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A.S.NO.505 OF 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 10 / 04 / 2024

JUDGMENT DELIVERED ON : 06 / 06 / 2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**A.S.NO.505 OF 2016
AND
CMP NO.11856 OF 2022**

R.Pooja Kanmani

.. Appellant /
Plaintiff

(Appellant declared as a major and the guardian was discharged vide order of this Court dated 17.06.2016 made in C.M.P.No.9311 of 2016 in A.S.SR.No.31952 of 2016)

Versus

1.K.Rajendrakumar
2.K.Sakthivel

.. Respondents /
Defendants

PRAYER: First Appeal filed under Order XLI Rule 1 read with Section 96 of CPC, praying to set aside the judgment and decree dated 22.12.2015 made in O.S.No.84 of 2010 on the file of the II Additional District Court, Erode by allowing this First Appeal.



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For Appellant : Mr.N.Manokaran

For Respondent 1 : Mr.C.R.Prasanan

For Respondent 2 : Mr.V.S.Kesavan

JUDGMENT

R.SAKTHIVEL, J.

The appellant herein is the plaintiff in *O.S.No.84 of 2010* on the file of 'II-Additional District Court, Erode' (henceforth 'Trial Court').

2. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Suit *i.e.*, the appellant herein and the respondents herein will be referred to as plaintiff and defendants respectively.

3. Feeling aggrieved with the judgment and decree dated *December 22, 2015*, passed by the Trial Court in *O.S.No.84 of 2010*, the plaintiff has preferred this Appeal under Section 96 read with Order XLI Rule 1 of the 'Code of Civil Procedure, 1908' (henceforth 'CPC'), praying to set aside the same.



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4. Plaintiff's case

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4.1.The case of the plaintiff is that, the marriage between the couple, K.Rajendrakumar / 1st Defendant (D1) and R.Chelvi, was solemnized on November 21, 1996. Out of their wedlock, plaintiff - Pooja Kanmani was born on September 10, 1997. Due to some matrimonial dispute between the couple, they obtained divorce on mutual consent on July 29, 2010. In these circumstances, the minor plaintiff – Pooja Kanmani (now major) represented by her mother – R.Chelvi filed O.S.No.84 of 2010 for partition and other reliefs against the defendants. Second defendant (D2) is the brother of D1.

4.2.According to the plaintiff, the Suit Properties are ancestral properties. The defendants' father owns landed properties acquired from and out of the income derived from the ancestral properties. On *November 17, 1992*, when D1 was a student, his father – Kannaiyan purchased Item No.1 of the Suit Properties in the name of D1 from the funds derived from the ancestral properties. Likewise, on *September 23, 1992*, Item No.2 of the Suit Properties was purchased in the name of D1. Though the above-mentioned



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properties stand in the name of D1, his father – Kannaiyan being the *kartha* of the family was maintaining the properties.

4.3. On *December 27, 2007*, Kannaiyan, his mother - Lakshmi-ammal, and his two sons – D1 and D2, partitioned their ancestral properties vide a registered Partition Deed. In the said partition, ‘A’ schedule properties were allotted to the share of Lakshmiammal for her life. ‘B’ schedule properties were allotted to Kannaiyan. ‘C’ schedule properties were allotted to D1. ‘D’ Schedule properties were allotted to D2. The properties purchased in the name of the D1 by way of registered Sale Deeds dated *September 17, 1992*, and *September 23, 1992*, out of the income derived from the ancestral properties were not included in the said Partition. The property allotted to the share of D1 as ‘C’ schedule property under the said Partition Deed is mentioned as Item No.3 of the Suit Properties.

4.4. D1 deserted the minor plaintiff and his wife without any justifiable cause or reason. Further, with a view to defeat and defraud the plaintiff’s legitimate right in the Suit Properties, Kannaiyan in collusion with D1



and D2, executed a registered Settlement Deed in favour of D1 and D2 on *November 13, 2007*, settling certain properties purchased from and out of ancestral nucleus. Those properties are mentioned as Item No.4 in the Suit Properties. With the same ulterior motive, D1 executed a registered Settlement Deed on *December 28, 2007*, in favour of D2, settling the properties mentioned in Item Nos.1 and 2 of the Suit Properties.

4.5.Since the impugned Settlement Deed dated 28.12.2007 executed by D1 in favour of D2 was not for the benefit nor for the welfare of the minor plaintiff, and since the minor plaintiff is not a *eo nomine* party to the impugned Settlement Deed dated *December 28, 2007*, it does not bind the minor plaintiff's legitimate $\frac{1}{2}$ share in the properties concerned.

