



*S.A.No.1918 of 1999*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2022

CORAM

**THE HON'BLE MR.JUSTICE S.SOUNTHAR**

**S.A.No.1918 of 1999**

Pandurangan (Died)

... Appellant/  
Respondent/Defendant

2.Maruthayee

3.P.Rajendran

4.P.Shanmugam

... Appellants

*(Appellants 2 to 4 are brought on record  
as legal heirs of the deceased sole  
appellant vide Court order, dated  
18.11.2021 in C.M.P(MD)No.1436 to 1438  
of 2019)*

Vs.

Karuppan (Died)

... Respondent/  
Appellant/ Plaintiff

2.Chellammal

3.Siva @ Chitra

4.Meenakshi

5.Amutha

6.Kamatchi



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7.Sasikumar

8.Marathumuthu (Died)

... Respondents

*(Respondents 2 to 8 are brought on record as legal heirs of the deceased sole respondent vide Court order, dated 18.04.2022 in C.M.P(MD)Nos.1415 to 1417 of 2019)*

9.Karupayee

10.Rajendran

11.Venila

... Respondents

*(Respondents 9 to 11 are brought on record as legal heirs of the deceased 8<sup>th</sup> respondent vide Court order, dated 25.03.2022 in C.M.P(MD)Nos.177 to 1799 of 2022)*

**PRAYER** : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 24.09.1999 and made in A.S.No.154 of 1999 on the file of District Judge, Karur, reversing the judgment and decree, dated 01.03.1996 and made in O.S.No.368 of 1994 on the file of District Munsif, Karur.

For Appellants : Mr.P.Thiagarajan

For R2 – R7 &  
R9 - R11 : No appearance



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## **JUDGMENT**

The defendant in a suit for partition is the appellant.

2. The respondent/plaintiff filed a suit for partition claiming half share in the property assigned to his father by an assignment order, dated 30.11.1969 marked as Exhibit A.1. According to the plaintiff, Maruthavanan who is the father of the appellant and the respondent died intestate on 11.11.1992 leaving behind the appellant, respondent and two daughters. It was pleaded by the respondent/plaintiff that both the daughters had got married nearly 20 years back and at the time of marriage, they were provided with sufficient Seervarisai and they have been living separately in their matrimonial home for the past 20 years. It was further pleaded that the daughters were ousted from claiming any share in the suit properties.

3. The appellant/defendant had filed a written statement and resisted the suit by raising plea of non-joinder of necessary parties, namely the daughters of Maruthavanan and earlier partition in the family.



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According to the appellant/defendant, even during life time of Maruthavanan, there was a partition in the family and the 5 cents of suit property lying on the eastern side, which was assigned to Maruthavanan was given to the respondent/plaintiff. The remaining 5 cents in occupation of Maruthavanan on the western side was allotted to the appellant/defendant. It is the specific case of the appellant/defendant that the parties had been in possession and enjoyment of the respective portion of property allotted to them in earlier partition and there was no necessity for filing a partition suit.

4. The trial Court came to the conclusion that both the sisters of the appellant and the respondent were married prior to 1989 and hence, they were not entitled to any share in the suit property. As far as the plea of earlier partition made by the appellant is concerned, the trial Court found that the appellant/defendant proved the plea of earlier partition and consequentially dismissed the suit.

5. Aggrieved by the same, the respondent filed an appeal in A.S.No.154 of 1999. The first appellate Court also concurred with the findings of the trial Court with regard to the non-joinder of necessary



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parties. However, with regard to the plea of earlier partition made by the appellant/defendant, the first appellate Court held that the respondent/plaintiff is entitled to half share in the 5 cents assigned in favour of Maruthavanan. Therefore, the plea of earlier partition made by the appellant was not accepted by the earlier appellate Court and aggrieved by the same, the appellant/defendant is before this Court.

6. Though notice have been served on the respondents and their name printed in the list, there is no representation for the respondents. Heard the arguments of the learned counsel for the appellant and perused the records.

7. The second appeal was admitted on the following substantial question of law:

*“(a) Is the learned District Judge correct in granting a decree for partition when already there was a partition between the two parties?”*



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8. On consideration of the arguments of learned counsel for the appellants, this Court frames the following substantial question of law also for consideration:

“(b) Whether the suit is bad for non-joinder of necessary parties, namely the sisters of the appellant and the respondent?”

9. A perusal of the plaint and the written statement would show that the appellant and the respondent are sons of one Maruthavanan. Admittely, the suit property was assigned in favour of Maruthavanan on 30.11.1969 under Exhibit A.1. It is not in dispute that the said Maruthavanan had two other daughters, namely the sisters of the present parties to the suit. It was pleaded by the respondent/plaintiff that both the sisters got married nearly 20 years back and therefore, they had been ousted from the suit properties and consequentially, they were not entitled to any share in the suit properties. Though an issue was framed with regard to the non-joinder of necessary parties, the trial Court as well as the first appellate Court found that the suit was not bad for non-joinder of necessary parties, mainly on the ground that both the sisters got married prior to 1989, Tamil Nadu amendment to Hindu Succession act. As per the admitted case of the parties, the suit property was assigned in



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favour of Maruthavanan in the year 1969 under Exhibit A.1. Therefore, by no stretch of imagination, the suit properties can be termed as a coparcenary property. It can be treated only as a self acquired property of Maruthavanan. In that case, the daughters of Maruthavanan are also entitled to a share in the suit property as his Class-I legal heirs. As far as self earned property of a male Hindu, daughters and sons are entitled to equal share as class one heirs from the inception of Hindu Succession Act, 1956. Therefore, both the Courts below have committed serious error in holding merely because both the sisters got married prior to 1989, they were not entitled to any share in the suit property. Therefore, the findings of both the Courts below with regard to the non-joinder is liable to be set aside and accordingly, the same is set aside. The plea of ouster made by the respondent/plaintiff has to be decided only in the presence of the sisters of the parties.

10. As far as the question of law (a) is concerned, the earlier partition pleaded by the appellant/defendant cannot be decided in the absence of other sharers of the suit property, namely the sisters of the parties. Therefore, the point raised by the appellant with regard to the earlier partition between the parties is left open and it can be decided



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only in the presence of other sharers, namely the sisters. Thus, both the questions of law are answered in favour of appellants.

11. In view of the conclusion with regard to the question of non-joinder, I hold that the suit is bad for non-joinder of necessary parties, namely the sisters of the appellant and the respondent, consequentially the findings of both the Courts below with regard to non-joinder of necessary parties are set aside. The judgment and decree passed by the lower appellate Court are set aside and the Second Appeal stands allowed.

12. In fine,

(a) The Second Appeal stands allowed by setting aside the judgment and decree of lower appellate Court.

(b) The original suit stands dismissed.

(c) No costs. Connected Miscellaneous Petitions, if any, closed.

**12.12.2022**

Index : Yes / No  
Internet : Yes / No  
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To

- 1.The District Judge,  
Karur,
- 2.The District Munsif,  
Karur.
- 3.The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SOUNTHAR,J.**

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Judgment made in  
S.A.No.1918 of 1999

Dated:  
12.12.2022