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S.A. NO.162 OF 2006

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 26 / 03 / 2026

JUDGMENT DELIVERED ON : 14 / 07 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A. NO.162 OF 2006

1.Ramani Ammal (Died)
W/o.Thandava Naicker

2.K.Mohan
S/o.Kannappa Naicker

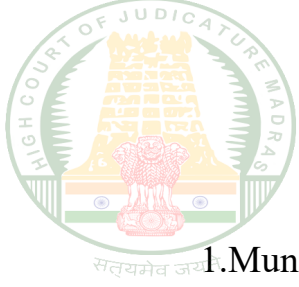
Both residing at
Visar Village,
Melkadirpur Post,
Kancheepuram District.

...Appellants 1 & 2 /
Appellants /
Defendants

3.A.Baskaran,
S/o.Mr.Aandavar Naikker,
7, Vishar Village,
Andhanar Street,
Melkadhipur Post,
Kancheepuram - 631 502.

... Appellant No.3 /
Legal Representative of the
deceased 1st Appellant

Note: Appellant-1 passed away.
Appellant-3 brought on record as
Legal Representative of deceased
Appellant-1 *vide* Order of this Court
dated January 09, 2023 made in C.M.P.
No.537 of 2023 in S.A. No.162 of
2006



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Versus

1.Munisamy Naicker (Died)
S/o.Perumal

...1st Respondent / 1st
Respondent / plaintiff

2.Muniammal
W/o.Govindan

3.Rajendran
S/o.Govindan

4.Vijaya
D/o.Govindan

5.Minor Jaya
D/o.Govindan
Represented by Mother and
Next Friend Muniammal

6.Agilandam
W/o.Ammavasaikhan

All are residing at
No.7, Visar Village,
Melkadirpur Post,
Kancheepuram District.

... Respondents 2 to 6 /
Respondents 2 to 6

7.Suceela (Died)
W/o.Late.Munusamy Naicker

8.A.Baskar
S/o.Late Mr.P.Arumugam Naicker,
No.149, Bajanai Kovil Street,
No.7, Visar Village,
Melkathirpur Post,
Kancheepuram District – 631 502.

... Respondents 7 & 8

Note:



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i) Respondent-1 passed away. Respondent-7 brought on record as Legal Representative of the deceased Respondent-1 namely Munisamy Naicker *vide* this Court's Order dated November 20, 2018 made in C.M.P. No.959 of 2012 in S.A. No.162 of 2006

ii) Respondent-8 impleaded *vide* this Court's Order dated January 02, 2025 made in C.M.P. No.6163 of 2023 in S.A. No.162 of 2006.

iii) Respondent-7 passed away - recorded *vide* this Court's Order dated March 16, 2026 made in S.A. No.162 of 2006 and C.M.P. SR. No.61622 of 2021.

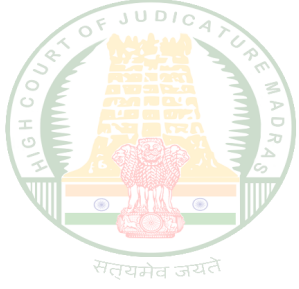
PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated October 19, 2004 made in A.S. No.72 of 1998 on the file of the Court of Subordinate Judge, Kancheepuram confirming the Judgment and Decree dated February 25, 1998 made in O.S. No.414 of 1994 on the file of the Court of Additional Munsif, Kancheepuram.

For Appellants : Ms.V.Ambika.

For Respondent-1 : Died, steps taken.

For Respondents -
2 to 4 & 6 : Served, no appearance.

For Respondent-5 : Minor 5th Respondent represented by her Mother 2nd Respondent -



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Served, no appearance.

For Respondent-7 : Died, memo filed.

For Respondent-8 : Dismissed *vide* this Court's Order dated February 19, 2025.

* * * * *

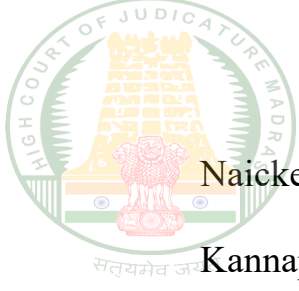
J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated October 19, 2004 passed in A.S. No.72 of 1998 by 'the Subordinate Court, Kancheepuram' ['First Appellate Court' for brevity], confirming the Judgment and Decree dated February 25, 1998 passed in O.S. No.414 of 1994 by 'the Additional Munsif Court, Kancheepuram' ['Trial Court' for brevity], the appellants therein have preferred this Second Appeal under Section 100 of 'the Code of Civil Procedure, 1908' ('CPC' for short).

