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AS No. 295 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 15-07-2026

Delivered On : 31-07-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

AS No. 295 of 2016

K.Jagadeesan

S/o A.K.Kanagarathinam, 59/1, New St, Ammapet,
Salem 636 003 Salem Tk, And Dt.

..Appellant(s)

Vs

1. K.Sakthivel

S/o A.K.Kanagarathinam, Dhanalakshmi
Textiles K.M.Nagar Ayothipattinam Salem Tk
And Dt.

2. K.Senthilkumar

S/o A.K.Kanagarathinam, 88-mettu St,
Ammapet, Salem 636 003 Salem Tk And Dt.

3. S.Sumathi

W/o Sakthivel, No.208, K.Nnagar,
Ayothipattinam, Salem Tk And Dt.

4. S.Vithagi

W/o Senthilkumar, No.88, Mettur St,
Ammapet, Salem 636 003

..Respondent(s)

PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 09.03.2015 made in O.S.No.177 of 2010 on the file of the II Additional District Judge, Salem.



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For Appellant(s):

Mr. V.Raghavachari, Senior Advocate
for M/s.I.Abrar MD Abdullah

For Respondent(s):

Mr.C.Gandhi for R1 & R3
Mr.C.Jagadish for R2 and R4

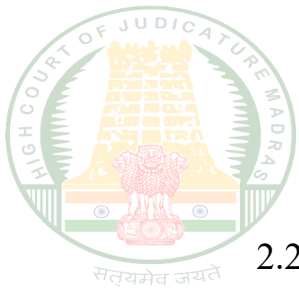
JUDGMENT

(Judgment of the Court was delivered by M.Jothiraman J.)

Unsuccessful plaintiff has preferred this Appeal Suit. The Suit is filed for Partition, Production of accounts and for Permanent Injunction. For the sake of convenience, the parties are referred hereunder as per their rankings in the Suit.

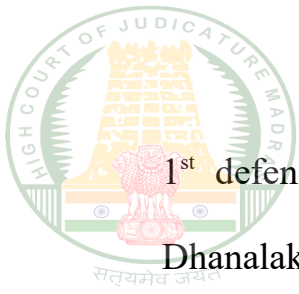
2. Brief case of the Plaintiff is as follows:

2.1. The plaintiff and the defendants are brothers. The suit schedule properties are acquired by the plaintiff on his hard labour manual earnings with the full fledged support and monitory help from one Dhanalakshmi. The defendants are with the helping hand of the plaintiff and associate in the business. The first item of the suit property has been purchased in the name of the plaintiff by his father Kanagarathinam, while he was minor, as a vacant land under the registered Sale Deed dated 11.09.1974. Thereafter, his father has put up construction over the same and brought the same as his dwelling house. The father of the plaintiff sustained huge loss in conducting chit business and finally became an insolvent. At that juncture, the creditors have accepted to have a composition deed in respect of the movable and immovable properties belongs to the family to discharge the debts due to the entire creditors.



2.2. The plaintiff stopped his studies at 8th standard and started to work for the livelihood of the family. The plaintiff at first has started to sell textile ready made cloths in the platforms at Salem Town and Ayothiyapattinam and also other places. The father of the plaintiff, after executing the composition deed, left the family. His father has no source of income and died in the year 2009. On the monetary support of the said Dhanalakshmi, the plaintiff was able to redeem the 1st item of the suit schedule properties. For the entire welfare of the family, the plaintiff has taken the sale deed from the compositors not only in the name of the plaintiff as well as in the joint name of the defendants although they are minors.

2.3. In the year 1990-1991, the plaintiff had started Cable Tv Network connection permit. The plaintiff also continues to do textile business and earned considerable sum and discharged the loans borrowed from outsiders. Out of earning from textile business and Cable Tv connections and also by borrowing loan from Cooperative Society by mortgaging the 1st item of the suit property, the plaintiff purchased 2nd item of the suit property on 12.07.1995, but the sale deed is in the name of the 1st defendant. After purchase, he constructed a building and started business in the name and style of Dhanalakshmi Textiles. At that time, the 1st defendant was working as a labour at the Kandagiri Spinning Mills for a meagre wages of Rs.600/- per month and he instructed the



1st defendant to resign his labour work and to look after the business of Dhanalakshmi Textiles at Ayothiyapattinam. The 2nd defendant has no capacity to purchase the 2nd item of the Suit property.

2.4. In the year 1995, the plaintiff purchased Road Rollers and started business of leading out in the name and style of Sri Dhanalakshmi Road Rollers. He developed business and increased the number of Road Rollers ratio to 10. In the year 2000, he indulged the 2nd defendant to look after the Road Rollers. He has also started a Road Roller Spare Parts stores in the name and style of Dhanalakshmi Motors Road Roller Spare Parts at Chitra Talkies Complex, D.D.Road, Salem. However, as the 2nd defendant is looking after the Road Roller Business, he has obtained licence in the name of 2nd defendant for the spare parts store. The defendants 1 and 2 are minors and are in school studies and there is no source of income for purchasing the suit schedule properties.

