



S.A.No.1768 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved	16/06/2026
Date of Pronounced	17/08/2026

CORAM

THE HON'BLE MS.JUSTICE R.POORNIMA,

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- 1.Meenatchi (died)
- 2.Murugesan (died)
- 3.Bhaskar
- 4.Kannan
- 5.Chellappa
- 6.Ravi @ Varadharajan
- 7.Lakshmi Ammal

Memo dated 28.07.2023 filed and recorded.
Appellants 1 and 2 died and the appellants 3 to 5 who are already on record are recorded as Lrs of the deceased 1st appellant vide Court order dated 11.10.2023.

... Appellants/Appellants 1 to 5 & 7 & 8/

1st Defendants 1 to 5 & 7 & 8

Vs.

- 1.A.Subramania Gounder (Died)
- 2.Palaniyaayi Ammal (died) ... Respondents 1 & 2 / Respondents /

Plaintiffs



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3.Vijayan

4.Papayee @ Malika

5.Amudha

... Respondents 3 to 5

Respondents 3 to 5 are brought on record as Lrs of the deceased 2nd respondent vide Court order dated 26.03.2024 made in CMP(MD)Nos.1085 to 1087 of 2024

PRAYER : Second Appeal is filed under Section 100 Cr.P.C., as against the judgment and decree dated 20.12.2002 made in A.S.No.99 of 2000 on the file of the Additional District Judge, (Fast Track Court No.1), Thanjavur partially reversing the judgment and decree dated 03.08.2000 made in O.S.No.78 of 1994 on the file of the Principal Subordinate Court, Thanjavur.

For Appellant : Mr.T.M.Hariharan

For Respondents : Mr.V.Balaji – for R3 to R5
died – R1 & R2

JUDGMENT

This Second Appeal is filed against the judgment and decree, dated 20.12.2002 made in A.S.No.99 of 2000 on the file of the Additional District Judge, (Fast Track Court No.1), Thanjavur, partially reversing the



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judgment and decree, dated 03.08.2000 made in O.S.No.78 of 1994 on the file of the Principal Subordinate Court, Thanjavur.

2.The appellants are the defendants 1 to 5, 7 & 8 in O.S.No.78 of 1994. The suit was filed for partition and separate possession.

3.The parties are referred to as per their ranking before the trial Court.

4.The brief case of the plaintiffs is as follows:-

According to the plaintiffs, the suit property is a house property situated in Vallam Vadakku Sethi Village and the entire house property originally belonged to one Ramasamy Gounder ancestrally. The said Ramasamy died leaving behind two sons viz., Muthusamy and Narayanasamy. Muthusamy had one son viz., Marutha Gounder through his first wife and four sons through his second wife viz., Dharmalinga Gounder, Mamundi Gounder, Rengasamy Gounder and Gopal Gounder.



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4.1.The plaintiffs relied upon several ancient documents to establish the devolution and subsequent alienations. According to them, Mamundi Gounder conveyed his share in favour of Marudha Gounder and Dharmalinga Gounder under Ex.A2-sale deed, dated 23.03.1907. Rengasamy Gounder conveyed his share in favour of Krishna Gounder and Dharmalinga Gounder under Ex.A3-sale deed, dated 10.03.1923. Gopal Gounder conveyed his share to Oomai @ Veerammal under Ex.A4-sale deed, dated 26.07.1934.

4.2.The plaintiffs further relied upon Ex.A5-sale deed, dated 07.02.1957, under which the undivided share of Krishna Gounder and Rathina Gounder was purchased by the first defendant. According to the plaintiffs, after taking into account, the above transactions and succession, the first plaintiff became entitled to 1/5th of the half share originally belonging to Muthusamy Gounder.



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4.3.As regards the other half share originally belonging to Narayanasamy Gounder, the plaintiffs contended that Narayanasamy Gounder had three sons, namely Chinnasamy Gounder, Govindasamy Gounder and Pappu Gounder. The plaintiffs relied upon Ex.A6-usufructuary mortgage of the year 1947 executed in favour of Arunachala Gounder, father of the first plaintiff, and Ex.A8-sale deed, dated 23.06.1972, under which the heirs of Lakshmi Ammal conveyed their interest to the second plaintiff.

