



S.A.Nos.725 & 1335 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved : 28/04/2026

Date of Pronounced : 20/07/2026

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

S.A.Nos.725 & 1335 of 2003

(1)SA No.725 of 2003:-

Joice : Appellant/Appellant/Plaintiff

Vs.

1.Paulraj

2.Sundarraaj

3.Bright (died)

4.Rosal (died)

5.Kamalabai

6.Sarojini

7.Selvarani

8.Rasalayyan

9.Rathinabai

10.Ramakrishnan Pillai : Respondents /Respondents 1 to 10 & 11/

Defendants 1 to 8 & 10



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11.Asha

12.Ablash

: Respondents 11 & 12

(Respondents 11 & 12 are brought on record as LR.s of the deceased 3rd respondent, vide Court order, dated 08/04/2022 made in CMP(MD)No.9251 of 2021 in S.A. No.725 of 2003)

(Memo dated 06.08.2022 filed on 17.08.2022 in USR.No.22917 is recorded, as R4 died, and Respondents 1, 2 and 5 to 7 who are already on record, are recorded as Lrs of the deceased R4 vide Court order dated 05.01.2024 made in S.A.No.725 of 2003)

PRAYER: This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 18.11.2002 made in A.S.No.17 of 1998 on the file of the Subordinate Court, Kuzhithurai confirming the judgment and decree dated 23.10.1997 made in O.S.No.292 of 1987 on the file of the II Additional District Munsif, Kuzhithurai.

For Appellants : Mr.P.Thiagarajan

for Mr.T.R.Rajaraman

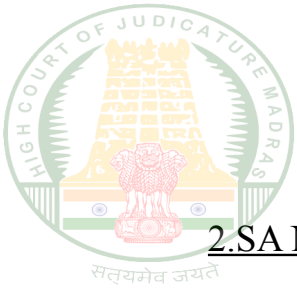
For Respondents : Mr.V.Meenakshisundaram-for RR1, 2, 5 to 7&9

for Mr.K.Sreekumaran Nair

: R3 Died (Steps taken)

: R4 died (memo recorded)

: No appearance -for RR8, 10, 11 and 12



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2.SA No.1335 of 2003:-

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Rasalayyan

: Appellant/Appellant/Defendant

Vs.

1.Paulraj

2.Sundaraj

3.Bright (died) : Respondents/Respondents/Plaintiffs

4.Rathinabai

5.Asha

6.Ablash : Respondent 4 to 6

(Respondents 4 to 6 are brought on record as LR.s of the deceased 3rd respondent, vide Court order, dated 01/04/2022 made in CMP(MD)Nos.9191, 9193 & 9194 of 2021 in S.A.No. 1335 of 2003)

PRAYER: This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 18.11.2002 made in A.S.No.161 of 1997 on the file of the Subordinate Court, Kuzhithurai confirming the judgment and decree dated 23.10.1997 made in O.S.No.168 of 1987 on the file of the II Additional District Munsif, Kuzhithurai.



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For Appellants : Mr.P.Thiagarajan
for Mr.T.R.Rajaraman

For Respondents : Mr.V.Meenakshisundaram-for R1 & R2
for Mr.K.Sreekumaran Nair
: R3 Died (Steps taken)
: No appearance -for R4 to R6

COMMON JUDGMENT

S.A.No.725 of 2003 has been filed by Joice who is the plaintiff in O.S.No.282 of 1987 filed an appeal as against the judgment and decree, dated 18.11.2002 in A.S.No.17 of 1998 on the file of the Subordinate Court, Kuzhithurai, but the first appellate confirming the judgment and decree, dated 23.10.1997 made in O.S.No.282 of 1987 on the file of the II Additional District Munsif, Tirunelveli. Whereas S.A.No.1335 of 2003 has been filed by Rasalayyan who is the defendant in O.S.No.168 of 1987 filed an appeal as against the judgment and decree dated 18.11.2002 in A.S.No.161 of 1997 on the file of the Subordinate Court, Kuzhithurai, but the first appellate court confirming the judgment and decree dated 23.10.1997 made in O.S.No.168 of 1987 on the file of the II Additional District Munsif, Kuzhithurai.



