

S.A.(MD)No.184 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.06.2026

DELIVERED ON : 10.07.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)No.184 of 2017

and

C.M.P.(MD)No.3336 of 2017

Ponnammal (Died)

2.Dhanushkodi

3.Murugan

4.Subbulakshmi

5.Seethalakshmi

6.Selvalakshmi

... Appellants

[A2 to 6 are brought on record as legal heirs of the deceased sole appellant vide court order dated 26.02.2021 made in C.M.P. (MD)No.5041 of 2020 in S.A.(MD)No.184/17 by RSMJJ]

Vs.

1.Palanichamy (Died)

2.Avudaiyachi

3.Alaguraj Mooppanar

4.Tamilvannan

5.Gomathi

6.Madasamy



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- 7.Sakthivel
- 8.Thandhayudhapani
- 9.Muniyandi
- 10.Murugeswari
- 11.A.P.Ramesh
- 12.Subbiah Pillai (Died)
- 13.Rajeswari
- 14.Susila
- 15.Chithra
- 16.Kanaga
- 17.S.Rakkammal
- 18.K.Muniyandi
- 19.K.Marimuthu
- 20.M.Parvathi
- 21.Balasubramaniam
- 22.Ramalakshmi
- 23.Pethanayagam
- 24.Eswari

... Respondents

[Respondents 13 to 16 are brought on record as legal heirs of the deceased 1st respondent vide court order dated 29.02.2024 made in C.M.P.(MD)Nos.16497, 16498 and 16499 of 2023 in S.A.(MD)No. 184 of 2017 by PVMJJ]

[Respondents 17 to 19 are brought on record as legal heirs of the deceased 12th respondent vide court order dated 29.02.2024 made in C.M.P.(MD)Nos.16500, 16507 and 16508 of 2023 in S.A.(MD)No. 184 of 2017 by PVMJJ]

[Respondents 20 to 24 are brought on record as legal heirs of the



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deceased 18th respondent vide court order dated 29.01.2026 made in C.M.P.(MD)Nos.12870 to 12872 of 2024 in S.A.(MD)No.184 of 2017 by KMSJJ

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 14.10.2015 made in A.S.No.44 of 2003, on the file of the Sub Court, Srivilliputhur, confirming the judgment and decree dated 24.12.1999 made in I.A.No.1074 of 1990 in O.S.No.330 of 1990, on the file of Principal District Munsif Court, Srivilliputhur.

For Appellants : Mr.M.Ramamoorthi
for Mr.K.Sudalayandi
Respondents 1, 18 & 12 : Died
For Respondents 2 to 11,
13 to 16 : No appearance
For Respondents 17, 19 to 24 : Mr.M.Thirunavukkarasu

JUDGMENT

The appellant who had originally filed the Second Appeal is the third defendant, who suffered concurrent findings before the Trial Court in O.S.No.330 of 1990, on the file of the Principal District Munsif Court, Srivilliputhur and also in A.S.No.44 of 2003, on the file of the Sub-Court, Srivilliputhur. Pending Second Appeal,
3/16



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the appellant / third defendant passed away and her legal heirs have been brought on record as appellants 2 to 6.

2.I have heard Mr.M.Ramamoorthi, learned Counsel for Mr.K.Sudalayandi, the learned Counsel for the appellants and Mr.M.Thirunavukkarasu, learned Counsel for the respondents 17 and 19 to 24. Other respondents have not chosen to enter appearance to contest the suit.

3.Brief facts that may be necessary to decide the present Second Appeal and also to ascertain whether any substantial questions of law arise for consideration are as follows:

3.1.The suit properties originally belonged to one Athiyapillai, who settled the property in favour of his two daughters, Ponnammal and Avadaiyachi and three grandchildren namely, Mookkammal alias Ponnammal, minor Annamalaiyammal and minor Palanichamy, born through his pre-deceased daughter, one Lakshmi. Claiming under the said settlement deed, a partition suit came to be filed by the grandchildren of Athiyapillai in O.S.No. 55 of 1972, which was later re-numbered as O.S.No.330 of 1990, on the file of the Sub-Court, Ramanathapuram. The plaintiffs therein sought the relief of partition of a $\frac{3}{5}$ th share in the 4th suit item of



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the property and for 3/6th share in the remaining suit properties. In all, claim was made in respect of 9 items of suit properties.