4.4.The plaintiffs further relied upon Ex.A1-Will, dated 10.12.1927 said to have been executed by Pappu Gounder in favour of his daughter Oomai @ Veerammal. According to the plaintiffs, after the death of Oomai @ Veerammal, her interest devolved upon the heirs of her husband and thereafter, the said heirs conveyed the property to the second plaintiff under Ex.A9-sale deed, dated 03.02.1972.

4.5.On the above basis, the plaintiffs claimed that the first plaintiff was entitled to 1/5th of one-half share and the second plaintiff was entitled to



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one-half share in the entire property together with the additional share claimed through Exs.A4 and A9. Thus, the plaintiffs claimed an aggregate share of 7/10th in the suit property.

5.The defendants resisted the suit. According to them, the plaintiffs had no right in the suit property. They disputed the genealogy projected by the plaintiffs and, in particular, denied that Gopal Gounder was a son of Muthusamy Gounder. They also disputed the genealogy relating to the branch of Narayanasamy Gounder.

5.1.The principal defence was that Pappu Gounder had settled his share in favour of Dharmalinga Gounder under an alleged document dated 19.01.1916 and that Dharmalinga Gounder was therefore entitled to a larger share in the property. The defendants also relied upon Ex.B10-Will, dated 24.05.1923, said to have been executed by Dharmalinga Gounder in favour of Muthusamy Gounder.



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5.2.The defendants further contended that Arunachala Gounder was not the legitimate father of the first plaintiff and that the first plaintiff, Subramanian, was born through an alleged relationship between Arunachala Gounder and one Gangammal. It was also contended that Arunachala Gounder subsequently married Periathal @ Marudambal and that they had no children. Therefore, according to the defendants, the first plaintiff was not entitled to succeed to any share.

6.The trial Court, on the basis of the pleadings, framed the following issues:-

- (i) Whether the plaintiffs are entitled to partition and preliminary decree as prayed for?*
- (ii) Whether the suit is maintainable?; and*
- (iii) To what other relief the parties are entitled?*

7.On the side of the plaintiffs, P.Ws.1 to 4 were examined and Exs.A1 to A25 were marked. On the side of the defendants, D.Ws.1 and 2 were examined and Exs.B1 to B10 were marked.



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8.After considering the oral and documentary evidence, the trial Court decreed the suit in O.S.No.78 of 1994 by judgment and decree dated 03.08.2000 and granted the plaintiffs a total share of 7/10th in the suit property.

9.Aggrieved by the same, defendants 1 to 8 have preferred A.S.No.99 of 2000. The First Appellate Court, after re-appreciating the evidence, partly allowed the appeal and modified the decree of the trial Court by holding that the plaintiffs were entitled to 6/10th share in the suit property.

10.Aggrieved by the said judgment, defendants 1 to 5, 7 and 8 have preferred the present Second Appeal. But, the plaintiffs have not preferred any appeal against the modification made by the First Appellate Court.

11.This Court, at the time of admission, formulated the following substantial questions of law:-

1.Whether the Courts below have not misdirected themselves in not even attempting to



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consider the very vital issue involved in the suit, viz., the availability of the suit item for partition?

2.Whether the release deed of Arunachala Gounder cannot be looked into for collateral purposes of determining the legitimacy of the first respondent and acknowledgement by Arunachala Gounder of Ex.B10-Will and whether, in the circumstances, the first respondent can claim any right to the suit property as the legitimate son of Arunachala Gounder?

3.Whether the trial Court has not misdirected itself in not even framing the vital issue involved in the suit relating to the legitimacy of the first respondent, availability of the suit item for partition and the legal rights and status of Gopal Gounder, Chinnasami Gounder and Govindasamy Gounder?

4.Whether the Appellate Court, as the final Court of facts, has not misdirected itself in not framing the proper points for determination in the appeal?

12.Heard the learned counsel on either side and perused the materials available on record.



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Answer to the substantial questions of law Nos.1 to 3:-

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13.Since the first three substantial questions of law are interconnected, they are taken up together.