2.For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

CASE OF THE PLAINTIFF IN BRIEF:

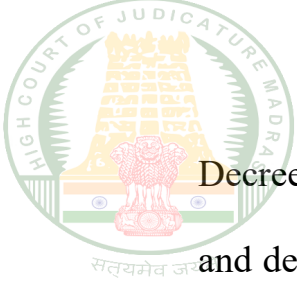
3.An extent of 32 Cents situate in Survey Number 90/2 in Vishar Village, Kancheepuram Taluk & District is the suit property. The suit property was originally owned by the plaintiff - Munusamy Naicker. He sold the same to his sister - Muniammal and her husband - Kannappa

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Naicker under a registered Sale Deed dated October 01, 1980. Thus, Kannappa Naicker and Muniammal became entitled to $\frac{1}{2}$ share each, *i.e.*, each entitled to 16 Cents in the suit property. Thereafter, Kannappa Naicker passed away intestate leaving behind his widow - Muniammal, the sister of the plaintiff; one son - Mohan, the second defendant; and one daughter - Kamakshi as his legal heirs to succeed his estate.

3.1. Then the plaintiff purchased back $26 \frac{1}{3}$ Cents out of the total 32 Cents of suit property from Muniammal and her daughter - Kamakshi under a registered Sale Deed dated September 07, 1993 and Rectification Deed dated September 11, 1993, that is to say, he purchased the shares of Muniammal and Kamakshi in the suit property. Ever since then, the plaintiff became the absolute owner of the $26 \frac{1}{3}$ Cents in the suit property. According to the plaintiff, the first defendant seems to have purchased the entire share of second defendant - Mohan in the suit property *i.e.*, $5 \frac{1}{3}$ Cents which is $\frac{1}{6}$ share therein. Thus, the first defendant is entitled to $\frac{1}{6}$ share in the suit property and the plaintiff is entitled to $\frac{5}{6}$ share therein.

3.2. The plaintiff issued a legal notice dated September 14, 1993 to the first defendant seeking amicable partition of the suit property, to which, the first defendant remained silent. Hence, the Suit seeking a Preliminary

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Decree for partition, dividing the suit property into 6 equal shares, allotting and delivering separate possession of 5 such shares to the plaintiff through Court, and it was also prayed to pass a Final Decree appointing an Advocate-Commissioner to divide and determine the future *mesne* profits under Order XX Rule 12 of CPC.

CASE OF THE FIRST DEFENDANT IN BRIEF:

4.The first defendant filed a written statement, sum and substance of which is that during the lifetime of father - Kannappa Naicker, an oral family arrangement took place in 1980 whereby the suit property was allotted to the second defendant and thus, the suit property is his absolute property. Upon the allotment, the second defendant has been in continuous & exclusive possession and enjoyment of the entire extent of 32 Cents of the suit property, to the knowledge of the plaintiff and his vendors, thereby perfecting title by adverse possession as well. In order to meet out some joint family expenses, second defendant borrowed a sum of Rs.5,000/- from the first defendant by mortgaging the suit property under a registered Mortgage Deed dated September 24, 1992. Even before that, the suit property was let out to the first defendant's husband - Aandava Naicker under a *Kuthagai* Agreement [Lease Agreement] dated September 24, 1988. As the second defendant was unable to discharge the mortgage debt,

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he sold the suit property for a valuable consideration of Rs.9,600/- under a registered Sale Deed dated July 22, 1993 in favour of first defendant and thereby, the first defendant became absolute owner of the suit property and she has been in absolute possession and enjoyment of the same. The plaintiff is not in possession of the suit property. Further, the Suit is not properly valued and the Court Fee paid under Section 37 (2) of 'the Tamil Nadu Court Fee and Suits Valuation Act, 1955' ['T.N.C.F. Act' for short] is incorrect. Furthermore, the Suit is bad for non-joinder of necessary parties. If at all there is any right of the plaintiff that persists, the plaintiff ought to have filed a Suit for declaration and recovery of possession. Stating so, the first defendant prayed to dismiss the Suit.

