

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
09.03.2026PRONOUNCED ON
08.07.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS Nos. 958 of 2015 and 59 of 2016

A.S.No.958 of 2015

Rani

W/o Subramani, Vengapatti, Mallur Vazhi, Salem

Dt.

..Appellant(s)

Vs

1. P.Muthukali
2. Periyammal
3. Nagarajan (died)
4. Valli
5. Kalaiselvi
6. Pothumani
7. Boopathi
8. Mohana

*R3 Died, RR4 To 8 are brought on record as
Lrs Of Deceased 3rd Respondent, Viz,
Nagarajan, vide order of Court dated
06/06/2023 made in As.No.958/2015*

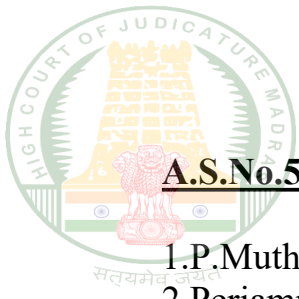
..Respondent(s)

For Appellant(s):

Mr.R.Vivekanadan
for MR.B.Ravi

For Respondent(s):

Mr.S.Arjun
Mr.S.Kaithamalai Kumaran for R1
R2 & R3 - Died
Mr.C. Jagadish for RR4 to 8



A.S.No.59 of 2016

1.P.Muthukali
2.Periammal

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..Appellant(s)

Vs

1.Rani
2.Nagarajan (Died)
3.Valli
4. Kalaiselvi
5. PothumaniM
6. Boopathi
7. Ms.Mohana

... Respondent(s)

R2 Died, RR3 to 7 are brought on record as Lrs Of Deceased 2nd Respondent, Viz, Nagarajan, vide order of Court dated 06/06/2023 made in As.No.59/2016

COMMON PRAYER:- First Appeal filed under Section 96 of Civil Procedure Code, against the judgment and decree passed by the learned Additional District Court-III, Salem, dated 29.06.2015 made in O.S.No. 159 of 2009.

In A.S.No.958 of 2015:-

For Appellant(s):	Mr.R.Vivekanandan for Mr.B.Ravi
For Respondent(s):	Mr.S.Arjun Mr.S.Kaithamalai Kumaran for R1
	RR2 & 3 - Died Mr.C. Jagadish for RR4 to 8

In A.S.No.59 of 2016:-

For Appellant(s):	Mr.S.Arjun Mr.S.Kaithamalai Kumaran
For Respondent(s):	R1 – (served) No appearance R2 - Died Mr.C. Jagadish for RR3 to 7



COMMON JUDGMENT

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The present first appeals have been filed challenging the decree and judgement dated 29.06.2015 made in the O.S.No.159 of 2009 on the file of the Learned Additional District Judge, Salem.

2. The suit was instituted seeking the relief of partition and separate possession of plaintiffs shares in the suit schedule properties, along with a consequential relief of permanent injunction restraining the defendants from alienating or encumbering the same. The plaintiffs are P. Muthukkali and Periyammal, are the son and widow of the deceased Periyasami. The first defendant, Rani, is the daughter of Periyasami through his first wife Palaniammal, while the second defendant, Nagarajan, is the brother of the said Periyasami.

3. The case of the plaintiffs, is that the suit schedule properties are ancestral joint family properties originally belonging to one Chinnappa Gounder, who had two sons, namely Periyasami and the second defendant Nagarajan. It is pleaded that upon the death of Chinnappa Gounder and his wife, the properties continued to remain joint in the hands of the surviving coparceners and their legal heirs. The plaintiffs further aver that the first plaintiff is the legitimate son of Periyasami and that the second plaintiff is his



legally wedded wife, the marriage having been contracted after a customary divorce between Periyasami and his first wife Palaniammal.

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4. It is further contended that no partition had taken place among the family members and that the parties continue to be in joint possession and enjoyment of the suit properties. The plaintiffs assert that they are entitled to a total share of 5/12 in the suit properties, comprising 4/12 share to the first plaintiff and 1/12 share to the second plaintiff. The plaintiffs claim that late Periyasami, after allegedly divorcing his first wife Palaniammal according to Vanniyar community custom, married the second plaintiff Periyammal, through whom the first plaintiff Muthukali was born. Following the intestate deaths of Periyasamy in 1988 and Chinnappa Gounder in 1996, the plaintiffs contend that they succeeded to Periyasami's share in the undivided joint family properties and sought partition and injunction after the defendants allegedly refused amicable partition.