14.The principal attack made by the learned counsel appearing for the appellants is that the first plaintiff, Subramania Gounder has no right in the suit property, since he is not the legitimate son of Arunachala Gounder. According to the appellants, Arunachala Gounder was living separately and had a relationship with Gangammal, through whom the first plaintiff was born. It is, therefore, contended that the first plaintiff cannot claim any right through Arunachala Gounder.

15.The said contention, however, has to be examined in the light of the entire evidence available on record and not merely on the basis of Ex.B1 or the recitals relied upon by the defendants.

16.The Courts below have considered the relevant documentary evidence. Exs.A17 to A20 are old documents in which the first plaintiff's



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name is found along with the name of Arunachala Gounder as his father.

These documents are of considerable vintage and were not brought into existence for the purpose of the present litigation. Such contemporaneous documents constitute relevant circumstances while determining the relationship claimed by the first plaintiff.

17.Further, Ex.A6 is a registered usufructuary mortgage executed in the year 1947 in favour of Arunachala Gounder. The existence of the said document and the transaction evidenced thereby are relevant circumstances in appreciating the contention that Arunachala Gounder was not available or had completely severed his connection with the family.

18.More importantly, Ex.A10, a legal notice issued by the first defendant herself, contains an admission concerning the relationship of Arunachala Gounder with the family. The defendants cannot selectively rely upon documents favourable to them while ignoring their own admissions contained in contemporaneous documents.



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19.The allegation that the first plaintiff was born through an illicit relationship with Gangammal is a serious allegation. The burden was upon the defendants, who set up such a case, to establish the same by acceptable evidence. Mere allegations in the written statement, without convincing evidence, cannot deprive a person of the status and rights which he otherwise establishes through documentary and oral evidence.

20.The defendants have not produced convincing evidence to establish that Arunachala Gounder had no relationship with the first plaintiff or that the first plaintiff was an illegitimate child. The fact that Arunachala Gounder is alleged to have subsequently married another woman, by itself, does not establish the alleged illegitimacy of the first plaintiff.

21.The defendants also placed reliance upon Ex.B10-Will, dated 24.05.1923. The Courts below have found that the said Will was not satisfactorily proved. The document is unregistered and contains



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corrections. More importantly, the defendants were required to establish the execution and testamentary capacity of the executant in accordance with law and to establish the precise effect of the bequest relied upon by them.

22.The mere production of Ex.B10 does not establish that the entire property claimed by the plaintiffs was validly bequeathed to Muthusamy Gounder. The defendants cannot derive title merely from the existence of an unproved testamentary document.

23.Even assuming that Ex.B10 could be looked into for a collateral purpose, such consideration cannot automatically establish the truth of every recital contained therein. A document admissible for a limited collateral purpose cannot, without proof of its contents and legal effect, be treated as conclusive proof of title or legitimacy.

24.The contention of the defendants that the first plaintiff was an illegitimate son of Arunachala Gounder has therefore rightly been rejected by the Courts below. The finding is essentially one of fact, based upon the



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appreciation of oral and documentary evidence. There is no perversity in such finding.

25.The Hon'ble Supreme Court has consistently held that in a Second Appeal under Section 100 CPC, the High Court does not ordinarily re-appreciate evidence merely because another view is possible. The findings of fact recorded by the First Appellate Court, which is the final Court of fact, can be interfered with only when they are shown to be perverse, based on no evidence, or contrary to the evidence on record.

26.In the present case, the First Appellate Court has considered the relevant documents and circumstances and has recorded a finding that the first plaintiff is the son of Arunachala Gounder and is entitled to 1/10th share. The said finding cannot be characterised as perverse.

27.The next contention relates to the availability of the suit property for partition. The defendants contend that there had already been a settlement/partition and that Dharmalinga Gounder had acquired a larger



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share which subsequently devolved upon the branch of Muthusamy Gounder.

28.However, the alleged settlement said to have been executed by Pappu Gounder on 19.01.1916 has not been satisfactorily established. The defendants have not demonstrated, by acceptable evidence, that the entire suit property or the entirety of the share claimed by the plaintiffs had ceased to be available for partition.