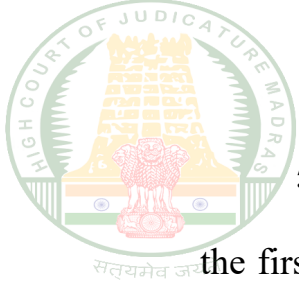
CASE OF THE SECOND DEFENDANT IN BRIEF:

5.The second defendant filed a written statement contending that the suit property originally belonged to the plaintiff. On October 01, 1980, Kannappa Naicker sold his ancestral land measuring an extent of 1 Acre 16 Cents with pump-set for a sum of Rs.42,000/- to the plaintiff. In that Sale Deed, the second defendant and his mother-Muniammal were also a party. The plaintiff paid a sum of Rs.32,000/- in cash and for the balance of Rs.10,000/-, the plaintiff sold the suit property measuring an extent of 32 Cents under Sale Deed dated October 1, 1980 in favour of the second

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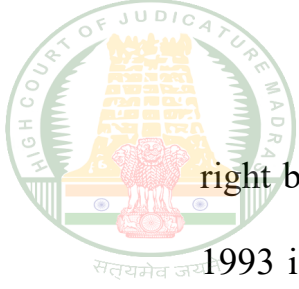
defendant's father - Kannappa Naicker and mother - Muniammal. Out of the said Rs.32,000/-, the second defendant deposited a sum of Rs.20,000/- in favour of his mother - Muniammal in Kancheepuram Central Co-operative Bank Limited. A sum of Rs.5,000/- was deposited there in favour of his father-Kannappa Naicker and the balance of Rs.7,000/- was utilised to discharge the family debts.

5.1.At that time, the second defendant's father had made a family arrangement in the presence of the second defendant's mother, sister-Kamakshi and family members with regard to the family properties wherein and whereby the entire suit property was absolutely allotted to the second defendant. In the said Panchayat, the plaintiff was one of the important member, since he was the President at that time. Since the allotment, the second defendant is absolutely enjoying the 32 Cents to the knowledge of the plaintiff. After the family arrangement, the second defendant's father - Kannappa Naicker passed away and the second defendant is looking after the family *qua Kartha* and Manager. The amount deposited in favour of Kannappa Naicker was also withdrawn and given to Kamakshi, second defendant's sister, as desired by Kannappa Naicker under the family arrangement.

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5.2.In the year 1988, the second defendant let out the suit property to the first defendant's husband - Aandava Naicker under a *Kuthagai* [Lease] Agreement. In order to discharge the family debts, the second defendant mortgaged the suit property in favour of first defendant for Rs.5,000/- under a registered Mortgaged Deed dated September 24, 1992. As the second defendant was not able to discharge the mortgage debt, he sold the suit property to first defendant *vide* registered Sale Deed dated July 22, 1993. Ever since the date of sale, the first defendant is in possession and enjoyment of the suit property as its absolute owner.

5.3.The plaintiff wanted to purchase the suit property as it originally belonged to him. The second defendant refused to sell the property to the plaintiff. Hence, in order to grab the suit property, the plaintiff has influenced his own sister / second defendant's mother - Muniammal and obtained a sham and nominal Sale Deed dated September 07, 1992 alleged to have been executed by second defendant's mother - Muniammal and his sister-Kamakshi. The said Sale Deed is not supported by any consideration and obtained by fraud & undue influence. The second defendant was in possession and enjoyment of the suit property as the absolute owner as per family arrangement from the year 1980 till he sold the property to the knowledge of the plaintiff and his family members and thus, perfected his

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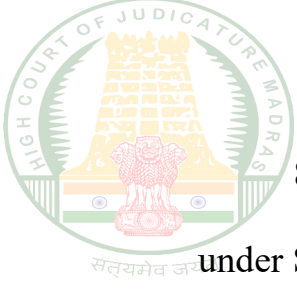
right by adverse possession as well. Hence, the Sale Deed dated July 22, 1993 is valid in law. The plaintiff is not in possession and enjoyment of the suit property. Accordingly, he prayed to dismiss the Suit.

TRIAL COURT:

6. Based on the above pleadings, the Trial Court framed the following issues:

- "(i) Whether a proper Court Fee has been paid under Section 37(1) of TNCF and Suits Valuation Act?*
- (ii) Whether the Suit is bad for non-joinder of necessary parties?*
- (iii) Whether the plaintiff is entitled to a preliminary decree as prayed for?*
- (iv) To what relief?"*

7. At trial, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.8 were marked on the side of the plaintiffs. The first defendant was examined as D.W.1, one Aandava Naicker was examined as D.W.2, the second defendant was examined as D.W.3, and Ex-B.1 to Ex-B.7 were marked on the side of the defendants.

