



S.A.No.2099 of 2001

.THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**S.A.No.2099 of 2001**  
**and**  
**C.M.P.No.21842 of 2001**

1.Bharathan

2.Lakshmanan

3.Alavammal

4.Adimoola Gounder

...Appellants

Vs.

1.Adiparasakthi

2.Minor Palaniammal by  
Guardian mother Adiparasakthi

...Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 18.01.2001 made in A.S.No.100 of 2000 on the file of the Principal District Court at Thiruvannamalai confirming the judgment and decree dated 27.06.2000 passed by the Additional District Munsif No.1 made in O.S.No.386 of 1997.



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For Appellants : Mr.R.Baskar

For Respondents : Mr.P.G.Thiyagu

### **J U D G M E N T**

Mr.R.Baskar, learned counsel appearing for the appellants 1 and 2 would represent that the 3<sup>rd</sup> and 4<sup>th</sup> appellants are no more. The 3<sup>rd</sup> appellant is Alavammal, the wife of the 4<sup>th</sup> appellant namely, Adhimoola Gounder. The sons of appellants 3 and 4 are appellants 1 and 2 namely, Bharathan and Lakshmanan. Since the legal heirs already being on record and the estate being substantially represented, there is no necessity to bring on record the other legal heirs.

2.The present Second Appeal arises against the suit for partition and maintenance. The relationship between the parties are admitted. There was one Adhimoola Gounder, who married one Alavammal. They are the defendants 3 and 4 in the suit. The 1<sup>st</sup> defendant is one Bharathan, whose brother is Lakshmanan/2<sup>nd</sup> defendant. They are the 1<sup>st</sup> and 2<sup>nd</sup> defendants to the suit. The suit has been filed by the unfortunate deserted wife of



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Bharathan by name Adhiparasakthi Ammal. From the wedlock between Adhiparasakthi Ammal and Bharathan, a female child by name, minor Palaniammal, who is the 2<sup>nd</sup> plaintiff was born. The suit was presented on the ground that Bharathan had deserted the plaintiffs and therefore, the 1<sup>st</sup> plaintiff was entitled for maintenance at the rate of Rs.1,200/- from the date of presentation of plaint and at the rate of Rs.500/- per month for the 2<sup>nd</sup> plaintiff. This is the maintenance aspect of the suit.

3.The suit also has another limb that is on partition of the properties. The 2<sup>nd</sup> plaintiff / minor Palaniammal being an unmarried, on the date of which, the Tamil Nadu Amendment to Hindu Succession Act was brought into force, claiming to be a coparcener, had attempted to partition the property with her father. The father did not agree and hence, the suit came to be presented in O.S.No.386 of 1997.

4.The 1<sup>st</sup> defendant filed a written statement, which was adopted by the other defendants. The plea was taken that the 1<sup>st</sup> defendant and the 1<sup>st</sup> plaintiff were never married and the marriage registration certificate dated



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16.04.1993 is not between them. He further denied the marital relationship between the 1<sup>st</sup> defendant and the 1<sup>st</sup> plaintiff. He claimed that he is not the husband of the 1<sup>st</sup> plaintiff and she is not entitled to maintenance from him. He would further plead that the 2<sup>nd</sup> plaintiff is not his daughter and therefore, they are not entitled to a share.

5.He would also plead that his father Adhimoola Gounder, the 4<sup>th</sup> defendant had married one Periyayee and from the marriage between Periyayee, a child named Indhirani was born and the said Indhirani is still alive and therefore, she is entitled to a share. The Trial Court framed the following issues:-

*“1.Whether the plaintiff is the legally wedded wife of the first defendant?*

*2.Whether the second plaintiff is the daughter of the first plaintiff and the first defendant?*

*3.Whether the suit properties are joint family properties of the defendant 1,2 and 4?*

*4.Whether the suit is bad for non-joinder of necessary parties?*

*5.Whether the plaintiff is entitled for the suit claim?*

*6.To what relief?”*



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6.On the side of the plaintiffs, Adhiparasakthi Ammal examined herself, apart from three other witnesses and the 4<sup>th</sup> defendant entered the witness box on their side. The plaintiffs filed Exs.A1 to A13 and the defendants marked Exs.B1 to B15. The Trial Court decreed the suit granting 1/8<sup>th</sup> share to the 2<sup>nd</sup> plaintiff in the 'A' schedule property, which it found to be an ancestral in nature. The Trial Court directed the 1<sup>st</sup> defendant to pay a sum of Rs.400/- from 06.08.1993 that is from the date of the filing of the suit.

7.Aggrieved by the said judgment and decree, the defendants filed A.S.No.100 of 2000 on the file of the Principal District Judge, Thiruvannamalai. The said appeal was dismissed on 18.01.2001. Aggrieved over the same, this present Second Appeal has been presented.

8.I have carefully perused the records and the judgments of the Trial Court and the lower Appellate Court.



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9.Mr.R.Baskar, learned counsel appearing for the appellants draw my attention to the questions of law framed and stated that a suit for maintenance and a suit for partition cannot be filed together. I am unable to agree with his contention. The cause of action for the suit for partition is the failure of the father to partition the property and give it to the daughter. The suit for maintenance was also presented because of the failure of the father to maintain the 1<sup>st</sup> plaintiff and his daughter/the 2<sup>nd</sup> plaintiff. By virtue of the very relationship, the husband is duty bound to maintain the wife, even if he does not have the capacity to maintain himself. I am unable to agree with the contention that the suit for maintenance and suit for partition cannot be presented together.

10.The Trial Court as well as the lower Appellate Court were right in granting 1/8<sup>th</sup> share to the minor, 2<sup>nd</sup> plaintiff / 2<sup>nd</sup> respondent herein. It is a concurrent findings of fact of law. I am satisfied that there is no perversity or illegality to interfere, I am not inclined to interfere with the judgments of the lower Courts. There is absolutely no question of law, much less a



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substantial question of law, which arises for consideration of this Court.

WEB CO This Appeal is therefore, dismissed with costs through out. Consequently,  
connected miscellaneous petition is closed.

30.03.2023

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

Nuetral Citation : Yes/No

To:-

1.The Principal District Court,  
Thiruvannamalai.

2.The Additional District Munsif Court - I,  
Thiruvannamalai.



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**V.LAKSHMINARAYANAN, J.**

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