



S.A. NO.1494 OF 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A. NO.1494 OF 2005

1.Thiyagarajan (Died)

2.Sambandan

Both residing at
Vaithiyampettai Village,
Thiruvallaputhur Post,
Mayiladuthurai Taluk,
Nagapattinam District.

... Appellants 1&2 /
Appellants /
Defendants 1&4

3.T.Amsavalli
W/o.Late Thiyagarajan

4.T.Baskaran
S/o.Late Thiyagarajan

5.T.Pandian
S/o.Late Thiyagarajan

6.T.Shanmugam
S/o.Late Thiyagarajan

Appellants 3 to 6 are residing at
Mariamman Koil Street,
Thiruvallaputhur Village Post,
Mayiladuthurai Taluk, Nagapattinam District.



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7.Malathi,
W/o.Thirugunanasambandam,
Chidambaram Cuddalore District.

8.Selvi,
W/o.Elango,
Mariamman Koil Street,
Rear Side Bus Stand,
Chidambaram, Cuddalore District.

9.Usha,
W/o.Manohar
Natham Village and Post,
Mayiladuthurai Taluk,
Nagapattinam District.

... Appellants 3-9 /
Legal Representatives
of the deceased 1st
Appellant-Thiyagarajan

Note: Appellant No.1 died. Appellants
3 to 9 were brought on record as Legal
Representatives of the deceased 1st
Appellant - Thiyagarajan *vide* Order of
this Court dated September 17, 2019
made in C.M.P. No.597 of 2011 in
S.A. No.1494 of 2005

-versus-

1.Kaliyaperumal (Died)
S/o.Dharmalinga Pathar,
4, Thirumanjana Veedhi,
Thiruvilandur,
Mayiladuthurai.

... 1st Respondent /
1st Respondent /
Plaintiff

2.Nagarathinam
S/o.Dharmalinga Pathar

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3. Viswanathan
S/o. Dharmalinga Pathar

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R2 and R3 are residing at
Vaithiyapettai Village,
Thiruvallaputhur Post,
Mayiladuthurai Taluk,
Nagapattinam District.

... Respondents 2 & 3 /
Respondents 2 & 3 /
Defendants 2 & 3

4. K. Prema,
W/o. Late Kaliyaperumal
No. 26C/18 Main Road,
Bazaar Street, Opp. To Chettiar Shop,
Thiruvallanthur, Mayiladuthurai.

5. Minor Hemavathi,
D/o. Late Kaliyaperumal,
Represented by their Mother and Guardian Prema,
4th Respondent herein
No. 26C/18 Main Road, Bazaar Street,
Opp. To Chettiar Shop, Thiruvallanthur,
Mayiladuthurai.

6. Minor Sathish,
S/o. Late Kaliyaperumal,
Represented by their Mother and Guardian Prema,
4th Respondent herein
No. 26C/18 Main Road,
Bazaar Street, Opp. To Chettiar Shop,
Thiruvallanthur, Mayiladuthurai.

... Respondents 4-6 /
Legal representatives
of the deceased
1st Respondent -
Kaliyaperumal

Note: Respondent-1 died.
Respondent-4 to Respondent-6 were



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brought on record as Legal Representatives of the deceased 1st Respondent - Kaliyaperumal *vide* this Court's Order dated November 16, 2018 made in C.M.P. No.2877 of 2007 in S.A. No.1494 of 2005

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated March 17, 2005 made in A.S.No.97 of 2004 on the file of the Principal Sub-Ordinate Judge, Mayiladuthurai confirming the Judgment and Decree dated November 11, 2002 passed in O.S.No.711 of 1998 on the file of the Principal District Munsif, Mayiladuthurai.

For Appellants	:	Mr.S.Hariharan for Mr.A.Muthukumar
For Respondent-1	:	Died, steps taken
For Respondents-2 & 3	:	Served – No appearance
For Respondent-4	:	Mr.B.Jawahar
For Respondents-5 & 6	:	Minor represented by Respondent-4

* * *

J U D G M E N T

This matter is listed today *suo motu* by this Court under the cause list caption “for being spoken to.”