4.6.Further, 5th Item of the Suit Properties are the properties allotted to Lakshmiammal – great grandmother of the plaintiff, as 'A' schedule properties under the Partition Deed dated *December 27, 2007*. After the demise of Lakshmiammal on *March 24, 2011*, the plaintiff is entitled $\frac{1}{4}$



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share, D1 is entitled $\frac{1}{4}$ share and D2 is entitled $\frac{1}{2}$ share. Hence, as per the order of the Court, D2 was added as a proper party.

4.7.Furthermore, in response to the additional written statement dated *February 9, 2015* filed by D2, the plaintiff filed reply statement stating that, against the judgment and decree passed in *O.S.No.260 of 2008* on the file of I-Additional District Court, Erode, the plaintiff therein (Sneha) has preferred an appeal before High Court. Further, the said judgment and decree would not bind the present suit as the judgment and decree passed in one court will not bind the proceedings in another having same jurisdiction and powers. Concept of *res judicata* does not apply in this case.

4.8.The contention of the plaintiff in a nutshell is that, the Suit properties are ancestral and joint family properties and the plaintiff has legitimate $\frac{1}{2}$ share in Item Nos.1 to 4 and $\frac{1}{4}$ in Item No.5. Since, the defendants are trying to alienate the Suit Properties, and defeat and defraud the plaintiff, the plaintiff has filed this Suit seeking partition and other reliefs. The



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principle of *res judicata* won't be applicable as the judgment and decree in *O.S.260 of 2008* would not bind the present plaintiff.

Defendants' Case

5.D1, in his written statement, has admitted that the plaintiff is born out of his wedlock with R.Chelvi on September 10, 1997 and that he obtained divorce from his wife on mutual basis on July 29, 2010. He denies that the Suit Properties are ancestral properties. Further, he denies all the plaint averments as false.

6.D2, in his written statement, has stated that his grandparents - Lakshmiammal and V.K.Raju, had three sons, namely Kannaiyan, Easwaran, Loganathan, and a daughter by name Anusuyadevi. Some of the properties owned by V.K.Raju were partitioned by way of registered Partition Deed dated *May 2, 1963* among the said V.K.Raju and his three sons. In the said partition, V.K.Raju was allotted 'A' schedule property, Kannaiyan was allotted 'B' schedule property, Easwaran was allotted 'C' schedule property and Loganathan was allotted 'D' schedule property.



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6.1.V.K.Raju died intestate on *November 24, 1969*, survived by his three sons and wife – Lakshmiammal. Thereafter, aforementioned legal heirs entered into a family arrangement on *December 2, 1970* partitioning the properties allotted to V.K.Raju in ‘A’ schedule of the Partition Deed dated *May 2, 1963*. Some of the properties allotted under the earlier Partition Deed dated *May 2, 1963* were rearranged for convenience and better enjoyment in the same family arrangement.

6.2.After the demise of V.K.Raju, Kannaiyan and his brothers took their respective shares and were in possession and enjoyment of the properties allotted to them. Kannaiyan had separate income from money lending business and real estate business apart from power looms, and they were never thrown into common hotchpot.

6.3.Subsequently, Easwaran sold an extent of 3,622 ½ sq.ft. allotted to him in ‘C’ schedule of the registered Partition Deed dated *May 2, 1963* and subsequently rearranged in the aforementioned family arrangement dated *December 2, 1970*, in favour of his other two brothers, namely



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Kannaiyan and Loganathan, by way of a registered Sale Deed dated *November 13, 1978*. Hence, Kannaiyan was entitled to $\frac{1}{2}$ of the extent comprised in the Sale Deed and it was his self-acquisition.

6.4. Thereafter, Loganathan being unmarried, executed a registered Will dated *December 12, 1979*. After the demise of Loganathan in or about the year 1981, testamentary succession took place entitling D1 and D2 to be the absolute owner of Loganathan's estate. Further, there have been several valid, true and genuine transfers between the family members.

6.5. Since the said properties were always treated as their own properties, they were not included in the registered Partition Deed dated *December 27, 2007*. D1 and D2 had separate income from the properties bequeathed by their paternal uncle – Loganathan through the Will dated *December 12, 1979*. Out of the said income, D1 purchased Item No.1 and Item No.2 of the Suit Properties by way of Sale Deeds dated *September 17, 1992* and *September 23, 1992*. Therefore, Item No.1 and Item No.2 of the Suit Properties were the absolute and separate properties of D1.