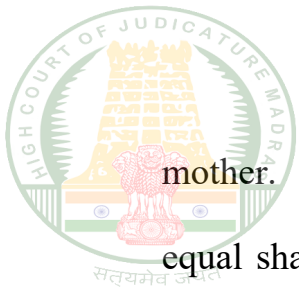
2.5. The 3rd defendant is the wife of the 1st defendant. The 4th defendant is the wife of the 2nd defendant. A part of the suit items were purchased in the name of the defendants 1 and 2 and also in the names of their wives i.e., the defendants 3 and 4 for the benefit and welfare of the joint family consisting of the plaintiff and the defendants 1 and 2 from the income of joint family. There was no hurdle between the plaintiff and the defendants in continuing their joint status in the business till the year 2008. In the year 2009, the plaintiff noticed



that the stocked materials are considerably sold out from the shop, instructed the 1st defendant to produce the accounts for the year 2009 for the textile shop business. But the 1st defendant has started to behave indiscriminately against the plaintiff and has refused to produce the accounts by saying evasive replies. In the year 2010, the plaintiff convened a mediation in the presence of mediators and demanded to the defendants for the general partition of the immovable properties. Hence the Suit.

3. The brief case of the 1st defendant is as follows:

3.1. The defendants and their mother toiled together by selling readymade garments in Ayothiapatnam daily Sandhai for their livelihood and saved money. The money saved from selling readymade garments with the financial help of one Jayachandran, son of Pethanna Chettiar of Gugai, who is running his shop under the name Dhanalakshmi Textiles, the plaintiff is able to get cable connection for television sets under the same name Dhanalakshmi cables. The plaintiff and his junior paternal uncle Chandrasekaran worked together and the cable connection were increased nearly to 2000 connections. From the efforts of all of them in readymade Garments sales, 1st item of the suit property is released. The plaintiff was receiving all, the property under cable Tv connections in his name in the year 1995. The 1st items of the suit property is kept as common. The plaintiff was residing in the upstairs and the 2nd defendant is residing in the ground floor of Item No.1 of the suit property along with his



mother. The plaintiff wants to divide the 1st item of the suit property into four equal shares and allot one such share to the plaintiff, the defendants and their

mother. The value of the 1st item is fixed at Rs.8,00,000/- by the Panchayatdars and the plaintiff has to get Rs.2,00,000/- towards his share. But the plaintiff has refused to receive the same. When the 2nd defendant and his family were away on tour, the plaintiff has opened the ground floor where the 2nd defendant is living and has taken two RC books and gold coins.

4. The 2nd defendant, in his written statement, has also placed similar pleadings of the 1st defendant.

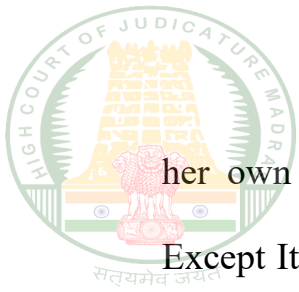
5. The 3rd defendant, in her written statement, has stated that the entire burden of the family has been lifted into the shoulders of the plaintiff and that the plaintiff has taken care of the family on his youngest age are false. The mother of the plaintiff Gandhimathi alone had taken the entire burden of the family and she shifted to Ayodhiyapattinam and was doing cloth business on the platform to bring up her children and saved money. Out of the income and monies saved from selling readymade garments in the daily shandy at Ayodhiyapattinam, 1st item of the suit property is released in the name of the plaintiff and the defendants 1 and 2. The plaintiff, the defendants 1 and 2 and their junior paternal uncle Chandrasekaran had divided in the year 199 and the 1st defendant is given the 2nd item of the suit property and the 2nd defendant is



given one road roller and 1st item of the suit property is kept as common for them. The plaintiff sold 1000 cable connections, certain cable connections were

given to the above said Chandrasekaran and retain the remaining cable connections for him. The defendants 1 and 3 started the textile business and developed the same with the help from the family of the 3rd defendant. The 3rd defendant with the help of her parents, purchased items 9, 15, 18 to 20, 22 and 24 of the amended suit properties from and out of her own funds and they are her separate properties. Except 1st item of the suit property, there is no other family property or joint family business among the plaintiff and the defendants 1 and 2. The 3rd defendant prayed for dismissal of the Suit.

6. Brief case of the 4th defendant as stated in her written statement was that the 4th defendant was married on 03.06.2001. The defendants 1 and 2 and mother of the plaintiff are living together in the ground floor. The plaintiff and his family members were living in the upstairs. The plaintiff has constructed a separate bungalow and now he alone is residing there. The 2nd defendant has improved the road roller business and developed. So also, the 1st defendant had developed his business. The cable profession run by the plaintiff is declined. Aggrieved by this, the plaintiff has come forward with this Suit with false allegations. To the knowledge of the 4th defendant, there is no common business among the plaintiff and the defendants 1 and 2. The 4th defendant has purchased item Nos.25 and 27 of the amended suit properties from and out of



her own funds after filing of the Suit and they are her separate properties.

Except Item No.1 of the suit property, there is no other joint family property or joint family business among the plaintiff and the defendants 1 and 2. The 4th defendant prays that the suit against her may be dismissed with regard to items 25 and 27 of the suit properties.