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2. When the matter was listed on March 24, 2026, this Court dismissed the Second Appeal. However, upon a careful perusal of the records, this Court found it necessary to allow the Second Appeal in part. Accordingly, the matter is listed today and the following judgment is pronounced:

2.1. Feeling aggrieved by the Judgment and Decree dated March 17, 2005 made in A.S. No.97 of 2004 by 'the Principal Subordinate Court, Mayiladuthurai' ['First Appellate Court' for brevity], dismissing the Appeal Suit and confirming the Judgment and Decree dated November 11, 2002 passed in O.S. No.711 of 1998 by 'the Principal District Munsif Court, Mayiladuthurai' ['Trial Court' for short], the Appellants therein have preferred this Second Appeal.

2.2. For the sake of convenience, the parties will be referred to as per their array in the Original Suit before the Trial Court.

PLAINTIFFS' CASE IN BRIEF:

3. Case of the plaintiff is that the suit properties originally belonged to one Dharmalinga Pathar, who is none other than the father of plaintiff and defendants 1 to 4. Dharmalinga Pathar passed away intestate.

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After his demise, his wife - Vairathammal also passed away. The first defendant was later adopted by one Singara Pathar, brother of Dharmalinga Pathar and Singara Pathar's wife - Nagarethinathachi. After the demise of Singara Pathar and his wife, the first defendant succeeded their properties, sold off a portion thereof in favour of third parties and continued to enjoy the remaining. Hence, the first defendant is not entitled to any share in the properties left behind by Dharmalinga Pathar and his wife - Vairathammal; only the plaintiff and defendants 2 to 4 are entitled to it equally. The suit properties are double crop *Nanja* lands capable of yielding 25 *Kalams* of Paddy per *Mah* per season and the plaintiff is entitled to 1/4 share in the past as well as future profits from the suit properties till the delivery of separate possession of his 1/4 share in the suit properties. The fourth defendant issued a notice to the plaintiff and others on July 25, 1997 seeking partition before Panchayatdars. In these circumstances, the plaintiff has come up with the Suit for partition and separate possession of his 1/4 share in the suit properties and also for future and past profits.

CASE OF DEFENDANT NOS.1 AND 4 IN BRIEF:

4.The first defendant filed his written statement denying the allegations made in the plaint and the same was adopted by the fourth

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defendant. They specifically denied the adoption of first defendant. They also denied that Nagarethinathachi is the legally wedded wife of Singaram Pathar. According to them, Singaram Pathar executed a registered Will in favour of the first defendant and on that basis, the first defendant got some properties, which he sold to third parties, and Nagarethinathachi executed a registered settlement in favour of first defendant in respect of her own properties. Contra averments made in the plaint are all denied as false. The first defendant remains the son of Dharmalingam Pathar and Vairathammal, and he is entitled to share in the properties left behind by them. After the demise of their father - Dharmalinga Pathar, the properties were managed by the plaintiff till 1993 and during the course of management, he contracted debts to the tune of Rs.83,400/- and not being able to clear the same, he left the Suit village and settled in Mayiladuthurai. The third defendant is suffering from some mental challenges intermittently. Subsequently, in a Panchayat held on January 24, 1994, it was decided that the fourth defendant shall be entrusted with the suit properties and that out of the income therefrom, he shall pay off the family debts. However, there was no profit from the suit properties; there were only losses. Nonetheless, the defendants 1 and 4 managed to clear the entire family debts by themselves. In fact, for that purpose, the first

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defendant had to sell a residential house for Rs.26,000/-. In these circumstances, defendants 1 and 4 have no objection for partition of suit properties, provided that the plaintiff pays defendants 1 and 4 the plaintiff's proportionate share in the debts which ought to have been paid by the plaintiff.

CASE OF SECOND DEFENDANT IN BRIEF:

5.The second defendant filed her written statement admitting that the first defendant is the adopted son of Nagarethinathachi and Singara Pathar, and that he inherited their properties. Hence, the first defendant is not entitled to any share in the suit properties. The second defendant prayed for 1/4 share in the suit properties and separate possession thereof.

THIRD DEFENDANT

6.The third defendant remained absent and was set *ex-parte* before the Trial Court.

TRIAL COURT:

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

"1. *Whether the plaintiff is entitled to 1/4 share in the suit*



properties?

