20 years prior to the institution of the suit and after her death, the property was in her possession and enjoyment. Kuttiyappa Goundar, defendant No. 1, and Nandimalai, defendant No. 5, did not enter appearance before the Trial Court and were set *ex parte*.

5. The Trial Court framed nine issues for consideration. The plaintiff examined herself as PW1 and examined her grandfather, Kuttiyappa

Goundar, as PW2. Gaundappan, one of the sons of Kuttiyappa Goundar, was examined by her as PW3. Exhibits A1 and A2 were marked by her. Exhibit A1 was a copy of the gift deed dated 13.12.1990 while Exhibit A2 was its original. DWs 1 and 2 were examined by the defendants. Muniammal, defendant No. 3, was examined as DW1. Exhibits B1 to B10 were marked on their behalf in evidence.

6. The Trial Court decreed the suit by its judgment dated 13.04.2006. Therein, opining that the suit properties devolved upon Kuttiyappa Goundar, defendant No. 1, upon the death of his wife, Muniyammal, and became his exclusive properties, the Trial Court held that he, thereupon, had absolute right to gift the same to his granddaughter to the exclusion of his other heirs.

7. Assailing the judgment and decree of the Trial Court, defendant Nos. 2 to 4 filed AS No. 77 of 2006 before the learned Sub Judge, Tirupattur, Vellore District. The First Appellate Court reversed the judgment and decree of the Trial Court by its judgment dated 16.04.2007. The First Appellate Court was of the opinion that, upon the death of Muniyammal, her properties devolved upon her husband, Kuttiyappa Goundar, and her daughter, Muniammal, in equal shares under the provisions of the Hindu Succession Act, 1956¹, and having only a half share in those properties, Kuttiyappa Goundar did not have the right to execute a gift deed in respect

¹ For short, 'the Act of 1956'

of the entire extent of the suit properties in favour of his granddaughter. The First Appellate Court was, therefore, of the opinion that the said gift deed was void and could not be acted upon. The Court further found that the recital therein to the effect that possession had been delivered pursuant thereto was also not borne out on facts. Holding so, the First Appellate Court *non suited* the plaintiff. It was, however, left open to Kuttiyappa Goundar, who had a half share in the suit properties, to claim his rights by way of a separate suit.

8. Aggrieved by this turn of events, the plaintiff filed Second Appeal No. 1393 of 2007 before the Madras High Court. A learned Judge framed two substantial questions of law therein, viz., whether the First Appellate Court was justified in drawing an adverse inference by reason of the fact that Kuttiyappa Goundar, defendant No.1, was examined as PW2; and whether the Courts below ought to have appreciated that, in a suit for declaration, the lesser relief of partition could be granted under Order VII Rule 7 of the Code of Civil Procedure, 1908 (CPC).

9. However, by judgment dated 09.06.2015, the Second Appeal was dismissed. Therein, a learned Judge answered both questions of law against the plaintiff and in favour of the defendants. The learned Judge concurred with the view taken by the First Appellate Court that, upon the death of Muniyammal, her husband, Kuttiyappa Goundar, and her daughter, Muniammal, jointly succeeded to her properties under Section

15 of the Act of 1956. The learned Judge was also in agreement with the view that, without the concurrence of Muniammal, the co-sharer, Kuttiyappa Goundar could not have gifted even his half share in the suit properties in favour of the plaintiff. As he had executed the gift deed dated 13.12.1990 in relation to the entire suit properties and as consent had not been taken from Muniammal, the co-sharer, the learned Judge affirmed the views of the First Appellate Court.

10. We may now note the admitted factual position. Kuttiyappa Goundar was married to Muniyammal and they had only one daughter, named Muniammal. The suit properties belonged to Muniyammal, having come to her from her father, Ammakara Goundar. Muniyammal died after the Act of 1956 came into effect. It is not clear whether Kuttiyappa Goundar remarried or only had a relationship with one Muthammal. It is, however, an admitted fact that she had one son and five daughters with Kuttiyappa Goundar. Muniammal, defendant No. 3, also admits this in her deposition before the Trial Court. It is not proved in absolute terms that Muthammal was married earlier to one Venkitachalam and had a son through that marriage, but the oral evidence hints to that effect. Gaundappan (PW3) spoke of the plaintiff, Maragadham, being the daughter of his elder brother. The inference that can be drawn therefrom is that Raja @ Munusamy, the father of Maragadham, the plaintiff, must have been the son of Muthammal with Venkitachalam, as it is an admitted fact that only

one son, apart from five daughters, were born to Kuttiyappa Goundar and Muthammal. Therefore, the status of Maragadham as Kuttiyappa Goundar's own granddaughter is open to question.

11. However, the same does not have any impact on the validity of the gift deed dated 13.12.1990 executed by Kuttiyappa Goundar in favour of Maragadham. The First Appellate Court and the High Court rightly held that the properties of Muniyammal, who admittedly died intestate, would devolve under Section 15(1)(a) of the Act of 1956 upon her only daughter and her husband in equal shares. Be it noted that this undivided half share in the hands of Kuttiyappa Goundar did not partake the character of 'coparcenary property' and belonged to him absolutely. He, therefore, had every right in law to gift or alienate the same to anyone, including a total stranger. There was no need for him to take the consent of the co-owner, Muniyammal, before parting with his undivided half share in the suit properties. The issue of such consent being obtained may have arisen had the property been coparcenary property, but not when the undivided half share was the absolute property of Kuttiyappa Goundar.

12. That being said, the fact remains that the properties remained joint and without partition by metes and bounds, the plaintiff could not have sought the relief of recovery of possession of that half share. Further, be it noted that her suit claim was that she was the absolute owner of the entire suit properties under the registered gift deed dated 13.12.1990 and

that she was put in possession. Her claim of ownership over the entire suit properties is not valid and tenable in law and her claim of being put in possession was not established on facts. In that regard, we may note that Order VII Rule 7 CPC authorizes the Court to grant a smaller relief than the larger relief claimed, if entitlement therefor is made out on facts. However, such discretion would not be available when a plaintiff sets up an altogether different case from the one ultimately found established on facts and in law by the Court. Presently, contrary to the plaintiff's claim of ownership over the suit properties in their entirety, we find that she has a right only over an undivided half share in the suit properties and no more. Without division of the property by metes and bounds, the question of the right of the plaintiff crystallising would not arise. However, as she sought declaration of title under the registered gift deed dated 13.12.1990, she would be entitled to such declaration only in respect of an undivided half share in the suit properties thereunder. She would necessarily have to seek partition of the suit properties by metes and bounds to actually claim her separate half share. Such relief of partition cannot be granted at this stage as the same is entirely alien to her suit claims. We, accordingly, leave it open to the plaintiff to take recourse to such measure by way of appropriate proceedings before the competent forum in accordance with law. However, as her right to a half share in the suit properties already stands decided and only the crystallisation of that right on the ground

remains to be determined by way of partition of the suit properties by metes and bounds, we would request the jurisdictional Court that entertains the plaintiff's suit for partition to decide the same as expeditiously as possible.

13. The appeal is, accordingly, allowed in part as indicated hereinabove and the judgments and decrees of the Courts below, to the extent they hold otherwise, are set aside. Decree to be drawn up accordingly.

The parties shall bear their own costs.

.....,J.
[SANJAY KUMAR]

.....,J.
[SANJEEV SACHDEVA]

**New Delhi;
July 29, 2026.**