7. Based upon the above pleadings, the Court below has framed the following issues:

- 1. Whether the suit properties have been acquired by the plaintiffs and defendants jointly?*
- 2. Whether the plaintiff is entitled to 1/3rd share in the suit properties?*
- 3. Whether the plaintiff is entitled for the relief of partition of item nos.1 and 2 of the suit properties into 3 equal shares and allotment of one share?*
- 4. Whether the plaintiff is entitled to accounts and partition claimed in respect of item No.3, 4, 5 of the suit properties.*
- 5. Whether the plaintiff is entitled for the relief of mesne profits in respect of item No.3 to 5 of the suit property?*
- 6. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?*
- 7. To what relief, if any, the plaintiff is entitled ?*



Thereafter, the Court below has re-casted the issues on the ground that the plaintiff has filed a memo stating that the is not pressing the suit claim in respect of item Nos.7 to 11, 13 and 23 and on the basis of the above said memo, the issues were re-casted as under:

- 1. Whether the suit properties are jointly purchased by the plaintiff and the defendants?*
- 2. Whether the plaintiff is entitled to 1/3rd share in item No.1 to 6, 12, 14 to 22, 24 to 33 of the suit property?*
- 3. Whether the plaintiff is entitled to mesne profit in item No.3 to 5 of the suit property?*
- 4. Whether the plaintiff is entitled to the relief of permanent injunction not to alienate or encumber the suit property?*
- 5. To what relief, the plaintiff is entitled to?*

8. On the side of the plaintiff, the plaintiff examined himself as PW1, one Gurunathan was examined as PW2, one Manohar was examined as PW3. Exs.A1 to A64 were marked on the side of the plaintiff. On the side of the defendants, the 1st defendant Sakthivel was examined as DW1, one Senthilkumar examined himself as DW2, one Govindasamy examined himself as DW3, mother of the plaintiff and defendants 1 and 2, Gandhimathi was examined as DW4 and Exs.B1 to B3 were marked.



FINDINGS OF THE TRIAL COURT

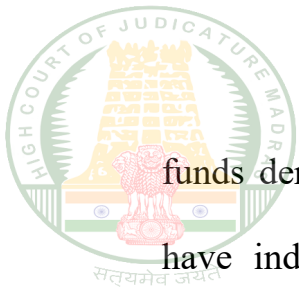
9. The Suit is barred for non-joinder of necessary parties. The mother of the plaintiff and the defendants 1 and 2, DW4 / Gandhimathi was not a party to the Suit and the plaintiff has not approached the Court with clean hands. The 2nd item of the suit schedule property stands in the name of the 1st defendant and he has purchased the same. The plaintiff did not assign reason that the road roller purchased by him was used by the 2nd defendant for running road roller business. Item No.6 of the suit property was purchased by the 1st defendant and it is a self acquired property of him and the same was not purchased as stated by the plaintiff in the plaint. The properties which are covered under Ex.A9, A10, A11, A20, A27, A28, A31, A32, A36, A46 are the self acquired property of the 1st defendant. The properties which are covered under Exs.A14, A22, A39, A42, A59, A63 are the self acquired property of the second defendant. The properties which are covered under Exs.A44 and A45 are the self acquired properties of the 3rd defendant. There is no sufficient evidence on record to show that the properties stands in the name of the 3rd and 4th defendant are purchased from the joint family funds. The Trial Court dismissed the suit in its entirety. Being aggrieved over the same, the plaintiff has preferred the present appeal.

10. The learned Senior Counsel appearing for the appellant / plaintiff would submit that the Court below has failed to consider the existence of the



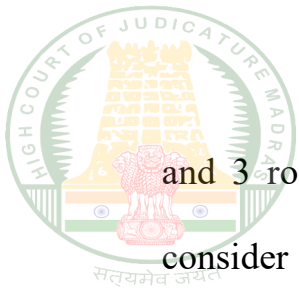
registered composition deed of the year 1978 in Ex.A1. Ex.A5 is the Challan for the payment of the amount of Cable Tv which stands in the name of the appellant, which would go to show that the financial status of the defendants 1 and 2 in the year 1992. Exs.A6 to A8 is the letter from the District Collector, which would go to show that the running of the Cable Tv business was done by the appellant during the period 1992 – 1996 and thereafter also. The defendants 1 and 2 have not produced any material to substantiating the availability of funds for the purchase of property described in Exs.A2, A9 and other properties purchased in the name of the respondents, whereas the same were purchased by the appellant, in and out of the funds from the family business of Cable Tv. The Court below has failed to consider that the appellant had discharged the loan taken from Cooperative Society through funds from the family business. Item No.1 of the suit property is joint family property and the same has been confirmed by the Court below and therefore, dismissing the suit in its entirety is unsustainable in law.

11. The learned Senior Counsel further would submit that the appellant / plaintiff alone discharged the loan taken from the cooperative society through the funds derived from family business and the same is evident under Exs.A19 – Discharged Mortgage Deed. The Court below failed to consider the fact that the business run by the defendants 1 and 2 namely Dhanalakshmi Textile business and Dhanalakshmi Roadroller Spares were initiated by the appellant from the



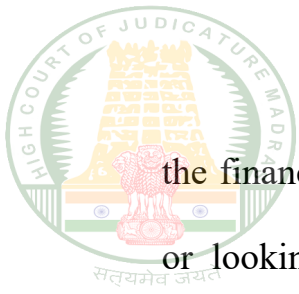
funds derived from the family business, since the defendants 1 and 2 did not have independent source of income nor they have produced any material evidencing the same. The evidence of PWs.1 to 3 clearly reveals that all the brothers were running the business together and it was the appellant, who was in-charge of the family business. PWs.2 and 3 had also deposed that the appellant was instrumental in the initiation of the other businesses and that the respondents 1 and 2 were assisting the appellant. DW1 in his evidence categorically deposed that he did not possess any funds in the year 1992, when the Cable Tv business was being managed only by the appellant. The Court below has not taken into consideration the admission made by DW1 with respect to the presence of the appellant, when the properties were purchased and he signed as a witness. The 1st defendant has not produced any material to show that how much funds were provided by his father-in-law for purchase of properties in his name and in the name of his wife. DW1 has also categorically admits that all the brother had contributed for the repayment of the loan in the year 1997.