2. *Is it correct to say that the first defendant was given in adoption, therefore, he is not entitled to any share in the suit properties?*
3. *Whether the plaintiff is also liable to discharge the family debts as alleged by defendants 1 and 4?*
4. *Whether the plaintiff is entitled to the relief of past and future profits as prayed for?*
5. *To what other reliefs the plaintiff and defendants are entitled to?"*

8.At trial, the plaintiff was examined as P.W.1 and one Jegannathan was examined as P.W.2 and Ex-A.1 to Ex-A.5 were marked on the side of the plaintiff. On the side of the defendants, First defendant was examined as D.W.1 and second defendant was examined as D.W.2 and Ex-B.1 to Ex-B.14 were marked.

9.After full-fledged trial, the Trial Court concluded that the adoption of the first defendant was not proved by adducing evidence and hence, the plaintiff is entitled to 1/5 share in the suit properties as well as past (at the rate of Rs.1,200/- per year for three years) and future profits (to be quantified in separate proceedings) therefrom. Accordingly, the Trial Court decreed the Suit.



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FIRST APPELLATE COURT:

10. After hearing either side, the First Appellate Court confirmed the Judgment and Decree of the Trial Court, however, directed the plaintiff to pay Court Fee for the total past *mesne* profits of Rs.3,600/- (for three years) within one month from the date of its Judgment. With the said observation, the First Appellate Court dismissed the Appeal Suit.

SECOND APPEAL:

11. The aggrieved defendants 1 and 4 approached this Court by way of this Second Appeal under Section 100 of the Code of Civil Procedure, 1908 assailing the Judgment and Decree passed by the First Appellate Court. The Second Appeal was admitted on December 16, 2005 on the following Substantial Questions of Law:

"1. Whether the plaintiff admitted in his cross examination about the existence of family debts and the 1st defendant produced the discharged promissory notes executed by the plaintiff and others, whether the courts below erred in law in holding that the said family debts are not proved?

2. Whether the Courts below erred in law in directing the 1st defendant to pay the past profits to the plaintiff in the absence of any evidence?"



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12.During the pendency of this Second Appeal, the first appellant / first defendant passed away and his legal representatives were brought on record as appellant nos.3 to 9. The first respondent herein also passed away during the pendency of this Second Appeal. His legal representatives were brought on records as respondent nos.4 to 6.

ARGUMENTS:

13.Mr.S.Hariharan, representing Mr.A.Muthukumar, Counsel on record for the appellant / defendants 1 and 4 argues that in a Partition Suit, rendition of accounts under Order XX Rule 18 of the Code of Civil Procedure, 1908 may be a further relief, not *mesne* profits under Order XX Rule 12. The Trial Court failed to consider the said aspect and granted past as well as future *mesne* profits erroneously. He further submits that the Trial Court failed to consider the existence of family debts which were discharged by the first defendant as it could be seen from the Discharge Receipts in Ex-B.8 to Ex-B.12. The plaintiff / P.W.1 in his evidence has admitted that the existence of family debts and further deposed that the same was discharged by his mother during her lifetime. If it is so, the burden is upon the plaintiff to prove the same. Accordingly, he prays to



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allow the Second Appeal, set aside the Judgment and Decree of the First Appellate Court as well as that of the Trial Court *qua mesne* profits.

14. On the other hand, Mr. B. Jawahar learned Counsel for respondents 4 to 6 fairly concurs that in a Partition Suit further relief would be Order XX Rule 18 of the Code of Civil Procedure, 1908 and not Order XX Rule 12. However, he points out that though the Trial Court as well as the First Appellate Court quantified past *mesne* profits, they held that future *mesne* profits shall be decided in separate proceedings. The sum and substance of which means that the Courts have granted the relief of rendition of accounts alone. Hence, there is no need to interfere with their decision. Accordingly, he prays to dismiss the Second Appeal.