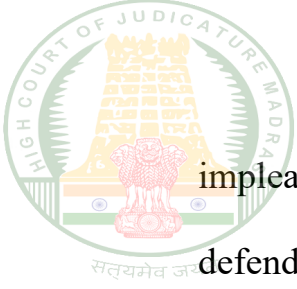
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8. After full-fledged trial, the Trial Court held that the Court Fee under Section 37 (2) of T.N.C.F. Act is correct. The Suit is not bad for non-joinder of necessary parties. Further held that the suit property is a self-acquired property of Kannappa Naicker and Muniammal; each were entitled to $\frac{1}{2}$ share therein. After the demise of Kannappa Naicker, his $\frac{1}{2}$ share devolved equally upon his wife - Muniammal, son - Mohan, the second defendant, and daughter - Kamakshi under Section 8 of the Hindu Succession Act, 1956. Thereby, Muniammal and Kamakshi became together entitled to $\frac{5}{6}$ share in the suit property which they later sold in favour of the plaintiff *vide* Ex-A.1 - Sale Deed dated September 7, 1993. The second defendant has no right to execute Sale Deed in respect of the entire extent of 32 Cents of the suit property, while he is actually entitled to $\frac{1}{6}$ share alone therein. Accordingly, the Trial Court decreed the Suit for partition and future *mesne* profits in favour of the plaintiff.

FIRST APPELLATE COURT:

9. Feeling aggrieved, the defendants preferred an Appeal Suit before the First Appellate Court.

10. In the Appeal Suit, an application under Order I Rule 10 (2) of CPC was filed in I.A. No.254 of 2001 by the defendants seeking to

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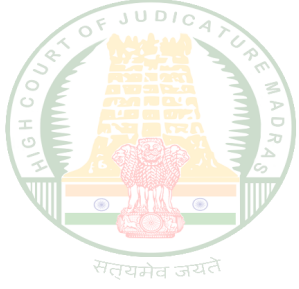
implead respondents 2 to 6 as parties to the Suit. According to the defendants, Kannappa Naicker had a son and daughter by name Govindhan (late) and Agilandam respectively through his first wife, and post the demise of his first wife, Kannappa Naicker married Muniammal through whom the second defendant and Kamakshi were born. Respondents 2 to 5 are the legal heirs of the said Govindhan (late) and sixth respondent is the said Agilandam. *Vide* Order passed in I.A. No.254 of 2001, respondents 2 to 6 were impleaded as necessary parties to the Appeal Suit. While respondents 2 to 5 entered appearance through Advocate in the Appeal Suit, sixth respondent did not appear despite being duly served.

11. The First Appellate Court after hearing both sides, concurred with the findings of the Trial Court and accordingly, dismissed the appeal and confirmed the Trial Court's Judgment and Decree.

SECOND APPEAL:

12. Feeling aggrieved by the dismissal of the First Appeal, the defendants have preferred the present Second Appeal under Section 100 of the CPC, which was admitted by this Court on February 23, 2006 on the following Substantial Questions of Law:

"1. Whether the Courts below are correct in law holding



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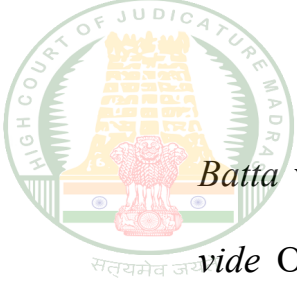
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that the suit property is not an ancestral property?

2. *Whether the Courts below are correct in law holding that the suit property is the self acquired property of Defendant No.2 (sic, ought to be Muniammal) and Kannappan?*
3. *Whether the Courts below are correct in holding that the suit is not bad for non-joinder of necessary parties?"*

13. During pendency of the Second Appeal, the plaintiff passed away. His wife – Suceela *qua* his legal heir was brought on record as seventh respondent *vide* Order dated November 2, 2018 of this Court made in C.M.P. No.959 of 2012. Seventh respondent subsequently passed away and the factum of her death has been duly recorded *vide* this Court's Order dated March 16, 2026 made in S.A. No.162 of 2006 and C.M.P. SR. No.61622 of 2021.

14. Further at the instance of the appellants, the eight respondent, who is said to be a purchaser of the suit property from plaintiff, was impleaded in the Second Appeal *vide* Order of this Court dated January 02, 2025 made in C.M.P. No.6163 of 2023. However, subsequently, as no

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Batta was paid, the Second Appeal was dismissed *qua* eight respondent *vide* Order of this Court dated February 19, 2025 made in this Second Appeal.