12. The learned Senior Counsel further would submit that there is no evidence adduced by the defendants 1 and 2 with regard to the alleged 1995 oral partition. Mother of the plaintiff and the defendants 1 and 2 was examined as DW4, she categorically states that it was the appellant, who had redeemed the property which was mortgaged. She also deposed that immovable properties



and 3 road rollers were purchased together. The Court below has failed to consider the evidence of DW4 where it was stated that the plaintiff was responsible for the welfare of the family and for all the business. The Court below has not given any finding with regard to the alleged oral partition in the year 1995 and simply dismissed the Suit, is unsustainable in law.

13. *Per contra*, learned counsel appearing for the defendants 1 and 3 would submit that the defendants 1 and 2 along with their mother were jointly doing the business of selling readymade clothes. With the financial help of one Jayachandran, who is running his shop under the name Dhanalakshmi Textiles, the plaintiff was able to start Cable Tv business in the name and style of Dhanalakshmi cables. The defendants, plaintiff and the junior paternal uncle Chandrasekaran worked together and the cable connection were increased nearly to 2000 connections. From the efforts of all of them, in readymade garments sales 1st item of the suit property is released. The plaintiff was receiving all, the property under cable Tv connections and in his name, when a stage has come for division in the year 1995, the plaintiff and the defendants purchased 2nd item of the suit property in the name of the 1st defendant towards his share, one road roller was given to the 2nd defendant towards his share. The plaintiff took the cable Tv connections and sold about 1000 connections and utilised the money. The learned counsel would further submit that the 1st defendant started business in the name and style of Dhanalakshmi textiles, with



the financial assistance from his father -in-law. The 1st defendant and his wife or looking after the business, item 3 of the suit properties, is his separate business. The 3rd defendant with the help of her parents, purchased Item Nos.9, 15, 18 to 20, 22 and 24 of the amended suit properties from and out of her own funds and they are her separate properties. There is no infirmity in the judgment and decree of Court below.

14. The learned counsel appearing for the 2nd and 4th defendants would submit that the 2nd defendant has improved the road roller business and developed. So also, the 1st defendant had developed his textile business. The cable profession run by the plaintiff is declined. Aggrieved by that, the plaintiff has come forward with this Suit with false allegations. There is no common business among the plaintiff and the defendants 1 and 2. The 4th defendant has purchased item Nos.25 and 27 of the suit properties from and out of her own funds after filing of the Suit and they are her separate properties.

15. In the light of the above submissions made by either side, the following points arises for consideration:

- 1. Whether the suit properties are joint family properties of the plaintiff and the defendants 1 and 2?***
- 2. Whether the plaintiff is entitled to 1/3rd share in Item Nos.1 to 6, 12, 14 to 22, 24, 25, 27 to 33 of the suit schedule properties?***
- 3. What other relief, the plaintiff is entitled ?***

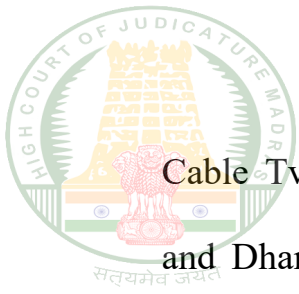


POINT NOS.1 TO 3

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16. It is not in dispute that the plaintiff is the elder son and the defendants 1 and 2 are younger sons of one Kanagarathinam and Gandhimadhi / DW4. Originally the 1st item of the suit property as vacant land has been purchased in the name of the plaintiff by the said Kanagarathinam, while plaintiff was minor, vide registered Sale Deed under 11.09.1974. Subsequently, his father had constructed a building therein. During the course of enjoyment, their father sustained huge loss in conducting chit business and became an insolvent. In order to meet out the situation, his father executed a registered composition deed dated 21.04.1978 under Ex.A1 in favour of creditors, at that time, the plaintiff and the defendants 1 and 2 are minors.

17. It is also not in dispute that after executing Ex.A1-Composition Deed, the said Kanagarathinam left the family and stayed out of the family. The said Kanagarathinam died in the year 2009. It is also not in dispute that at the young age, the plaintiff stopped his studies and started to work for the livelihood of the family. The plaintiff along with his mother / DW4 started selling textile readymade clothes in the platform at Salem Town and Ayothiyapattinam and also other places while doing business, by the plaintiff for his efforts to upgrade the family, one Dhanalakshmi has supported him. The plaintiff used to start the business only in the name and style of Dhanalakshmi such as Dhanalakshmi

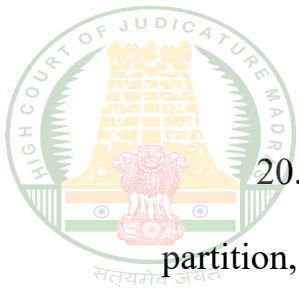


Cable Tv business, Dhanalakshmi Textile Shop, Dhanalakshmi Road Rollers and Dhanalakshmi Road Roller Spare parts shop. The plaintiff and the 2nd

defendant are in possession and enjoyment of Item No.1 of the suit schedule property.