3.2.The said suit was decreed and a preliminary decree was passed on 13.08.1974, declaring a 3/5th share in favour of the plaintiffs. The defendants in the said suit, wife of Athiyapillai, Subbammal, as well as the daughters Ponnammal and Avudayachi, preferred an appeal in A.S.No.264 of 1974, before the District Court, Ramanathapuram. The preliminary decree granted by the Trial Court was set aside by the First Appellate Court in the said appeal by judgment and decree dated 24.12.1975. A Second Appeal was preferred by the plaintiffs in O.S.No.330 of 1990 (originally O.S.No.55 of 1972), in S.A.No.1880 of 1976 and the Second Appeal was allowed, vide judgment and decree dated 18.09.1979, confirming the judgment and decree passed by the Trial Court. However, this Court, while allowing the Second Appeal, directed that the final decree application cannot be filed during the life time of Subbammal, wife of Athiyapillai.

3.3.The said Subbammal died on 03.05.1988. Thereafter, vide registered sale deed dated 25.05.1988, the second and third plaintiffs, joining hands with the third and fourth defendants,



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jointly sold the 4th item of suit property in favour of one Tamilvanan. It is claimed by the plaintiffs that subsequently, on 01.06.1988, the above four mentioned vendors except Mookkammal @ Ponnammal had orally partitioned the property and also executed a Vardhamana letter dated 01.06.1988, confirming the partition.

3.4.According to the plaintiffs, under the said agreement, plaintiffs 2 and 3 and defendants 3 and 4 had divided the suit properties into three equal shares, with 1/3rd each being taken by the Ponnammal branch, Lakshmi branch [plaintiffs 1, to 3] and Avudayachi branch. Thereafter, the first plaintiff Ponnammal on 03.01.1989, filed a final decree application in I.A.No.1074 of 1990 in O.S.No.330 of 1990, seeking allotment of 1/5th share to her. Pending the said final decree application, taking into account the oral partition arrangement dated 01.06.1988, plaintiffs 2 and 3 and defendants 3 and 4 have jointly sold suit items 1 and 5, in and by sale deed dated 15.03.1989, in favour of one Muniyandi Pillai. According to the plaintiffs, the agreement dated 01.06.1988 has also found place in the recitals to the sale deed.

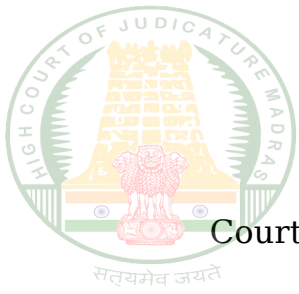


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3.5.The plaintiffs further state that the third and fourth defendants objected to the final decree application and opposed the allotment of 1/5th share in favour of Ponnammal. However, the plaintiffs 2 and 3 colluded with Ponnammal and consented for passing of final decree in favour of the first plaintiff, besides seeking a 2/5th share for themselves. According to the appellants, the stand taken by the plaintiffs was against the partition agreement dated 01.06.1988 and they are clearly estopped from claiming any share in the suit properties. The final decree application was dismissed on 30.04.1993. An appeal was preferred in A.S.No.27 of 1994, before the Principal District Court, Srivilliputhur, which came to be allowed on 15.10.1996, setting aside the dismissal of the final decree application by the Trial Court on 30.04.1993.