ARGUMENTS:

15. Ms.V.Ambika, learned Counsel appearing for the appellants submits that Kannappa Naicker had sufficient ancestral properties. *Vide* Ex-A.5 = Ex-B.1 - Sale Deed dated September 25, 1980, Kannappa Naicker, his wife - Muniammal, his son / second defendant and his daughter - Kamakshi, sold the ancestral properties to the plaintiff who is none other than said Muniammal's brother, for a sale consideration of Rs.42,000/-. The plaintiff paid Rs.32,000/- out of the total sale price of Rs.42,000/- in cash; as he could not pay the remaining Rs.10,000/- in cash, in lieu of the same, the plaintiff executed Ex-A.8 - Sale Deed dated October 1, 1980 in respect of an extent of 32 Cents which is the suit property. In the said Sale Deed, Muniammal was included as a party nominally for name sake alone. Having been purchased in lieu of the sale consideration due from the sale of ancestral properties, the suit property acquired the character of ancestral and joint family property.

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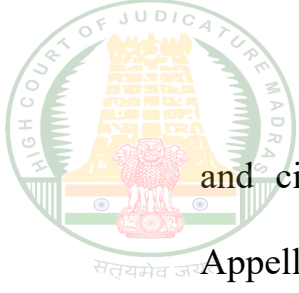
15.1. She would further argue that out of the sale consideration of Rs.32,000/- received in cash, Rs.20,000/- was deposited in Muniammal's name under Ex-B.6 - FDR Receipt, Rs.5,000/- was deposited in Kannappa Naicker's name *vide* Ex-B.7 - Bank Account Details of Kannappa Naicker, and the remaining Rs.7,000/- was used to discharge joint family debts. Following this, in an oral family arrangement that took place in or around 1980, in which the plaintiff / then Panchayat President prominently participated, Kannappa Naicker allotted 2/3 share in the house properties to Govindhan (his son through first wife), and 1/3 share thereof to second defendant apart from the suit property measuring 32 Cents. Since then, the second defendant alone was in exclusive possession and enjoyment of the suit property.

15.2. She would further argue that *vide* Ex-B.2 - Lease Agreement, second defendant leased out the suit property to the first defendant's husband. Later, he mortgaged the suit property with the first defendant for a sum of Rs.5,000/- under Ex-B.4 - Registered Mortgage Deed dated September 24, 1992. As the second defendant could not repay the mortgage debt, he sold the suit property in favour of the mortgagor / first defendant itself, *vide* Ex-B.3 - Sale Deed dated July 22, 1993, for a sum of Rs.9,600/-.

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15.3.As regards the plaintiff's Sale Deed in Ex-A.1, whereby he allegedly bought back Muniammal and Kamakshi's share in the suit property, the learned Counsel contended that it is a sham and nominal one. Possession never slipped away from the hands of second defendant and his vendees; plaintiff was never in possession of the suit property. Further, having been in exclusive possession since the allotment in the oral family arrangement in 1980, until sale under Ex-B.3, the second defendant has perfected title by adverse possession as well. Hence, Ex-A.1 - Sale Deed allegedly executed by Muniammal and Kamakshi would not give right, title or interest over the suit property in favour of the plaintiff and would not bind the defendants.

15.4.She would further argue that in the presence of Ex-B.3 - Sale Deed, without setting aside the sale thereunder, the Suit for mere partition is not maintainable. The Court Fee paid under Section 37 (2) of T.N.C.F. Act is incorrect. Further, she would submit that the Trial Court as well as the First Appellate Court miserably failed to consider the character of the suit property, *i.e.*, ancestral property and the fact that an oral family arrangement took place in the year 1980, in a right perspective. Further, the First Appellate Court failed to frame proper point for consideration and mechanically concurred with the Trial Court without appreciating the facts

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and circumstances of the case and hence, the Judgment of the First Appellate Court is hit by Order XLI Rule 31 of CPC. She invites the attention of this Court to the Order passed in I.A. No.254 of 2001 and submits that the First Appellate Court miserably failed to apply its mind. In this regard, without any prejudice to her case, she provides the following instance : when the defendants themselves have admitted that Govindhan and sixth respondent - Agilandam are also legal heirs of Kannappa Naicker, the First Appellate Court ought to have treated them as legal heirs under Section 8 of the Hindu Succession Act, 1956 while decreeing the Suit for partition, but it failed to apply its mind. Accordingly, she prayed to allow the Second Appeal and set aside the Judgment and Decree passed by the Trial Court as well as the First Appellate Court and dismiss the Suit.

DISCUSSION:

16.Heard the arguments advanced by the learned Counsel appearing for the appellants and perused the case file.

