



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-07-2026

CORAM

WEB COPY

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**CMA No. 2164 of 2014, CRP Nos.2720, 2721, 2722 and 2723 of 2014
and MP.Nos.1, 1 of 2014**

CMA No.2164 of 2014

Elavarasi
W/o Michel Raj Moongilthuraipattu
Village, Sanarapuram Tk, Villupuram.

Appellant(s)

Vs

1. Kunjithabatham
S/o Malichi Padayachi

2. Mayakannan
S/o Kunjithabatham

3. Elangiyam
W/o Kunjithabatham

4. Karikalan
S/o Kunijithamabam

Respondent(s)

Prayer:

Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of the Code of Civil Procedure, appeal against the order of remand passed by the Principal District Court at Ariyalur on 22.04.2014 in A.S.No.45 of 2012 filed against the judgment and decree of the Additional District Munsif Court at Ariyalur dated 28.02.2008 in O.S.No.218 of 2004.



CRP No. 2720 of 2014

Mary Imaculate Elavarasi
W/o Michael Raj Moongilthurai Pattu
Village, Sangarapuram Taluk.

Petitioner(s)

Vs

1. Kunjithabatham
S/omalichi Padayachi

2. Mayakannan
S/o Kunjithabatham

3. Ilangiyam
W/o Kunjithabatham

4. Karikalan
S/o. Kunjithabatham

Respondent(s)

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the Principal District and Sessions Court at Ariyalur, dated 22.04.2014 in I.A.No.23 of 2012 in A.S.No.45 of 2012.

CRP No. 2721 of 2014

Mary Imaculate Elavarasi
W/o Michael Raj Moongilthurai Pattu
Village, Sangarapuram Tk.

Petitioner(s)

Vs

1. Kunjithabatham
S/omalichi Padayachi

2. Mayakannan
S/o Kunjithabatham

3. Ilangiyam
W/o Kunjithabatham,

4. Karikalan
S/o Kunjithabatham



WEB C

Respondent(s)

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the Principal District and Sessions Court at Ariyalur, dated 22.04.2014 in I.A.No.37 of 2013 in A.S.No.45 of 2012.

CRP No. 2722 of 2014

Mary Imaculate Elavarasi
W/o Michael Raj Moongilthurai Pattu
Village, Sangarapuram Tk.

Petitioner(s)

Vs

1. Kunjithabatham(died)
S/omalichi Padayachi

2.Mayakannan
S/o Kunjithabatham

3.Ilangiyam
W/o Kunjithabatham

4.Karikalan
S/o. Kunjithabatham

Respondent-1 Died.
Respondent-4 is brought on record as LR's of the deceased R-1 Viz., Kunjithabatham vide court order dated.10/01/2025 made in CMP Nos.15191/2022 and 10477/2024 in CRP Nos.2723 and 2722 of 2014 by MDIJ.

Respondent(s)

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the Principal District and Sessions Court at Ariyalur, dated 22.04.2014 in I.A.No.1 of 2014 in A.S.No.45 of 2012.



CRP No. 2723 of 2014

Mary Imaculate Elavarasi
W/o Michael Raj Moongilthurai Pattu
Village, Sangarapuram Tk

Petitioner(s)

Vs

1. Kunjithabatham(died)
S/omalichi Padayachi

2.Mayakannan
S/o Kunjithabatham

3.Ilangiyam
W/o Kunjithabatham

4.Karikalan
S/o. Kunjithabatham

Respondent-1 Died. Respondent-4 is brought on record as LR of the deceased R-1 Viz Kunjithabatham vide court order dated.10/01/2025 made in CMP NOS.15191/2022 and 10477/2024 in CRP NOS.2723 and 2722 of 2014 by MDIJ.

Respondent(s)

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the Principal District and Sessions Court at Ariyalur, dated 22.04.2014 in I.A.No.38 of 2013 in A.S.No.45 of 2012.