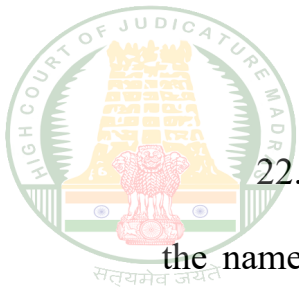
18. According to the 1st defendant, the defendants 1 & 2, plaintiff and their junior paternal uncle Chandrasekaran worked together and the cable Tv connections were increased nearly to 2000 connections. From the efforts of all of them in readymade garments sales, 1st item of the suit property is released. Further the plaintiff has purchased valuable items of immovable properties in his name, including Cable Tv business in his name. The plaintiff took the cable Tv connections and sold about 1000 connections and utilised the money. Further, the 1st defendant has started the business under the name and style as Dhanalakshmi Textiles at Ayothiapattinam with the financial assistance, his father-in-law borrowed money from Ammapet Urban Cooperative Bank and developed the business.

19. According to the 2nd defendant, he toiled together with his mother and developed the work in the road roller business, sold the old one and purchased 2 new road rollers and purchased the suit schedule property Item Nos.4 and 5 in the name and style of Dhanalakshmi motors and it is his individual business. The plaintiff has nothing to do with Item Nos. 2 to 5 of the suit schedule properties.



20. Admittedly, there is no dispute with regard to Suit Item No.1 for partition, dividing the same into three equal shares as claimed by the plaintiff, which is also evident from Ex.A2 dated 28.07.1988, stands in the name of the plaintiff, defendants 1 and 2 represented by their mother.

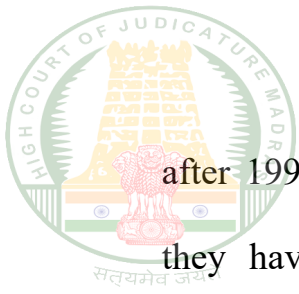
21. It is seen from records, Ex.A9- Sale Deed dated 12.07.1995 pertains to Item No.2 of the suit schedule property which is a vacant land stands in the name of the 1st defendant. According to the 1st defendant, when a stage has come for division in the year 1995, the plaintiff and the defendants 1 and 2 have purchased 2nd item of the suit property in the name of the 1st defendant towards his share. On perusal of Ex.A9, there is no such recitals are found in the Sale Deed that the plaintiff and the defendants 1 and 2 purchased the property for the share of the 1st defendant. Therefore, the contention of the 1st defendant is not acceptable one for the simple reason that as per Ex.A18, the 1st item of the suit property was mortgaged on 19.01.1995 jointly by the plaintiff, defendants 1 and 2 and their mother / DW4 in favour of the Ammapet Cooperative Society, Salem, thereafter within 6 months, Ex.A9- Sale Deed dated 12.07.1995 came into existence in the name of the 1st defendant. Hence, it is clear that mortgaging Suit Item No.1 jointly by the parties, the Suit Item No.2 came to be purchased in the name of the 1st defendant.



22. It is relevant to note that Ex.A11 – Registration Certificate issued in the name of Dhanalakshmi Textiles is in respect of 3rd item of suit property, which stands in the name of the 1st defendant.

23. Item No.4 of the suit schedule property is the “Sri Dhanalakshmi Road Rollers” business. As per Ex.A12, Sale Letter dated 10.05.1995 for purchase of roadrollers from one Vijaya Bharathi in the name of the plaintiff. Item No.5 is the Dhanalakshmi Road Roller Spare parts business. According to the 2nd defendant, he is managing the said business.

24. DW1 / 1st defendant, in his cross examination, has deposed that the plaintiff has instructed him to look after the textile shop business. The plaintiff has also allotted one roadroller to his brother, namely the 2nd defendant. He admits that after 1995, they have not partitioned the income derived out of the roadroller business and textile business, into 3 equal shares and utilizing the income derived out of the said business, they have purchased properties independently in their names. He also admits that he has not produced any document to show that he was working in Kandagiri mill. He further admits that the marriage of their sister has been performed by them jointly and they have been given 15 sovereigns of gold during the course of marriage. He deposed that in the year 1995, there was a oral partition held between the plaintiff and the defendants 1 and 2. From the evidence of DW1, it is clear that



after 1995, the income derived from roadroller business and textile business, they have not apportioned the same and they have purchased properties independently in their names.

25. The evidence of DW1 also reveals that they have jointly obtained loan on 3 occasions from the bank. According to DW1, in the year 1995 itself there was a partition held between the plaintiff and the defendants 1 and 2. It is relevant to note that it is not the case of the 1st defendant that in the year 1995, there was an oral partition held between the plaintiff and the defendants 1 and 2 in the presence of panchayatdars.

26. In order to prove the plea of oral partition held in the year 1995, the defendants have examined DW3 – Govindasamy. DW3, in his chief examination, stated that the 1st defendant was working in a mill and he was contributing to his family. He has also stated that the plaintiff runs cable Tv connections with the assistance of the defendants 1 and 2 along with his paternal uncle. Twenty years prior, the plaintiff has set up textile shop in Ayothiyapattinam and gave to the 1st defendant. Similarly, plaintiff has given roadrollers to the 2nd defendant. The plaintiff has also given 200 cable Tv connections to his paternal uncle and the remaining cable Tv connections were retained by the plaintiff as his share. Thereafter, they have been independently doing their business. DW3, in his cross examination, categorically admits that



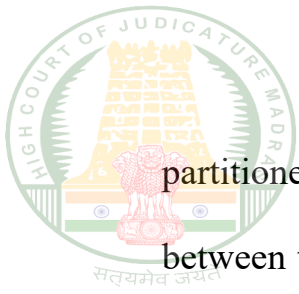
prior to 20 years, he did not know what are all the properties were allotted to parties under oral partition and also he did not know the value of the properties which said to have been allotted to the parties prior to 20 years. From the evidence of DW3, it is clear that he has not specifically stated in his chief examination or in cross examination about the specific date and place when the alleged oral partition took place between the parties and what are all the properties allotted to parties and the possession and enjoyment of respective shares. The evidence of DW3 alone is not sufficient to prove the alleged oral partition, in the absence of revenue records / other documents came into existence in pursuance of the alleged oral partition.