17.As regards character of suit property, Ex-A.7 is the Settlement Deed dated January 1, 1955, executed by one Muthappa Naicker in favour of his daughter - Muniammal. Numerous properties were settled upon Muniammal *vide* Ex-A.7. The said fact has been admitted by the second



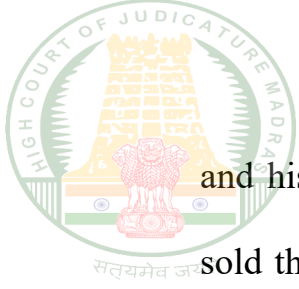
defendant in his evidence as D.W.3, through whom Ex-A.7 was marked. It could easily be discerned that Muniammal who is the mother of second defendant and wife of Kannappa Naicker, had separate properties as early as in 1955.

18. Further, in the year 1980, under Ex-A.5 = Ex-B.1 - Sale Deed dated September 25, 1980, Kannappa Naicker, Muniammal, second defendant and Kamakshi, sold an extent of 1 Acre 16 Cents in favour of the plaintiff for a sale consideration of Rs.14,000/-. In description of property thereof, one of the boundary has been described as Muniammal's property, which fact also shows that Muniammal owned properties independently. This is further supported by the fact that, in Ex-A.5 = Ex-B.1, the subject property thereof has been recited to be the self-acquired property of both, Kannappa Naicker and Muniammal, which fact has also been admitted by second defendant / D.W.3 in his cross-examination. Moreover, merely because, the second defendant and his sister - Kamakshi were added as co-executants, it cannot be presumed that they had any right or title over the property covered under Ex-A.5 = Ex-B.1. When Ex-A.5 = Ex-B.1, which is a registered document admitted by either side, recites that the property covered thereunder belongs to both, Kannappa Naicker and Muniammal as their self-acquired property, the defendants cannot take a stand and lead

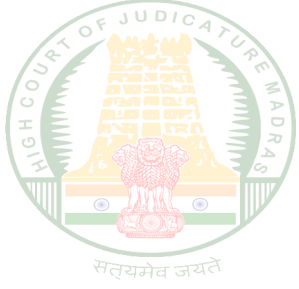
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evidence against the said recitals in view of Sections 91 and 92 of the Indian Evidence Act, 1872. Further, the defendants are also precluded from taking any other stand *contra* to recitals contained in Ex-A.5 = Ex-B.1 - Sale Deed, like their stand that the sale consideration was Rs.42,000/- while Ex-A.5 = Ex-B.1 clearly specifies Rs.14,000/- as the sale consideration. Furthermore, there is no evidence available on record to show that Kannappa Naicker owned any ancestral properties. Merely because the second defendant and Kamakshi were added as co-executants in Ex-A.5 = Ex-B.1, it cannot be said that the property covered thereunder is ancestral in character. Therefore, the property sold under Ex-A.5 = Ex-B.1 to the plaintiff is a separate property of Kannappa Naicker and Muniammal, and not ancestral property. Consequently, even while assuming that the suit property was acquired in lieu of sale consideration due under Ex-A.5 = Ex-B.1 as claimed by the plaintiff, the suit property does not acquire ancestral character.

19. Perusal of Ex-A.8 - Sale Deed dated October 1, 1980 would show that the suit property was originally owned by Perumal Naicker and his family. His wife - Kannammal, sons - Munusamy Naicker (plaintiff) and Arumuga Naicker, and another son - Kumarasamy Naicker for himself

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and his two minor sons, *vide* Ex-A.8 - Sale Deed dated October 1, 1980, sold the suit property in favour of Kannappa Naicker and Muniammal for Rs.2,400/-. From a bare reading of the recitals contained in Ex-A.8 with attention to the terminologies used, it would be pellucid that Kannappa Naicker and Muniammal jointly paid the total sale consideration of Rs.2,400/-. The defendants who contend that the entire sale consideration was paid by Kannappa Naicker bears the burden to prove the *contra* stand, but they have failed to do so. Though the defendants' plea is not barred by the Benami Transactions (Prohibition) Act, 1988 [Central Act No.45 of 1988], as per Section 3 thereof, unless otherwise established, law presumes that the property was purchased for the benefit of the wife or the unmarried daughter as the case may be. In this case, Muniammal possessed sufficient independent and personal properties [See Ex-A.8 - Sale Deed]. Given that, and also the absence of contrary recitals in Ex-A.8, and in view of Section 45 of the Transfer of Property Act, 1882, law presumes that the vendees under Ex-A.8 - Kannappa Naicker and Muniammal jointly contributed and purchased; the vendees equally contributed and equally purchased the property. Hence each of them are entitled to $\frac{1}{2}$ share therein, that is to say, in the suit property. For ready reference, Section 45 of the Transfer of Property Act, 1882 is extracted hereunder:



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"45. Joint transfer for consideration.—Where immoveable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced. In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property."