5. The first defendant denies the alleged customary divorce and the validity of the marriage between Periyasami and the second plaintiff, contending that she alone is the lawful daughter and sole legal heir of Periyasami through his legally wedded wife Palaniammal. She further asserts that the plaintiffs are neither legal heirs nor in joint possession of the suit



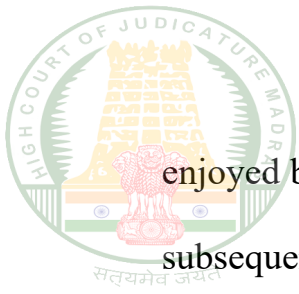
properties and therefore not entitled to any share.

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6. The second defendant contends that an oral partition had already taken place about 40 years ago between Periyasami and himself, under which the Kammalapatti properties were allotted to him and the Vengampatti properties to Periyasami. He claims exclusive possession and enjoyment of the properties allotted to him and denies the plaintiffs' and 1st defendant's entitlement to any share therein.

7. He further states that Items I and III of the suit properties were allotted to Periyasami and the Item II suit property alone was allotted to him and states that there seems to be a dispute between the plaintiffs and first defendant with regard to the enjoyment of the suit schedule Items I & III and as to the legal heirs. He states he has been made a scape goat for the dispute between the plaintiffs and the first defendant.

8. On consideration of the issues that have been framed, the Trial Court had held that the customary divorce as claimed by the plaintiffs stood proved and held that the plaintiffs were entitled to the share in the Item Nos.1 & 3 of the suit scheduled property as claimed by them. But however, the Trial Court had rejected their claim for partition in Item No.2 of the suit scheduled property by accepting the contention of the second defendant that the property had been



enjoyed by him based upon a partition that had happened 40 years back and has subsequently granted the permanent injunction in respect of the properties which had been allotted to the plaintiffs. Aggrieved against the partial grant of decree, the plaintiffs had approached this Court in an Appeal suit in A.S.No.59 of 2016 and the first defendant being aggrieved against the grant of decree in respect of Item Nos.1 & 3 is in an Appeal in A.S.No.958 of 2015.

9. Heard Mr.R.Vivekanadan, learned counsel appearing for the appellants in A.S.No.958 fo 2015 and for first respondent in A.S.No.59 of 2016, Mr.Arjun, learned counsel for the appellants in A.S.No.59 of 2016 and for the first respondent in A.S.No.958 of 2015 and Mr.C.Jagadish (Jayaram), learned counsel appearing on behalf of the remaining respondents. In view of the appeals that arise from a judgment and decree filed by the Counter parties, the parties are referred to hereinafter as per the ranks in the suits.

10. Learned counsel appearing for the first defendant would contend at the outset that there is no such customary practice of divorce as claimed by the plaintiffs. He would submit that a perusal of the plaint would itself indicate that there were no averments relating to the customary divorce as alleged between the first defendant's mother and Periyasami and that apart there was no pleadings with regard to the date of marriage between the second plaintiff and the deceased Periyasami except for a bald averment that the divorce of the



deceased Periyasami and Palaniammal had taken place in a customary manner and that the second plaintiff thereafter got married to the deceased Periyasami.

He would further submit that even accepting the claim of the plaintiffs of such a customary divorce after the advent of the Hindu Marriage Act, the marriage could only come to an end only under the Provisions of the Act and not otherwise.

11. In that context, he had placed reliance upon the Section 7 of the Hindu Marriage Act, 1955 and the decisions reported in *AIR 2002 SC 971*, *2025 LW DELHI 1627*, *AIR 1965 SC 1564*, *AIR 1966 SC 614* and *2024 INSC 355*.

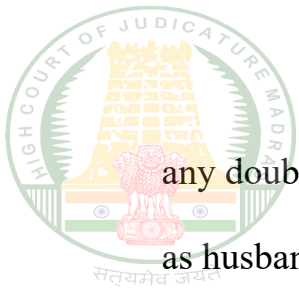
12. He would further submit that various other documents such as electoral records, ration cards and identity documents cannot constitute a proof for valid marriage or succession. He would further submit that the present suit was not at all maintainable without a declaration of legal heirship as required under law and further that the suit itself is barred by law of limitation as the same had been instituted nearly 20 years after the death of Periyasami under whom the plaintiffs claim title. He would further submit that the suit as framed itself is bad as there is no prayer for recovery of possession, as admittedly, after the death of Periyasami, the first defendant was in sole absolute possession and enjoyment of the Item Nos.1 & 3 scheduled properties. In that context, he seeks indulgence of this Court.



13. Countering his arguments, learned counsel appearing for the plaintiffs submits that the existence of the practice of customary divorce in the community to which the parties belong has been established through oral evidence of PW3 & PW4. That apart, DW4 who was examined on the side of the defendants had also deposed the existence of customary practice of divorce as deposed by the aforesaid witnesses, which had not been discredited in their cross-examination. Further drawing attention to Ex.A7, which is the marriage invitation of the first defendant's son, he would submit that the first defendant herself had voluntarily in the said invitation shown the names of her half blood brothers who were born to Palaniammal after her marriage with Rangasamy.