3.6.The First Appellate Court upheld the right of Annamalai Ammal to 1/5th share, Palani Ammal to another 1/15th share, Palanichamy to 1/15th share, mother of the appellant Ponnammal to a 5/15th share, and similarly, Avudayachi to the remaining 5/15th share and directed that the above allotment can be taken benefit of, provided applicable Court fee is paid for such allotment. The Trial



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Court was directed to appoint a Court Commissioner to divide the properties by metes and bounds. It is the grievance of the appellant that despite such directions of the First Appellate Court, the Trial Court allowed the final decree application and allotted 1/5th share to Ponnammal and 1/5th share each to the other plaintiffs, Annamalai Ammal and Palanichamy and passed the final decree on 24.12.1999.

3.7.As against the said final decree, the third defendant Ponnammal preferred A.S.No.44 of 2003. The First Appellate Court allowed the appeal in and by judgment and decree dated 03.02.2004 and remitted the matter to the Trial Court for fresh consideration in line with the judgment of the First Appellate Court in A.S.No.27 of 1994. The order of remand was challenged by the second plaintiff in C.M.A.(MD)No.100 of 2004, which came to be allowed by this court on 30.09.2008. The First Appellate Court was directed to frame additional issues and also appoint an Advocate Commissioner to identify the properties sold to Tamilvanan and Muniyandi Pillai, with further directions to implead the said purchasers and also hear them. Subsequent to the judgment of this court in C.M.A.(MD)No.100 of 2004, the First Appellate Court conducted enquiry and though, no further oral or documentary



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evidence was produced, the First Appellate Court dismissed the appeal in A.S.No.44 of 2003, confirming the final decree granted in I.A.No.1074 of 1990 dated 24.12.1999, by the Principal District Munsif Court, Srivilliputhur. Challenging the said judgment and decree, the present second appeal has been filed originally by the third defendant Ponnammal and subsequent to her demise, the legal representatives have come on record.

4.Learned Counsel for the appellants Mr.M.Ramamoorthi, would firstly contend that the First Appellate Court has misdirected itself in holding that despite liberty given by this Court while remanding the matter to the First Appellate Court, no fresh oral and document evidence had been let in. According to Mr.M.Ramamoorthi, the unregistered partition agreement confirming the oral partition dated 01.06.1988, had already been marked as Ex.R.2 in I.A.No.1074 of 1990 and without noticing the same, the First Appellate Court has erred in confirming the final decree passed by the Principal District Munsif Court. He would therefore, state that the First Appellate Court was clearly in error in dismissing the appeal without noticing the material circumstances in and by which the parties had already divided the suit properties amongst themselves and ignoring the same, the



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final decree could not have been even sought for, leave alone being granted in favour of the respondents as prayed for.

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5.Per contra, Mr.M.Thirunavukkarasu, learned Counsel appearing for the contesting respondents would state that even though Ex.R.3 partition deed had been marked, the document was inadmissible in evidence and clearly hit by Section 17 of the Registration Act and could not be looked into for any purposes whatsoever. It is also his submission that Ex.R.3 is not signed by all the parties and therefore, it was not a valid and binding document and under such circumstances, in the absence of any other evidence supporting a partition having already taken place, there was no error committed by the Courts below in passing the final decree. He would further state that no substantial questions of law arise for consideration and there is no merit in this Second Appeal.

6.I have carefully considered the submissions advanced by the learned Counsel on either side.

7.The only issue which arises for consideration is as to whether Ex.R.3, unregistered partition deed is admissible in evidence and whether it is valid and binding on the parties and



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consequently, prevents the final decree applicants to seek for partition, dehorse the said arrangement. It is not in dispute that the said Ex.R.3, partition arrangement is unregistered. No doubt, it is not impermissible for the parties to enter into any private arrangement, subsequent to a preliminary decree having been passed in a suit for partition. However, it is incumbent on the person claiming right or benefit under the said arrangement to establish a valid and admissible partition to successfully defend a final decree application being filed in pursuance of the preliminary decree passed in the suit for partition.