27. It is relevant to note that as per Ex.A18, the 1st item of the suit property was mortgaged in favour of the Cooperative Society on 19.01.1995 and discharged the same on 13.07.1996, which is evident from Ex.A52 – Discharge Receipt dated 20.03.2013. Thereafter, as per Ex.A19, again the 1st item of the suit property was mortgaged in favour of the Cooperative Society on 02.07.1997 and discharged the same on 25.01.1999, which is evident from Ex.A53- Discharge Receipt dated 20.03.2013. A perusal of Exs.A18, A19, A52 and A53 would go to show that the plaintiff, defendants 1 and 2 and their mother / DW4 were jointly mortgaged the property in favour of cooperative society and thereafter they have discharged their debts jointly in the year 2013.



28. It is also relevant to note that as per Ex.A54, 2nd item of the suit property was mortgaged in favour of the Cooperative Society on 22.10.1997 jointly by the parties and discharged the debt jointly on 17.11.2011, which is evident from Ex.A55 – Discharge Receipt.

29. DW4, who is the mother of the plaintiff and the defendants 1 and 2 in their cross examination deposed that the plaintiff was running textile shop and Cable Tv business and the plaintiff alone performed the marriage of her daughter and her two younger sons. DW4 admits that originally the plaintiff alone was doing textile business and thereafter he started Cable Tv business. She admits that the plaintiff used to purchase clothes from one Dhanalakshmi and the properties were purchased while they were living jointly. At the time of purchase of roadrollers also, they were residing jointly. She admits that her sons were jointly residing and she could not say that the dispute arose between her sons. She deposed that the plaintiff assigned textile business to the 1st defendant and given road roller to the 2nd defendant. She also admits that the properties that were purchased jointly by her sons were not divided so far. She also admits that the properties were purchased jointly and on her efforts. From the evidence of DW4, originally plaintiff has started textile business and thereafter, he has started cable Tv business in which the defendants 1 and 2 assisted the plaintiff to develop their textile business, cable Tv business, road roller business and selling roadroller spare parts which also shows that the properties were not



partitioned. DW4 has not spoken anything about the alleged oral partition held between the parties in the year 1995. Though the 1st defendant has vehemently contended that his Father-in-Law has contributed to develop his business relating to Item No.3 i.e., Dhanalakshmi textiles, whereas he has not produced any document to show that his father-in-law was having means to assist him in his business. The 1st defendant also not chosen to examine any independent witness in this regard.

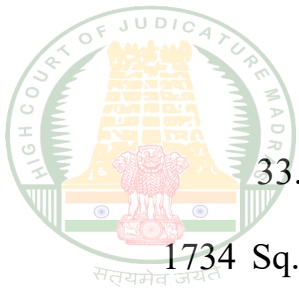
30. It is the evidence of DW2 in his cross examination that in the year 1995, there was a partition held between the parties, but he could not remember the date and month. He did not know what are all the properties that were jointly mortgaged and loan availed jointly. He admits that the plaintiff was running Cable Tv business, out of which the plaintiff earned lot of income. The plaintiff has also contributed the income to their family. He deposed that in the year 2004, he started roadroller business and he has spent 2.5 lakhs. He admits that he was assisting the plaintiff to run cable Tv business. He admits that the plaintiff has signed as witness in the properties purchased in his name in the year 1997. He admits that initially textile business was started and thereafter cable Tv business was started. From the evidence of DW2, it is clear that Suit Item Nos.1 to 5 are not partitioned as contended by the defendants 1 and 2.



31. It is pertinent to note that admittedly, there is no dispute with regard to suit Item No.1 of the property to divide the same as claimed by the plaintiff.

With regard to Suit Item Nos.2 and 6 stands in the name of the 1st defendant under Ex.A9 dated 12.01.1995, Ex.A21 dated 15.09.1997 respectively and Suit Item No.3, being run by the 1st defendant and Suit Item Nos.4 and 5 being run by the 2nd defendant. As per the admissions made by DW1, DW2 and DW4, Suit Item Nos.2 and 6 were purchased in the year 1997 while they were doing business jointly. Therefore, Suit Item Nos.2 to 6 were not partitioned and therefore, the same items i.e., Item Nos.1 to 6 are available for partition as claimed by the plaintiff.