14. He had also relied upon Ex.A8, which is the death certificate of Palaniammal wherein her husband's name has been shown as Rangasamy and not Periyasami. The aforesaid documents had also remained uncontested and hence had been abundantly proved that there had been a customary divorce between Periyasami and Palaniammal, after which Palaniammal had married Rangasamy.

15. He had also placed reliance upon Section 29(2) of the Hindu Marriage Act, 1955 which protects the right of customary divorce. He would further submit that assuming the claim of the first defendant to be a valid contention in light of the various other exhibits it had been categorically established without



any doubt that the second plaintiff had been living with the deceased Periyasami as husband and wife and that the first plaintiff was born through them.

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16. In that context, he had also relied upon the judgement of this Court reported in **2010 2 CTC 632** to contend that in the event of co-habitation which is recognised by the society that they had been living as husband and wife, the the *onus* is on the person rebutting the same to substantiate that there was no marriage.

17. In that context, he would submit that the first defendant had failed to substantiate in any manner that the deceased Periyasami and the second plaintiff had not lived as husband and wife and the first plaintiff was not born to them. In that context, he would also take this Court to the evidence of PW2, 3 & 4 and DW2 & 4 to contend that the second plaintiff and the Periyasami lived as husband and wife and the first plaintiff was born to them.

18. Rebutting the claim for the second defendant that there had been a partition as early as 40 years before, he would submit that Item No.2 scheduled property still stood in the name of the father of the second defendant and the deceased Periyasami and in that regard, the claim made by the second defendant that the property had been partitioned 40 years back that too during the life time



of Chinnapa Gounder, who is the grandfather of the first plaintiff and the father of second defendant itself would have to fall.

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19. That apart, he would submit that the second defendant had been given a lion share in the said partition and Periasami was given only a miniscule share, even assuming that Item Nos.1 & 3 scheduled properties had been given to him which is much lesser than Item No.2 scheduled property. He would submit that mere possession or payment of this kist not prove exclusive title upon parties.

20. Mr.C.Jagadish, learned counsel appearing for the legal heirs of the deceased second defendant had placed on record various exhibits to substantiate that there had been a partition between the deceased Periyasami and second defendant even during the lifetime of Chinnapa Gounder, their father. He would submit that even though the Court below had given a finding that certain activities in the land cannot be conclusively driven to bring home to a conclusion that there has been a partition based on the Revenue Records that have been produced as various exhibits, but had come to a conclusion that the second defendant had been in possession of the suit property in his rights justifying the claim of partition between Periyasami and second defendant.



21. He would submit that even during the lifetime of Periyasami or Chinnapa Gounder, the exclusive possession of the second defendant is reflected in the Revenue Records which had not been objected, would itself establish that there had been a partition in the family, upon which the second defendant had been in exclusive possession and enjoyment of the Item No.2 of the suit scheduled property and in that aspect, he would submit that there is no error in the finding and the conclusion of the Trial Court that there was a partition between Periyasami and the second defendant and the Court was also right in rejecting the claim for partition in respect of Item No.2 of the suit scheduled property.

22. I have considered the submissions made by the learned counsels appearing for their respective parties and perused the materials available on record.

23. The following issues are framed;

(a) Whether the customary divorce between Palaniammal and Palanisamy is valid?

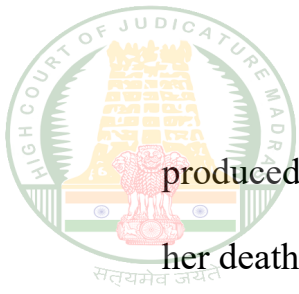
(b) Whether the marriage between the Periyasamy and second plaintiff had been proved?

(c) Whether the plaintiffs were entitled to the suit claim in respect of the suit scheduled properties?

**ISSUES Nos.(a) & (b):-**

24. It is the admitted case that the deceased Periyasmi had been originally married to one Palaniammal through whom the first defendant was born. However, it is claimed that there has been a customary divorce of the said marriage after which the second plaintiff got married to the said Periyasami and through the said marriage, the first plaintiff was born. Customary divorce was sought to be negated by the first defendant on the contention that after coming into force of the Hindu Marriage Act, the customary divorce cannot be a valid mode of divorce and in that regard, the alleged marriage of the second plaintiff with the deceased Periyasami to be an invalid marriage. Apart from contesting the claim that there was no marriage in any manner in the eye of law by which the first plaintiff was also born.