20. Further, the defendants contended that in the year 1980, an oral family arrangement took place in front of the *Panchayatdhars* namely Kuppan, Sugan and Sadagopan [See evidence of D.W.3 / second defendant] and that the plaintiff / then Panchayat President prominently participated in the same. The defendants, who sets up a plea of oral family arrangement bears the burden to prove the same, but they failed to examine

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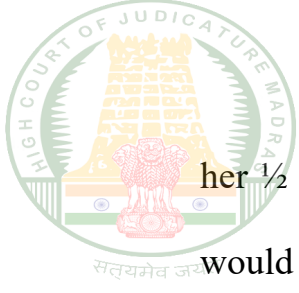
any of the Panchayatdhars, and failed to prove the oral family arrangement and the alleged allotments thereunder. Moreover, as stated above, there is no evidence available on record to show that Kannappa Naicker possessed ancestral properties. Hence, this Court has no hesitation in concluding that the oral family arrangement has not been proved. The Trial Court as well as the First Appellate Court has concurrently held that the oral family arrangement has not been proved, and there is no need to interfere with the same.

21. As far as the plea of non-joinder of necessary parties is concerned, the defendants in their written statement did not specify the necessary parties who were not impleaded as parties to the Original Suit. From a wholistic consideration of their oral evidence, it could be inferred that they mean Muniammal, Kamakshi, legal heirs of late Govindan and Agilandam are necessary parties to the Suit who were not impleaded originally. It is settled law that in a Suit for partition, all the sharers or interested persons are necessary parties to the Suit. If a necessary party is not impleaded, the Suit must fail [See ***T.Panchepakesan -vs- Periathambi Naicker***, reported in ***AIR 1973 Mad 133*** and ***A.Ramachandran Pillai -vs- Valliammal***, reported in ***1987-100-L.W.486***. As stated *supra*, in the Appeal Suit, at the instance of the defendants, Agilandam and legal heirs of

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Govindhan were impleaded as respondents 2 to 6. As under Ex-A.1, Muniammal and Kamakshi have executed Sale Deed in respect of the suit property in favour of the plaintiff, the plaintiff steps into the shoes of Muniammal and Kamakshi and there is no need to add them as necessary parties to the Suit. In short, in view of the subsequent impleadment of respondents 2 to 6 in the Appeal Suit, the Suit is not bad for non-joinder of necessary parties.

22. It is true that the First Appellate Court did not frame proper points for consideration as per Order XLI Rule 31 of CPC. The First Appellate Court concurred with the Trial Court's findings that the suit property is separate property of Kannappa Naicker and Muniammal and that during their lifetime each were entitled to $\frac{1}{2}$ share therein. Admittedly, Kannappa Naicker passed away in the year 1981 as a Hindu and hence, the applicable succession law is the Hindu Succession Act, 1956. His $\frac{1}{2}$ share would devolve upon his legal heirs under Section 8 thereof. In other words, his $\frac{1}{2}$ share would devolve upon (i) his wife - Muniammal, (ii) son - Govindan, (iii) daughter - Agilandam, (iv) son - second defendant and (v) daughter - Kamakshi; thus each of them would get $\frac{1}{10}$ share under Section 8 of the Hindu Succession Act, 1956. In case of Muniammal, with



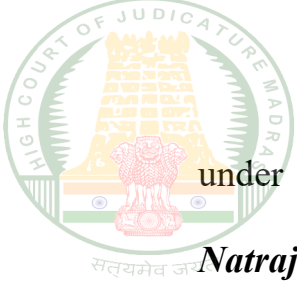
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her $\frac{1}{2}$ share in the suit property, upon the devolution under Section 8, she would be entitled to a total of $\frac{6}{10}$ share in the suit property.