DISCUSSION:

15. Heard on either side. Perused the evidence available on record.

16. This Court has carefully considered the evidence of P.W.1 / plaintiff. Admittedly, suit properties are in possession and enjoyment of the fourth defendant. Though the defendants 1 and 4 pleaded that their joint family consisting of plaintiff and defendants 1 to 4 had debts, the same was

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not proved as per law. The defendants did not examine anyone related to the Discharge Pro-notes in Ex-B.8 to Ex-B.13. There is no other evidence available on record to prove the alleged debts and their discharge by defendants 1 and 4 as alleged. Hence, the Trial Court as well as the First Appellate Court are right in their decision that the family debts have not been proved. ***Substantial Questions of Law No.1 is answered accordingly.***

17.As regards Substantial Questions of Law No.2, in a Suit for Partition, Order XX Rule 12 of the Code of Civil Procedure, 1908 will not apply. Order XX Rule 18 will alone apply. It is settled law. Bare reading of the provisions would make it clear that Order XX Rule 12 is applicable to a Suit for recovery of possession of immovable property, rents and *mesne* profits. In a Partition Suit, the question of recovery of possession will not arise as the defendant(s) and the plaintiff(s) are generally the co-owners. In a Partition Suit, as rightly submitted by the counsels on either side, further relief is rendition of accounts and not *mesne* profits. Hence, the Trial Court and the First Appellate Court are not right in quantifying the past profits (at Rs.1,200/- per year for three years), and also not right in granting future *mesne* profits. They ought to have

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granted the relief of rendition of accounts. There is ample evidence available on record to show that the suit properties are under the management of the fourth defendant. Both the Courts have concurrently held so. Hence, the fourth defendant is liable to render accounts in respect of suit properties from the date of Suit till the final decree. To that extent, the Judgment and Decree of the Trial Court as well as the First Appellate Court are liable to be modified. ***Substantial Questions of Law No.2 is answered accordingly.***

18.The plaintiff's case is that the first defendant was given in adoption to Dharmalinga Pathar's brother namely Singara Pathar and his wife - Nagarethinathachi, at the age of 1-2 years. The person who brings up the plea of adoption is supposed to prove the same. The plaintiff / P.W.1 deposed that he is not directly aware of the adoption of first defendant; he came to know about the same from his mother. P.W.2 and the first defendant are contemporaries in terms of age. From his evidence, it could be seen that he does not know the difference between adoption and foster. The first defendant's case is that he was not given in adoption; he merely remained as the foster son of Singara Pathar and one Nagarethinathachi. As evident from Ex-B.1 - SSLC Certificate, the first defendant was born on

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December 16, 1944. He studied upto X standard in Board High School,

Manalmedu, Thanjavur East, Nagapattinam from 1958 to 1963. Ex-B.1

was issued on December 18, 1962. In Ex-B.1, first defendant's father's

name has been mentioned as '*M.Dharmalingam*' (Dharmalinga Pathar). In

fact, he has also signed as a parent. Ex-B.2 is the first defendant's marriage

invitation, wherein he has been regarded as Singara Pathar's foster son and

Dharmalinga Pathar's son [மாயூரம் தாலூகா வைத்தியம்பேட்டை சிங்கார

பத்தர் அபிமான புத்திரனும் தர்மலிங்க பத்தர் குமாரனுமான சிரஞ்சீவி

தியாகராஜனுக்கு] Singara Pathar *vide* Ex-B.3 - Baby Shower Invitation,

invites guests for first defendant's wife - Amsavalli's Baby Shower

Ceremony. In Ex-B.3, Singara Pathar himself regards the first defendant's

wife, as wife of his brother's son - Thiyagaran [எனது தம்பி குமாரன்

தியாகராஜன் பாரியாள் சௌபாக்கியவதி அம்சவல்லிக்கு]. Ex-B.4 is the

invitation for a Post-Funeral Ceremony on December 23, 1993, for

Dharmalinga Pathar's wife - Vairathammal's demise on December 14,

1993, printed by defendants 1 to 4 and plaintiff. In Ex-B.4, Vairathammal

has been referred to as their mother. Ex-B.5 is the Identity Card issued by

Assistant Agricultural Officer for purchase of fertilizers, wherein first

defendant's father's name has been shown as Dharmalingam. Ex-B.6 is a

Settlement Deed executed by Nagarethinathachi in favour of first

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defendant wherein she describes the first defendant as her foster son.