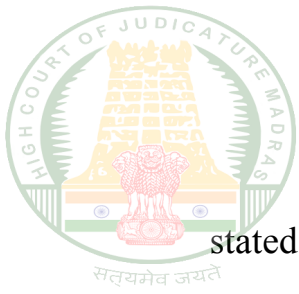
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2. Brief case in O.S.No.168 of 1987

According to the respondents/plaintiffs, their father Sathyanesan during his life time mortgaged the property to the sole defendant (appellant, Rasalayyan) on 04.03.1982 for a sum of Rs.500/-. The property mortgaged was 30 cents of land for 10 years. Since the plaintiffs are the agriculturist, they are entitled to claim relief under the Debt Relief Act, 1938, 1972 and 1979. Half of the amount has already been lapsed, the plaintiffs claimed redemption of mortgage for the remaining amount. But the appellant/defendant refused to do so, when they demanded on 15.03.1987. Hence, the suit.

3.In the written statement, the defendant admitted that the properties originally belongs to Sathyanesan, father of the plaintiffs and also admitted that he is a mortgagee. He further stated that he had constructed a 'Saw Mill' in the subject matter of the property. The plaintiffs demolished the construction and took away the machineries and in this connection, already civil suit and criminal cases are pending against the plaintiffs. The plaintiffs were also running 'Saw Mills' and they are not entitled for the relief under the Debt Relief Act and further



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stated that the mortgage period was 10 years and this suit for redemption was filed before completion of mortgage, which is a premature one.

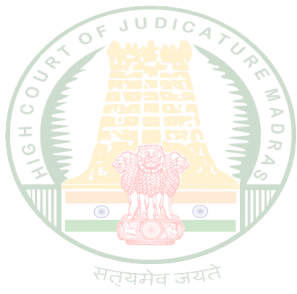
4.The trial Court, after receipt of the written statement has framed the following issues in O.S No.168 of 1987:-

- 1. Whether the suit is premature ?*
- 2. Whether the plaintiffs are entitled to the benefits of the Tamil Nadu Agriculturist Debt Relief Act ?*
- 3. To what relief, the plaintiffs are entitled to?*
- 4. What is the order as to costs ?*

5.The said suit was decreed in favour of the plaintiffs by directing them to pay a sum of Rs.500/- within a month and to redeem the mortgage. Against which, they have filed A.S.No.161 of 1997, which was also dismissed. Now the present second appeal in S.A.No.1335 of 2003 has been filed.

6.At the time of admission of S.A.No.1335 of 2003, the following substantial questions of law were framed :-

(a) Having held that the plaintiff is entitled to a share, though not in respect of the entire items, have not the courts below committed an error in dismissing



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the present suit, which itself is a suit for partition and directing the plaintiff to file a separate suit for partition?

(b) When the entitlement of the plaintiff atleast in respect of certain items of properties is found in his favour, can not the court mould the relief accordingly and grant a preliminary decree for partition in respect of those items?

(c) When admittedly the plaintiff is not a party to Exs.B.6 and B.7/family arrangement, have not the courts below committed an error of law in non-suiting the plaintiff on the basis of Exs.B.6 and B.7?

7. Another suit in O.S.No.282 of 1987 was filed for partition and separate possession, by the plaintiff Joice, who is the appellant in S.A.No.725 of 2003 against the respondents, who are her brothers by claiming her 1/8th share. In the said suit, she has stated that the suit properties originally belonged to her father, Sathyanesan and her mother, who is the 4th defendant. Defendants 1 to 3 and 5 to 7 are her brothers. Her father Sathyanesan died leaving behind the plaintiff and defendants. Since they belong to Christian community, she is entitled to 1/8th share. 30 cents of land was also mortgaged by her father that has to be taken into consideration while allotting her share .

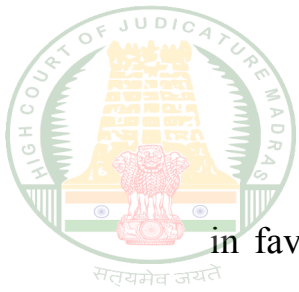


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8.The defendants in their written statement admitted that the father of the plaintiff and defendants Tr.Sathyanesan is the owner of the suit scheduled property. They further contended that 'A' schedule property consisting of 3 acres 24 cents and 'B' schedule consists of 91 cents . But they further contended that at the time of marriage, the plaintiff was given 45 cents of land as Sreedhana in the year 1974 and also given with jewels. Subsequently, the 4th defendant filed a suit in O.S.No.318 of 1982 for maintenance and the entire suit properties were attached and therefore, she cannot claim partition.