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23. In Ex-A.1 - Sale Deed, Muniammal and Kamakshi have sold 83.33% of the suit property which totally measures 32 Cents, however they have $\frac{7}{10}$ share alone [Muniammal - $\frac{6}{10}$ and Kamakshi - $\frac{1}{10}$, total $\frac{7}{10}$ share] or 70% right alone over the suit property. Hence, Ex-A.1 - Sale Deed itself is valid only in respect of their $\frac{7}{10}$ share in the 32 Cents. As oral family arrangement has not been established as stated above, the alleged pursuant mortgage, lease and sale by second defendant in favour of first defendant, would not bind the share of respondents 2 to 6, Muniammal and Kamakshi. Hence, Ex-B.3 - Sale Deed dated July 23, 1993, executed by second defendant in favour of first defendant, is valid in respect of his $\frac{1}{10}$ share in the suit property alone. In these circumstances, the First Appellate Court ought to have modified the Judgment and Decree of the Trial Court and passed a Preliminary Decree for partition in favour of the plaintiff only in respect of $\frac{7}{10}$ share and not $\frac{5}{6}$ share.

24. Further, in a Suit for partition, the purchaser from a sharer steps into the shoes of the vendors and is a co-owner deemed to be in joint possession and enjoyment of the suit property. Hence, the Court Fee paid



under Section 37 (2) of T.N.C.F. Act is correct [See **Neelavathi -vs- Natrajan**, reported in **AIR 1980 SC 691**].

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25. Further, in a Suit for partition, further relief would be rendition of accounts under Order XX Rule 18 of CPC, and not *mesne* profits. In this regard, reliance shall be placed on the Judgment of this Court in **R.Rani -vs- R.Hemavathi**, reported in **2025 SCC Online Mad 9082**, wherein it was held thus:

"35. It is settled law that in a Suit for partition, Order XX Rule 12 of CPC cannot be applied. In a Partition Suit covered under Order XX Rule 18 of CPC, the further relief shall only be rendition of accounts and not mesne profits. Without appreciating the said aspect in the right perspective, the Trial Court granted mesne profits, which is not the right approach. The defendants are liable to render accounts in respect of the income from the Suit Item No.1 from the date of Suit up to complete partition and delivery of possession [See Judgment of this Court in Babburu Basavayya -vs- Babburu Guravayya, reported in AIR 1951 Mad 938 (FB), and in Subba Reddiar -vs- Hazra Bibi, reported in AIR 1973 Mad 237]"

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26. In view of the above legal position, the plaintiffs are not entitled to the relief of future *mesne* profits. The Trial Court as well as the First Appellate Court miserably failed to consider the said aspect and erred in granting the relief of future *mesne* profits under Order XX Rule 12 of CPC as a further relief in a Suit for partition.

27. At the instance of the defendants, eight respondent was added as a party to this Second Appeal stating that plaintiff executed a Sale Deed in respect of the suit property in favour of eight respondent. However, the Second Appeal was dismissed *qua* eight respondent as *Batta* was not paid. Though the Second Appeal has been dismissed *qua* eight respondent, he being a pendente lite purchaser is bound by the Decree passed by this Court.

28. In view of the above discussion, Substantial Questions of Law Nos.(1) and (2) is answered thus: The Trial Court as well as the First Appellate Court are correct in holding that the suit property is self-acquired and separate property of Kannappa Naicker and Muniammal, and not ancestral property. Substantial Questions of Law No.(3) is answered thus: As elaborated above, in view of the subsequent impleadment of the



necessary parties namely respondents 2 to 6 in the Appeal Suit, the Suit is not bad for non-joinder of necessary parties.

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CONCLUSION:

29. In the result, the Second Appeal is partly allowed. The Judgment and Decree of the Trial Court and the First Appellate Court are modified as follows:

(i) The suit property shall be divided into 10 equal shares and seven such shares shall be allotted to the plaintiff. To that effect, a Preliminary Decree for partition is passed in favour of the plaintiff.

(ii) The plaintiff and respondents 2 to 6 are entitled to the relief of rendition of accounts under Order XX Rule 18 of CPC from the defendants.

29.1. Considering the facts and circumstances of the Case, there shall be no order as to costs in this Second Appeal.

29.2. Connected Civil Miscellaneous Petition / Civil Miscellaneous Petition (Filing), if any, shall stand closed.

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Index : Yes

Speaking Order : Yes

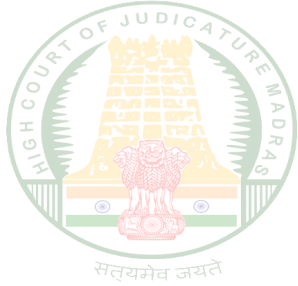
Neutral Citation : Yes

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To

1.The Subordinate Judge, Kancheepuram.

2.The Additional Munsif, Kancheepuram.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.162 OF 2006

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