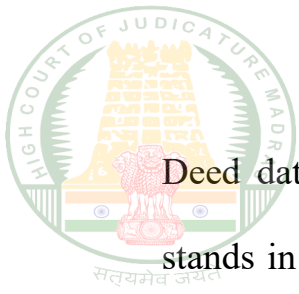
32. It is relevant to note that Item Nos.7, 8, 9, 11, 13 = 16 under Ex.A27 dated 20.02.2004, Ex.A28 dated 23.03.2004, Ex.A29 dated 07.06.2004, Ex.A31 dated 02.12.2004, Ex.A33 dated 20.03.2006 and Ex.A36 dated 20.03.2006 are Sale Agreements respectively entered between the 1st defendant with 3rd parties in the year 2004 and 2006. Similarly, Suit Item Nos.10 is the Sale Agreement dated 29.11.2004 between the 3rd defendant and one Vennila under Ex.A30 in respect of 652.5 Sq.Ft of vacant land. Suit Item No.23 is the Sale Agreement dated 27.09.2004 under Ex.A26 executed between the 3rd defendant and one Sadaiyan in respect of 1290.5 Sq.ft. of vacant land. The plaintiff has given up for seeking the relief in respect of Suit Item Nos.7 to 11, 13 = 16 and 23. Therefore, the aforesaid items are not available for partition.



33. It is not in dispute that Suit Item No.26, vacant land admeasuring 1734 Sq.ft sold by DW4 / Gandhimathi to one Ramachandran under Ex.A38 Sale Deed dated 16.03.20017, which is not available for partition.

34. Originally the Suit was filed on 16.07.2010. Suit Item Nos.25 and 27 are purchased after filing of the suit. Suit Item No.21 was purchased in the name of the 1st defendant just a day prior to filing of the suit i.e., on 15.07.2010. Item No.25 is the vacant land measuring 5232 Sq.Ft plus 3270 Sq.ft purchased in the name of the 4th defendant from Jayagopal and one Vijayalakshmi under ExA45 – Sale Deed dated 04.08.2010. Item No.27 is a vacant land measuring 2400 sq.ft. Purchased in the name of the 4th defendant from Gopalakrishnan, possessed and enjoyed by the 4th defendant under Ex.A44 – Sale Deed dated 22.10.2010. Item Nos.25 & 27 stands in the name of the 4th defendant, who is the wife of the 2nd defendant. The plaintiff has failed to substantiate with acceptable evidence that out of the income derived from textile and cable Tv business, properties were purchased in the name of the 4th defendant in the year 2010 and therefore, Item Nos.21, 25 and 27 are not available for partition.

35. It is also pertinent to mention that Suit Item No.12 is a vacant land measuring 1660 Sq.Ft stands in the name of the 1st defendant under Ex.A32 Sale Deed dated 02.05.2005. Suit Item No.14 is a building measuring 520 Sq.ft purchased in the name of the 1st defendant from one Aleem under Ex.A34 Sale

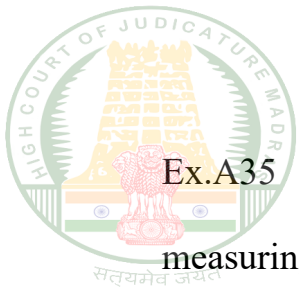


Deed dated 19.04.2006. Suit Item No.17 vacant land measuring 1050 sq.ft. stands in the name of the 1st defendant was purchased from one Chinnaponnau under Ex.A37 – Sale Deed dated 12.02.2008.

36. It is to be noted that Suit Item No.28 stands in the name of the 2nd defendant under Ex.A39- Sale Deed dated 16.06.2008. Item No.29 is a vacant land measuring 1025 sq.ft. stands in the name of the 2nd defendant under Ex.A22 dated 15.09.1997. Item No.30 is a vacant land measuring 1185.5 sq.ft. Purchased in the name of the 2nd defendant from Thirugnanasambandham under Ex.A42 Sale Deed dated 11.12.2009.

37. It is also to be noted that Suit Item No.31 is a vacant land measuring 1804 sq.ft purchased in the name of the plaintiff from Radhakrishnan under Ex.A47 Sale Deed dated 27.01.2010. Item No.32 is a vacant land measuring 1275 Sq.ft purchased in the name of the plaintiff from one Visalatchi under Ex.A48- Sale Deed dated 26.04.2010. Item No.33 is a vacant land measuring 1800 Sq.ft purchased in the name of the plaintiff from one Lakshmi under Ex.A23-Sale Deed dated 13.07.1998. Suit Item Nos. 12, 14, 17, 28 to 33 are available for partition.

38. It is pertinent to note that Suit Item No.15 is a vacant land measuring 952 Sq.ft purchased in the name of the 3rd defendant from one Venugopal under



Ex.A35 Sale Deed dated 04.04.2007. Suit Item No.18 is a vacant land measuring 1125 sq.ft purchased in the name of the 3rd defendant from one Natarajan vide Ex.A40 Sale Deed dated 11.02.2009. Suit Item No.19 is a vacant land measuring 900 sq.ft purchased in the name of the 3rd defendant from one Ramadoss vide Ex.A43-Sale Deed dated 28.04.2010. Suit Item No.20 is a vacant land measuring 900 sq.ft purchased in the name of the 3rd defendant from one Govindasamy under Ex.A41-Sale Deed dated 04.11.2009. Item No.22 is a vacant land measuring 1125 Sq.ft purchased in the name of the 3rd defendant from one Kaliappan, Sakthivel under Ex.A24 – Sale Deed dated 21.01.2004. Item No.24 is a vacant land measuring 1800 Sq.ft purchased in the name of the 3rd defendant from Anandagopal under Ex.A25-Sale Deed dated 01.12.2004.