9.They further contended that the said Sathyanesan died leaving behind heavy debts and therefore, in order to repay the same, they had conveyed 1 ½ acres in 'A' schedule property to one Ramakrishnapillai and for maintenance and running of the family, they have also sold a part of the property in favour of one Rathinabai. In order to meet out the marriage expenses of 5 to 7 defendants, they have sold some properties in favour of one Ramakrishna Pillai and so far as the remaining properties are concerned, they have already entered into a partition, vide document No.388/1987. They further stated that in order to repay the loan, the 4th defendant mortgaged a portion of the property



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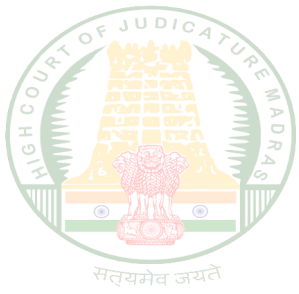
in favour of one Palanisamy for a sum of Rs.20,000/-. The defendants after repayment of entire debts allotted small extents, which were comparatively less than what was given to the plaintiff and prayed to dismiss the suit.

10. The 8th defendant, who is the husband of the plaintiff stated that he had obtained mortgage from Sathyanesan of 30 cents that has to be allotted to the plaintiff, who had no objection regarding the allotment.

11. The 9th defendant, who is the purchaser of the property has stated that 60 cents of the land was sold in pursuance of decree in O.S.No.547 of 1956, on 12.06.1986 by the 4th defendant and her three sons and another extent of 40 cents also sold in his favour on 26.05.1986. After the purchase, he had planted rubber trees and also fence the lands. Hence, prayed to dismiss the suit.

12. After hearing both sides, the trial Court has framed the following issues in O.S.No.282 of 1987:-

1. Whether the plaintiff is entitled to get 1/8th share in the suit property ?



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2. Whether the plaintiff is entitled to get any share from the family property?

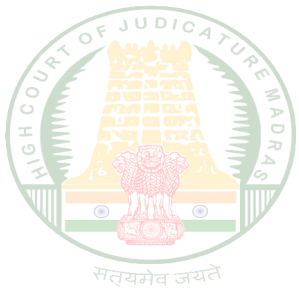
3. Whether the plaintiff received her due share in the property by way of sridhanam at her marriage time ?

4. Whether the plaintiff relinquished her share in lieu of sridhanam received ?

5. Relief and costs ?

13. Both the suits were tried together and the witnesses were recorded in O.S.No.282 of 1987. On the side of the plaintiff, PW1 was examined and no documents were marked. On the side of the defendants, DW1 and DW2 were examined and documents Exs.B1 to B22 were marked.

14. After hearing both parties, the trial Court dismissed the suit in O.S.No.282 of 1987 filed by Joice for partition with liberty to file a fresh suit for partition. Against which A.S.No.17 of 1998 has been filed by the said plaintiff, which was also dismissed. Against which, the present S.A.No.725 of 2003 has been filed by the plaintiff.



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15. At the time of admission of S.A.No.725 of 2003, the

following substantial questions of law were framed :-

(a) Having held that the plaintiff is entitled to a share, though not in respect of the entire items, have not the courts below committed an error in dismissing the present suit, which itself is a suit for partition and directing the plaintiff to file a separate suit for partition?

(b) When the entitlement of the plaintiff at least in respect of certain items of properties is found in his favour, cannot the Court mould the relief accordingly and grant a preliminary decree for partition in respect of those items?

(c) When admittedly the plaintiff is not a party to Exs.B.6 and B.7/family arrangement, have not the Courts below committed an error of law in non-suiting the plaintiff on the basis of Exs.B.6 and B.7?

16. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1, 2, 5 to 7 & 9.

17. In so far as S.A.No.1335 of 2003 is concerned, it is the contention of the appellant that, since the stipulated period under the mortgage had not expired, the plaintiff was not entitled to seek



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redemption.