For Petitioner(s): Mr.P.Valliappan
(for All cases) Senior Counsel

For Respondent(s): Mr.K.S.Navin Balaji
(for All cases) for Mr.P.Sathishkumar
for R2 & R3



COMMON JUDGMENT

A common issue is involved in all these cases and hence this Court is inclined to pass a common order.

2.The plaintiff is the appellant in CMA No.2164 of 2014. The plaintiff filed the suit in OS.No.218 of 2004 seeking for the relief of partition and for allotting 1/2 share in the suit properties. The said suit was contested by the defendants by taking a stand that the plaintiff is not entitled for any share in the suit property and accordingly, they sought for the dismissal of the suit.

3.The plaintiff examined herself as PW.1 and also examined yet another witness as PW.2 and marked exhibits A.1 to A.6. The defendants examined DW.1 to DW.5 and marked exhibits D.1 to D.22. Two more documents were also marked while examining the witnesses, as court documents.

4.The Trial Court on considering the facts and circumstances of the case and on appreciation of evidence came to a conclusion that the plaintiff is entitled for 1/3rd share in the suit properties and accordingly, passed preliminary decree by a judgment and decree dated 28.02.2008.

5.Aggrieved by the same, the defendants 1, 3 and 4 filed an appeal in AS.No.45 of 2012 on the file of the Principle District Judge, Ariyalur. The



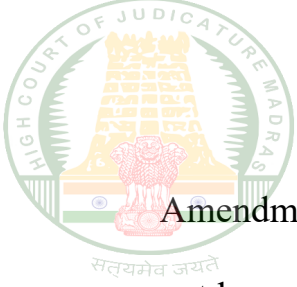
plaintiff also filed cross appeal insofar as reducing her share to 1/3rd as against the claim of 1/2 share made by the plaintiff. In the pending appeal, four applications came to be filed by the appellants in the appeal in IA.Nos.23/2012, 37/2013, 38/2013 and 1/2014.

6.The Appellate Court on considering the facts and circumstances of the case and on appreciation of evidence allowed all the four applications filed by the appellants in the appeal and passed a final judgment and decree in AS.No.45 of 2012 and the cross appeal filed by the plaintiff, dated 22.04.2014, remanding the matter back to the Trial Court for the limited purpose of receiving the documents relied upon in the four interlocutory applications and recording the evidence and re-submit the suit to the Appellate Court for disposal on merits.

7.Aggrieved by the same, the plaintiff has filed Civil Miscellaneous Appeal and four Civil Revision Petitions before this Court.

8.Heard the learned counsel for the appellant/petitioners and the learned counsel for respondents 2 and 3.

9.The defendants were attempting to establish that the marriage of the plaintiff did not take place on 10.05.1989 as was claimed by the plaintiff and it had actually taken place on 25.12.1987 much before the Tamil Nadu



WEB COPY

Amendment Act came into force on 25.03.1989 and therefore the plaintiff will not be entitled for a share in the suit property. The other ground that was raised on the side of the defendants is that the plaintiff had converted into Christianity and therefore there is a bar under Section 26 of the Hindu Succession Act, 1956 for her to claim any share in the suit properties.

10.All the interlocutory applications were filed to bring in additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908, only to establish the above facts. The Appellate Court allowed all the four interlocutory applications and remanded the matter back to the Trial Court only for the purpose of recording evidence regarding the documents that were sought to be brought in as additional documents and to send back the matter to the Appellate Court after recording evidence to dispose of the appeal on merits.

11.Even though various contentions were raised on both sides, all those contentions will become academic in view of the coming into force of the Central Act viz., Act 39 of 2005 with effect from 09.09.2005 and also the judgment of the Apex Court in **Vineeta Sharma v. Rakesh Sharma** reported in **(2020) 9 SCC 1**.



12. In view of the same, it is not necessary for the Trial Court go through the process of recording the evidence insofar as the entitlement of the share of the plaintiff in the suit property.