39. The plaintiff has failed to establish his case that the properties stands in the name of the 3rd defendant were purchased out of his income derived from joint family business. Therefore, the properties stands in the name of the 3rd defendant viz., Item Nos.15, 18, 19, 20, 22 and 24 are not available for partition.



PROPERTIES IN THE NAME OF PLAINTIFF WHICH ARE AVAILABLE FOR PARTITION:

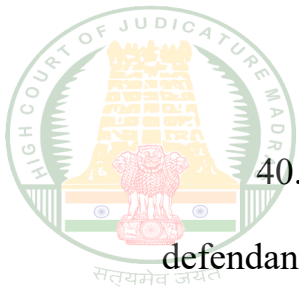
S.NO.	ITEM NUMBERS	EXHIBITS THOSE ITEMS COVERED UNDER
1	31	Ex A47 - Sale deed dated 27.01.2010
2	32	Ex A48 - Sale deed dated 26.04.2010
3	33	Ex A23 - Sale deed dated 13.07.1998

PROPERTIES IN THE NAME OF DEFENDANT 1 WHICH ARE AVAILABLE FOR PARTITION:

S.NO.	ITEM NUMBERS	EXHIBITS THOSE ITEMS COVERED UNDER
1	2	Ex A9 - Sale deed dated 12.07.1995 Ex A54 - Co-operative society Mortgage deed dated 22.10.1997
2	6	Ex A21 - Sale deed dated 15.09.1997
3	12	Ex A32 - Sale deed dated 02.05.2005
4	14	Ex A34 - sale deed dated 19.04.2006
5	17	Ex A37 - Sale deed dated 12.02.2008

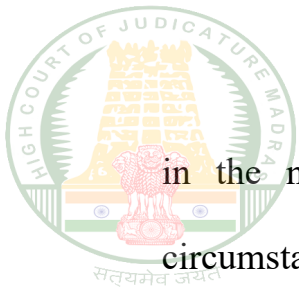
PROPERTIES IN THE NAME OF DEFENDANT 2 WHICH ARE AVAILABLE FOR PARTITION:

S.NO.	ITEM NUMBERS	EXHIBITS THOSE ITEMS COVERED UNDER
1	28	Ex A39 - Sale deed dated 16.06.2008
2	29	Ex A22 - Sale deed dated 15.09.1997
3	30	Ex A42 - Sale deed dated 11.12.2009



40. From the evidence of PW1, DW1 to DW4, shows that the plaintiff, defendants 1 and 2 and their mother / DW4, have jointly mortgaged the suit Item No.1 of the property in favour of cooperative society in the year 1995 and in the year 1997. Thereafter, they have discharged the same in the year 1996 and in the year 1999, which is evident from Ex.A18 and Ex.A19. Further also shows that in the year 2013, they have been jointly received the discharge receipts under Ex.A52 and Ex.A53. Hence, it is clear that the parties are jointly mortgaged and purchased the properties separately in the name of the plaintiff and defendants 1 and 2. It also shows as per conduct of the parties that without partitioning the properties, they have been enjoying the same, as per their convenience. The plea of oral partition held in the year 1995 has not been proved by the defendants with cogent, acceptable and reliable evidence. In view of the above, dismissing the Suit is unsustainable in law.

41. It is to be reiterated that the Suit Item Nos.31, 32 & 33 relating to Exs.A47, A48 & A23 vide Sale Deeds dated 27.01.2010, 26.04.2010 & 13.07.1998 respectively, stands in the name of the plaintiff are available for partition. Suit Item Nos.2, 6, 12, 14 & 17 relating to Exs.A9, A21, A32, A34 & A37 vide Sale Deeds dated 12.07.1995, 15.09.1997, 02.05.2005, 19.04.2006 & 12.02.2008 respectively stands in the name of the 1st defendant are available for partition. Likewise, Suit Item Nos.28, 29 & 30 relating to Exs.A39, A22 & A42 vide Sale Deeds dated 16.06.2008, 15.09.1997 & 11.12.2009 respectively stands



in the name of the 2nd defendant are available for partition. In such circumstances, the plaintiff is entitled to 1/3rd share in respect of aforesaid suit item numbers. The judgment and decree passed by the Trial Court warrants interference and the same is liable to be set aside. ***The point Nos. 1 to 3 are answered accordingly.***

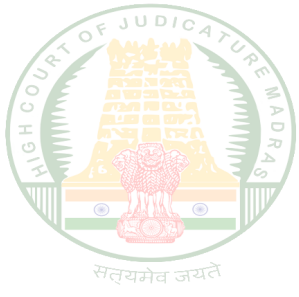
42. In the light of the above reasoning, this Appeal Suit stands partly allowed and the Judgment and Decree dated 09.03.2015 made in O.S.No.177 of 2010 on the file of the II Additional District Judge, Salem is set aside. A preliminary decree is passed to the effect that the plaintiff is entitled to 1/3rd share in respect of Suit Item Nos.1 to 6, 12, 14, 17, 28 to 33. In respect of other suit items, the plaintiff is not entitled for partition. Considering the relationship between the parties, there shall be no order as to cost.

(N.S.K.,J.) (M.J.R.,J.)
31-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
Jvm

To
1.II Additional District Judge,
Salem.

2.The Section Officer,
VR Section, High Court, Madras.



WEB COPY

AS No. 295 of 2



**N.SATHISH KUMAR J.
AND
M.JOTHIRAMAN J.**

Jvm

**Judgment in
AS No. 295 of 2016**

31-07-2026