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18.It is not in dispute that the suit property originally belonged to Sathyanesan, the father of the plaintiff and that the mortgage in question is a usufructuary mortgage. As a general rule, a mortgage is redeemable even before the expiry of the stipulated period, unless there is a valid statutory restriction or an express covenant creating a legally enforceable bar. The mortgagor's right of redemption is a substantive statutory right protected under the Transfer of Property Act, 1882. Any contractual term which completely prevents or unreasonably restricts the exercise of such right amounts to a clog on the equity of redemption and is unenforceable.

19.In the present case, the defendants have failed to establish that the mortgage deed contains any such valid covenant postponing or restricting the plaintiff's right of redemption.. Therefore, the contention that the suit for redemption was premature cannot be accepted.

20.The appellants/ defendants further contended that the



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plaintiffs were running a saw mill and, therefore, were not entitled to the benefits of the Agricultural Debt Relief Act. However, no such plea was substantiated by acceptable evidence. Even during the chief examination, no evidence was adduced to establish that the plaintiffs were carrying on a Saw Mill business, nor was any documentary evidence produced in support of the said contention. On the other hand, the wife of the mortgagee, admitted that the suit property is a paddy field.

21.Further, during cross-examination, the mortgagee categorically admitted that he had no objection for redemption of the mortgage, provided the mortgage amount was paid. Though he also claimed developmental charges, he failed to establish any contractual covenant entitling him to such reimbursement.

22.Under Section 62 of the Transfer of Property Act, in the case of a usufructuary mortgage, the mortgagee is entitled to remain in possession of the mortgaged property and appropriate the rents, profits and usufruct in lieu of interest or towards the mortgage money, as agreed between the parties. In the absence of an express covenant in the mortgage deed, the mortgagee is not entitled to claim reimbursement of



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developmental charges or the value of improvements made by him as a condition precedent for redemption.

23.The Trial Court has, therefore, rightly permitted the plaintiffs to deposit the mortgage amount and redeem the mortgage. This Court finds no perversity or illegality in the concurrent findings recorded by the Courts below warranting interference. Accordingly, S.A No.1335 of 2003 is liable to be dismissed.

24. In so far as S.A. No.725 of 2003 is concerned, the appeal arises out of a suit filed by Joice, one of the daughters of late Sathyanesan, seeking partition and separate possession of her share in the suit properties. The plaintiff claimed 1/8th share in the suit property.

25.The defendants 1 to 3 and 5 to 7, who are the brothers of the plaintiff, contended that at the time of her marriage in the year 1974, their father had gifted her 45 cents of land, apart from jewels and meeting the marriage expenses. Therefore, according to them, she was not entitled to claim any further share in the family properties. Though the plaintiff did not specifically deny the receipt of the said properties, the question

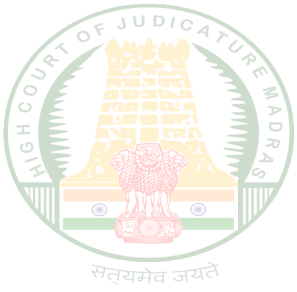


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that arises is whether the properties given as Sreedhana can be construed as allotment of her share in the ancestral estate.

26.This Court is of the considered view that such a contention cannot be accepted. The evidence clearly establishes that the property was gifted by the father as Sreedhana in connection with the marriage of the plaintiff. A gift made towards Sreedhana cannot be equated to a partition or relinquishment of the daughter's inheritance. Therefore, the Sreedhana properties cannot be treated as the plaintiff's share in the estate, nor can they curtail her statutory right to succeed to her father's properties.

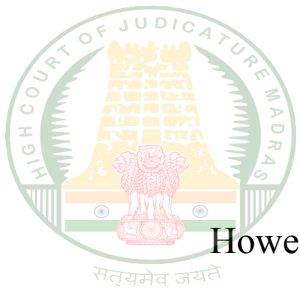
27.The defendants further contended that late Sathyanesan had incurred substantial debts from various banks and private individuals, which the plaintiff deliberately failed to disclose in the plaint. It was also stated that the fourth defendant, the widow of Sathyanesan, had instituted O.S. No.318 of 1982 for maintenance, during which certain properties had been attached.