Relevant extract therefrom reads thus:

‘ . . . எனக்கு சுமார் 70 வயதாகிறது. என் கணவர் சுமார் 40 வருடங்களுக்கு முன் இறந்துவிட்டார். எனக்கு ஆண் வாரிசோ, பெண் வாரிசோ கிடையாது. என் கணவர் இறந்தபிறகு நான் கடக்கம் கிராமத்திலிருந்து வைத்தியம்பேட்டை கிராமத்திற்கு குடிவந்து வசித்து வருகிறேன். நான் ஷை வைத்தியம்பேட்டை கிராமத்திலிருக்கும் தர்மலிங்க பத்தர் குமாரன் தியாகராஜன் என்பவனை சிறுவயது முதல் எனக்கு யாதொரு வாரிசும் இல்லாததால் ஷையானை எடுத்து வளர்த்து அபிமான மகனாக இருந்து வருகிறான். இப்பொழுதும் நான் இந்த தள்ளாத வயதில் அவனுடைய யோஷனையிலும் சம்ரட்சனையிலும் தான் இருந்து வருகிறேன். ஷை தியாகராஜன் எனக்கு இஷ்டப்படி அபிமான மகனாக இருந்து வருவதால் . . . ’

19.Ex-B.7 is the registered Will dated November 11, 1971 executed by Singara Pathar in favour of first defendant. In Ex-B.7, Singara



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Pathar, described first defendant as his brother's son. Relevant extract reads thus:

‘ . . . என் சொத்து வகையறாக்களை என்
தம்பி மகனாகிய ஷை வைத்தியம்பேட்டை
கிராமத்திலிருக்கும் தர்மலிங்க பத்தர் குமாரன்
தியாகராஜன் என்பவன் என் ஜீவதிசைக்கு பிறகு
எனக்கு செய்ய வேண்டிய கிருத்தியங்களை
அவனே செய்து கொண்டு சர்வசுதந்திரமாய்
அடைந்து கொள்ள வேண்டியது. . . . ’

20.From what could be seen from the above documents, Singara Pathar and Nagarethinathachi regards the first defendant as their *Abimana Puthiran* [*M.Winslow's Comprehensive Tamil and English Dictionary of High and Low Tamil, 13th Edition*] which as per *Winslow's Tamil Dictionary* means a son adopted after the proper age or otherwise disqualified for adoption. Hence, *Abimana Puthiran* [அபிமான புத்திரன் - A son adopted after the proper age, or otherwise disqualified] cannot be equated to *Suvigara Puthiran* [சுவிகார புத்திரன் - An adopted son]. Merely because a child / person is being fostered by love and affection, the same cannot be termed as adoption. In the eyes of law, an adoption must have giving and taking of the child as well as clear declaration. It must



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further meet the other legal requirements. When a question arises, the same must be proved. In this case, the alleged factum of adoption is not proved.

The Trial Court and the First Appellate Court meticulously examined the evidence available on record and concluded that the first defendant was not given in adoption to Singara Pathar and Nagarethinathachi. Though the defendants pleaded the suit properties are joint family properties, the said fact was neither emphasised by either side nor proved. No issues were framed with regard to the character of suit properties by the Trial Court as well as the First Appellate Court. Though the defendants pleaded that the suit properties are joint family properties, both parties projected their case as if the suit properties are Dharmalinga Pathar's separate properties. Admittedly, he passed away in 1984 as Hindu and his wife - Vairathammal passed away in 1993 as Hindu. Hence, as per Sections 8 read with 15 of the Hindu Succession Act, 1956, the plaintiff and defendants 1 to 4 are entitled 1/5 share each in the suit properties. Hence, the Judgment and Decree of the First Appellate Court granting 1/5 share to the plaintiff as per Section 8 of the Hindu Succession Act, 1956 is confirmed.



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CONCLUSION:

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21.Resultantly, the Second Appeals is partly allowed. The Judgment and Decree of the Trial Court and the First Appellate Court are modified as per the following terms:

- (i) The plaintiff is entitled to 1/5 share in the Suit Properties. To that extent, Preliminary Decree is passed;
- (ii) The relief of past and future profits are set aside;
- (iii) The plaintiff is entitled to the relief of rendition of accounts from the fourth defendant in respect of the suit properties;
- (iv) In all other aspects, the Judgment and Decree of the Trial Court and the First Appellate Court shall hold good.

21.1.Considering the facts and circumstances of the case, there shall be no order as to costs.

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(1/3)

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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R. SAKTHIVEL, J.

PAM/TK

To

- 1.The Additional Subordinate Judge
Myladuthurai.
- 2.The Additional District Munsif
Myladuthurai.

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