25. PW 3 & 4 and DW4 had infact spoken about the practice of the customary divorce and also supported the claim of the plaintiffs that the second plaintiff was married to 1st defendant's father after the customary divorce with his first wife Palaniammal. Even assuming that the said customary divorce was opposed by law and public policy, it is to be noted that Ex.A7, wedding invitation of the first defendant's son, Ex.P8, the death certificate of Palaniammal shows her husband to one Rangasamy. Even though, the first defendant who had examined herself as DW1 was confronted with the same, she had blankently denied the correctness of the said document, but had not



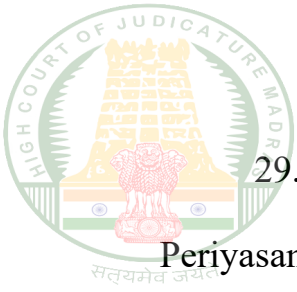
produced any contrary evidence to substantiate her case that Palaniammal till her death lived as wife of Periyasami.

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26. Various other documents namely Exs.P13 to 18 which would show that the deceased Periyasami and the second plaintiff had lived as husband and wife and the first plaintiff was born through them. Both Periyasami and the second plaintiff had been living as husband and wife, till the death of Periyasami.

27. Conjointly reading Ex.P8 and the aforesaid exhibits, this Court could only come to conclusion that even though the divorce between the Periyasami and Palaniammal had not taken place under the Provisions of the Hindu Marriage Act 1955, they had parted ways and had remarried thereafter. Any finding that could be rendered by this Court with regard to the customary divorce as being invalid would not only affect the rights of the third parties who are not parties to the suit particularly the children who are born to Palaniammal after the customary divorce of her marriage with the Periyasami.

28. In that context, it would also be useful to note the claim of the plaintiffs by producing Ex.P7 that there are children born to Palaniammal through her second marriage with one Mr.Rangaswamy.



29. In that context, this Court holds that the second plaintiff and the Periyasami had lived as husband and wife and were recognised by the society as husband and wife. In that regard holds that the marriage between the second plaintiff and the Periyasami to have been validly consummated.

ISSUE No.(c)

30. It is the claim of both the plaintiffs that they have a right of succession in the suit scheduled properties in which the first plaintiff's father, namely the deceased Periyasami and the second defendant had equal share. The first defendant disputes the claim of the plaintiffs' right of share in the property and had stated that the suit scheduled properties had remained unpartitioned between the Periyasami and the second defendant and claimed a share in the property equally with the second defendant. The second defendant had contested the suit by claiming that the suit scheduled properties which originally belong to one Chinnapa Gounder had been partitioned between himself and Periyasami even during the lifetime of the Chinnapa Gounder and there had been a conclusive possession and enjoyment of the same. In support of his claim he had placed various Revenue Records in that regard.

31. The Court below, even though accepting the claim of the plaintiffs that various activities carried out in Item No.2 suit scheduled property, would not prove oral partition, had given a categorical finding based upon the Revenue



Records that the second defendant had been in exclusive possession and enjoyment of the suit property, which substantiates oral partition. It is to be noted that neither the first defendant's father, namely Periyasami or the Chinnapa Gounder during their lifetime had contested such exclusive possession and enjoyment of the property by the second defendant. In that regard it would only be presumed that there has been an oral partition/ Division of the properties belonging to Chinnapa Gounder during his lifetime between his sons namely Periyasami and the second defendant.

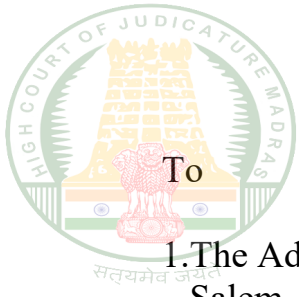
32. In such a view of the matter, this Court do not find any infirmity or irregularities with the findings of the Court below that Item No.2 could not be subjected to partition as claimed by the plaintiffs or the first defendant.

33. For the aforesaid reasons, both the Appeal suits in AS No. 958 of 2015 and AS No.59 of 2016 fails and are accordingly dismissed. However, there shall be no order as to costs.

08-07-2026

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

GBA

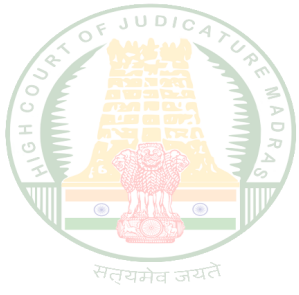


To

1. The Additional District Court-III.
Salem.

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



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AS No. 958 of 2



K.KUMARESH BABU, J.

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**AS No. 958 of 2015 and
AS No.59 of 2016**

08-07-2026