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28. On careful scrutiny of the records, it is evident that the

plaintiff failed to disclose the debts incurred by her father, including loans obtained from the Thakkalai Land Development Bank. The evidence further establishes that, after the death of Sathyanesan, defendants 2, 6 and 7 were still minors. In order to maintain the family, educate the minor children and discharge the outstanding debts, the fourth defendant borrowed money from one Palanisamy, against whom a money suit was subsequently instituted. To repay those debts and meet the educational and marriage expenses of the children, she sold an extent of 1.00 acre in favour of Ramakrishnan Pillai, the ninth defendant, and another portion in favour of Rathnabai (10th defendant), the wife of the third defendant. The plaintiff has not seriously dispute these transactions. Records further revealed that the said transaction had taken place even prior to the filing of the partition suit. Desperate, being fully aware of these transactions, the plaintiff failed to disclose them before the court. A plaintiff seeking partition is expected to approach the Court with complete candour by disclosing not only the assets, but also the liabilities of the estate. In these circumstances, the alienations made in favour of Ramakrishnan Pillai and Rathnabai, having been effected for legal necessity and discharge of family debts, do not warrant interference.

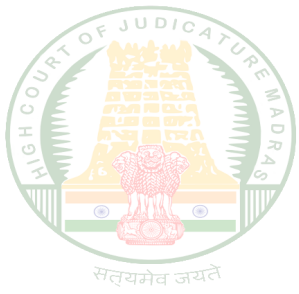


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However, the plaintiff is entitled to claim her lawful share in the remaining properties available for partition.

29.The parties admittedly profess the Christian faith. Therefore, succession is governed by the Indian Succession Act, 1925. Under Section 33 of the Act, where the deceased leaves behind a widow and lineal descendants, the widow is entitled to one-third of the estate, while the remaining two-thirds devolve upon the lineal descendants in equal shares. Consequently, the plaintiff's claim for 1/8th share is legally unsustainable.

30.In the present case, it is admitted that the plaintiff, defendants 1 to 3 and 5 to 7 are the children of late Sathyanesan, and the fourth defendant is his widow. After excluding the properties that were validly alienated for the discharge of debts and maintenance of family, the remaining extent available for partition is 91 cents. Further, in O.S.No.282 of 1987 an extent of 30 cents was permitted to be partitioned. Consequently, both the said cents of land are presently available for partition.



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31. Accordingly, the fourth defendant, being the widow, is entitled to one-third share in the remaining property. The balance two-thirds shall devolve equally upon the seven children. Consequently, each child, including the plaintiff, is entitled to $\frac{2}{21}$ th share in the remaining extent available .

32. Though the defendants relied upon Ex.B6, said to be a partition deed, the plaintiff was admittedly not a party to the said document. Therefore, the said partition is not binding upon her.

33. The Trial Court, instead of dismissing the suit on the ground that the plaintiff claimed $\frac{1}{8}$ th share, ought to have moulded the relief in accordance with the statutory provisions governing succession. This Court, therefore, modifies the decree by passing a preliminary decree declaring that, out of the remaining extent , the fourth defendant being the wife of Sathyanesan is entitled to one-third share, under the provision of Indian Succession Act. The remaining two third shall be devolve equally upon plaintiff and the other children of Sathyanesan, resulting the plaintiffs to bar $\frac{2}{21}$ share. Consequently, the judgment and



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decree of the Trial Court and first appellate court stand modified to the
above extent.

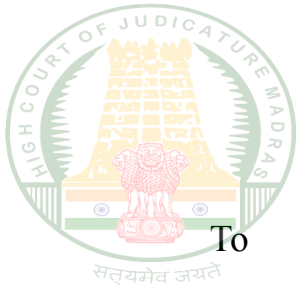
34. With these modification, **S.A.No.725 of 2003 is partly allowed** and the judgments and decrees passed by the Courts below are set aside. No costs.

35. In the result, **S.A. No.1335 of 2003 is dismissed** and the judgments and decrees passed by the Courts below are confirmed. No costs.

20.07.2026

Index : Yes
Internet : Yes
NCC : Yes / No

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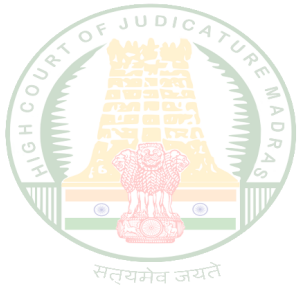
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1.The Subordinate Court,
Kuzhithurai.

2.TheII Additional District Munsif Court,
Kuzhithurai.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

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Pre-Delivery Common Judgments in
S.A.Nos.725 & 1335 of 2003

20.07.2026