29.The question whether the suit property is available for partition is essentially dependent upon the title and succession of the respective branches. The Courts below have considered the ancient sale deeds, the Will, the subsequent transactions and the evidence of the parties. The defendants have failed to establish an exclusive title to the entire property or to demonstrate that the plaintiffs had completely lost their right to seek partition.



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30.As regards Gopal Gounder, Chinnasamy Gounder and Govindasamy Gounder, the First Appellate Court has considered the genealogy and the documentary evidence. The issue whether a particular person was a member of the branch is predominantly a question of fact. In the absence of perversity or a finding unsupported by evidence, such findings do not warrant interference in a Second Appeal.

31.The findings recorded by the First Appellate Court regarding the share of the plaintiffs are based upon appreciation of the evidence and the successive transactions evidenced by Exs.A2 to A5, A8 and A9 and the other documents relied upon by the parties.

32.The First Appellate Court ultimately held that the second plaintiff was entitled to 3/6th share, namely, 1/2 share in the entire suit property, and that the first plaintiff was entitled to 1/10th share. Thus, the plaintiffs were held entitled to a total extent of 6/10th share.



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33.It is relevant to note that the plaintiffs have not challenged the modification made by the First Appellate Court. Therefore, the question before this Court in the present Second Appeal is not whether the plaintiffs could have been granted the original 7/10th share awarded by the trial Court, but whether the appellants have established any substantial question of law warranting interference with the modified decree.

34.On a careful consideration of the entire evidence, this Court finds that the First Appellate Court has given cogent reasons for modifying the decree of the trial Court and for determining the respective shares. The findings are neither perverse nor contrary to the evidence on record.

35.Accordingly, substantial question of law Nos.1 to 3 are answered against the appellants.

Answer to the substantial question of law No.4:-

36.The fourth substantial question of law relates to the alleged failure of the First Appellate Court to frame proper points for determination. In the



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present case, though the points for determination may not have been framed in the most elaborate manner, the judgment of the First Appellate Court demonstrates that it considered the principal controversies raised by the appellants, including the genealogy, the claim of the first plaintiff through Arunachala Gounder, the effect of Ex.B10-Will, the respective shares of the parties and the documents relied upon by the plaintiffs.

37.The First Appellate Court has also modified the decree of the trial Court from 7/10th share to 6/10th share. This itself demonstrates that the appellate Court independently considered the matter and did not mechanically affirm the judgment of the trial Court.

38.Therefore, no failure of jurisdiction or substantial prejudice has been demonstrated merely because the points for determination were not formulated in the precise manner now suggested by the appellants.

39.Hence, substantial question of law No.4 is also answered against the appellants.



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Conclusion

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40. On an overall consideration of the pleadings, oral and documentary evidence and the judgments of the Courts below, this Court finds that the appellants have failed to establish any perversity, illegality or substantial error of law in the judgment of the First Appellate Court.

41. The principal contention that the first plaintiff is an illegitimate son of Arunachala Gounder has not been proved. The reliance placed upon Ex.B10-Will and the other documents by the appellants is insufficient to displace the findings recorded by the Courts below. The alleged settlement and exclusive title claimed by the defendants have also not been established so as to defeat the plaintiffs' right to partition.

42. The First Appellate Court, being the final Court of fact, has considered the material evidence and has arrived at a conclusion which is a possible and reasonable view of the evidence. This Court, exercising jurisdiction under Section 100 CPC, finds no ground to substitute its own appreciation of the evidence for that of the First Appellate Court.



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43. Accordingly, all the substantial questions of law are answered against the appellants.

44. In the result, the Second Appeal is **dismissed**, confirming the judgment and decree dated 20/12/2002 passed in A.S.No.99 of 2000 by the learned Additional District Judge, Fast Track Court No.I, Thanjavur, modifying the judgment and decree dated 03.08.2000 passed in O.S.No.78 of 1994 by the learned Principal Subordinate Judge, Thanjavur. In the circumstances of the case, there shall be no order as to costs.

17.08.2026

NCC : Yes / No
Index : Yes / No
RM



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To

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- 1.The Additional District Judge, (Fast Track Court No.1),
Thanjavur.
- 2.The Principal Subordinate Court,
Thanjavur.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

RM

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