8.Though, liberty was granted to both parties to adduce oral and documentary evidence by this Court, while remitting the matter to the First Appellate Court, the appellants did not avail of the opportunity to establish the alleged partition dated 01.09.1988. The First Appellate Court also found that even if a compromise between some of the parties to the suit alone can be held to be valid, since the compromise had not been properly established, there was no error committed by the Trial Court in passing the final decree. Ex.R.3, is the alleged partition arrangement dated 01.06.1998. Admittedly, it is an unregistered instrument entered into between plaintiffs 2 and 3 and defendants

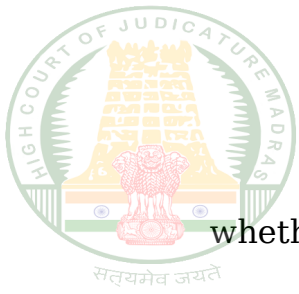


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3 and 4 alone. The first plaintiff, Mookkamal @ Ponnammal was not a party to the said agreement.

9.No doubt, the said partition agreement has been exhibited as Ex.R.3 in the course of enquiry in the final decree application. Mere marking of the document will not enable the appellants to claim any right under the said document, especially, when it has not been admittedly signed by all the parties concerned. The appellants should have let in acceptable and satisfactory oral evidence to establish such partition agreement and also to satisfy the Court that the agreement was not compulsorily registrable. No such effort or endeavour has been taken by the appellants either before the Trial Court or before the First Appellate Court, despite this Court in C.M.A.(MD)No.100 of 2004, granting liberty to the parties to lead further oral and documentary evidence.

10.This Court in ***Amertham Vs. Thannace and another***, reported in **2020 4 CTC 395**, relying on the Division Bench judgment in ***A.C.Lakshmipathy Vs. A.M.Chakrapani Reddiar and others*** reported in **2001 1 L.W. 257**, held that even if the family arrangement can be made orally and it is reduced to writing, then, it would be a question of fact depending on each case as to



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whether the nature and phraseology of the writing and circumstances in which it was written would render it a document required to be stamped and registered. This Court also held that the document can be looked into for collateral purposes as long as a person does not claim any right or title under the said document . This Court, also held that the document can be looked into for collateral purposes, if it is stamped but not registered, however, when it is neither stamped nor registered, it cannot be looked into for any purpose whatsoever.

11.Admittedly, Ex.R.3 marked in the final decree application in I.A.No.1074 of 1990, is written on a five rupee non-judicial stamp paper and therefore, it is not only insufficiently stamped but also unregistered and further, I find that it is only under the said Vardamana letter that the parties has attempted a division, giving a go-by to the preliminary decree passed by the Trial Court. Therefore, the document is clearly inadmissible for want of registration and hit by Section 17 of the Registration Act. Therefore, I do not find any error committed by the Courts below in proceeding to pass the final decree in a suit for partition, ignoring the alleged partition agreement dated 01.06.1988. I, therefore, do not find any error committed by the Courts below and the findings



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rendered are neither perverse nor illegal, warranting interference under section 100 of CPC.

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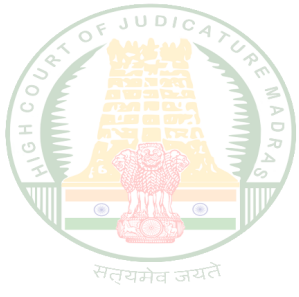
12.In fact, I do not find any substantial questions of law arising for consideration in the present Second Appeal. The Second Appeal stands dismissed. Considering the fact that the parties are closely related, there shall be no order as to costs.

10.07.2026

Index : Yes / No

NCC : Yes / No

MR

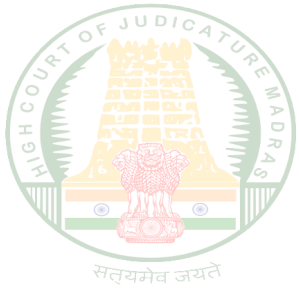


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To

- 1.The Subordinate Judge,
Srivilliputhur.
- 2.The Principal District Munsif,
Srivilliputhur.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI, J.

MR

PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)No.184 of 2017

10.07.2026