13. The only other issue that has to be taken into consideration is the so called bar under Section 26 of the Hindu Succession Act, 1956. The said provision will apply where the Hindu has ceased or ceases to be a Hindu by conversion to another religion before or after the commencement of the Hindu Succession Act and it will act as a disqualification of inheriting the property of any of the Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

14. The objection raised on the side of the defendants is that the plaintiff has converted herself to Christianity after her marriage and therefore the bar under Section 26 of the Hindu Succession Act, will come into force.

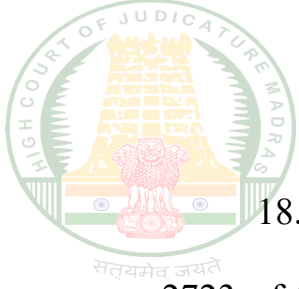
15. In reply to the above submission, the learned Senior Counsel for the appellant/petitioner submitted that Section 26 of the Hindu Succession Act, does not disqualify the convert and it only disqualifies the descendants of the converts who are born to the convert after such conversion, from inhering property of any of their Hindu relatives. The learned Senior Counsel in order to substantiate his submission relied upon the judgment of the Calcutta High Court



in **Asoke Naidu .vs. Raymond S.Mul** reported in **AIR 1976 Calcutta 272** and the judgment of the Chhattisgarh High Court in **Suresh Darvade .vs. Arrjun Ram Pandey** reported in **AIR 2010 Chhattisgarh 40**.

16.This Court finds a lot of force in the above submission made by the learned Senior Counsel appearing on behalf of the appellant/petitioner. A plain reading of Section 26 of the Act, makes it clear that it is only the descendants of the convert who are disqualified from inheriting and this disqualification will not apply to the convert. Therefore, even assuming that the plaintiff has converted to Christianity, Section 26 of the Act does not disqualify the plaintiff to claim for the share in the suit properties. In view of the same, no useful purpose will be served in recording the evidence in this regard by the Trial Court.

17.In the light of the above discussion, the judgment and decree passed by the lower Appellant Court in A.S.No.45 of 2012, dated 22.4.2014 has to be set aside and the Appellate Court must be directed to dispose of the appeal and cross appeal on merits within the time frame fixed by this Court. The order passed by the lower Appellate Court allowing the four interlocutory applications in IA.Nos.23/2012, 37/2013, 38/2013 and 1/2014, are also liable to be set aside since no useful purpose will be served in adducing additional evidence.



WEB COPY

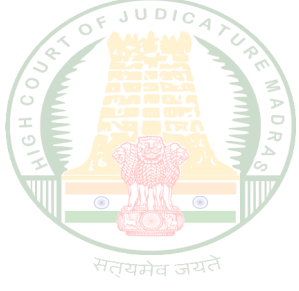
18.In the result, CMA No.2164 of 2014, CRP Nos.2720, 2721, 2722 & 2723 of 2014, are allowed and the judgment and decree passed by the lower Appellate Court in A.S.No.45 of 2012 & Cross Appeal and the order passed in I.A.Nos. 23 of 2012, 37 & 38 of 2013 and I.A.No.1 of 2014, dated 22.04.2014, are set aside. The matter is remanded back to the file of the Principal District Judge, Ariyalur. There shall be a direction the learned Principal District Judge, Ariyalur, to deal with the appeal suit and the cross appeal on merits and pass final judgment after affording opportunity to both the sides within a period of three months from the date of receipt of a copy of this judgment. It goes without saying that all the contentions on merits can be raised before the lower Appellate Court and the same will be considered on its own merits and in accordance with law.

19.In the result, the appeal and CRP's are allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

28-07-2026

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

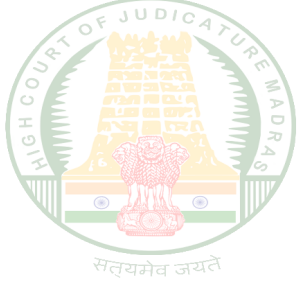
KP



WEB COPY

To

The Principal District and Sessions Court
Ariyalur,



WEB COPY

N.ANAND VENKATESH J.

KP

**CMA No. 2164 of 2014,
CRP Nos.2720, 2721, 2722
and 2723 of 2014**

28-07-2026