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Subsequently, on *December 28, 2007*, D1 settled Item No.1 and Item No.2 of the Suit Properties in favour of D2. Since the concerned properties were self-acquired properties in the hands of D1, he has got every right to deal with the same, and plaintiff has no right or title over it. The Gift Settlement Deed dated *December 28, 2007*, is true, valid, and genuine, and D2 accepted the properties covered therein.

6.6.It is true the grandmother of the defendants was allotted 'A' schedule (Item 5 of the Suit Properties) in the Partition Deed dated *December 27, 2007* for her life. After her death it devolved upon the defendants in equal moieties as per the aforesaid Partition Deed. It is defendants' self-acquired property and the plaintiff has no share whatsoever in the same.

6.7.Further, D2, in his additional written statement, stated that his daughter – Sneha filed a Suit in *O.S.No.260 of 2008* on the file of the I-Additional District Judge, Erode, seeking partition and other reliefs. Item Nos.1 and 2 of the Suit Properties herein, are also part of the subject matter in the said Suit filed by Sneha. Plaintiff and D1 herein were respectively im-



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pleaded as D3 and D2 therein. After full trial, the said Suit was dismissed on *June 26, 2014*. Therefore, the decree and judgement passed therein is binding upon the plaintiff herein / Pooja Kanmani. The plaintiff herein did not prefer an appeal against the said judgement and decree. Therefore, the Suit is bad for barred by the principle of *res judicata* and estoppel.

6.8. In a nutshell, for the aforesaid reasons, the defendant states that the Suit is barred by the principle of *res judicata*, and the Suit Properties are not ancestral, hence, the plaintiff is not entitled to share therein.

7. Based on the above pleadings, the Trial Court framed the following six issues:

- “ 1) *Whether the plaintiff is entitled to the relief of partition, separate possession and permanent injunction as prayed for?*
- 2) *Whether the assertion of the plaintiff that the Gift Settlement Deed dated December 28, 2007 is invalid, is correct?*



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- 3) *Whether the assertion of the plaintiff that the Suit Properties are purchased from and out of ancestral properties, is correct?*
- 4) *Whether the assertion of the plaintiff that she is in joint possession of the Suit properties, is correct?*
- 5) *Whether the Court fees calculated is incorrect?*
- 6) *To what others reliefs the plaintiff is entitled?"*

7.1. Thereafter, the following additional issues were framed:

- "1) Whether the Suit Property in Item No.5 is amenable to partition?"*
- 2) To what other reliefs the parties are entitled?"*

7.2. Before the Trial Court, on the plaintiff's side, the plaintiff's mother was examined as P.W.1 and Ex-A.1 to Ex-A.5 were marked through her. On the side of the defendants, D2 was examined as D.W.1 and Ex-B.1 and Ex-B.2 were marked through him.

7.3. Upon hearing both sides, the Trial Court concluded that the plaintiff failed to prove the alleged factum of joint family nucleus and surplus



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income therefrom; and that the Suit Properties are ancestral properties.

Further concluded that the defendants acquired separate property of their paternal uncle through his Will and therefore, the same is separate property in the hands of the defendants; that D1 had sufficient independent income to purchase the properties in Item Nos. 1 and 2 of the Suit Properties, and therefore, they are his separate properties and thus, the Settlement Deed executed by D1 is valid. Accordingly, the Trial Court answered Issue Nos.1 to 6 and Additional Issue Nos.1 and 2 in favour of D1 and D2, and against the plaintiff. Thus, the Trial Court held that, the plaintiff is not entitled to the reliefs sought.

8.Assailing the Judgment and Decree passed by the Trial Court, the plaintiff has preferred this Appeal.

Arguments

9.Learned Counsel for the appellant / plaintiff would argue that Item Nos.1 and 2 were purchased in the name of D1 under Ex-A.1 and Ex-A.2 only with the help of the income derived from the joint family nucleus.



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Further, D1 filed a written statement containing only evasive denials, and he did not enter the witness box and state his case on oath. In these circumstances, the Trial Court ought to have taken adverse inference under Section 114 (g) of the Indian Evidence Act, 1872.

9.1.Further, drawing the attention of this Court to Ex-A.3, he would submit that, Ex-A.3 has specific recitals as to the existence of joint family nucleus and surplus income therefrom. Hence, the properties purchased in the name of D1, D2, and their father Kannaiyan are from and out of the joint family surplus income.

9.2.Further would submit that, taking advantage of the matrimonial disputes between the defendants and their respective wives, the defendants executed Ex-A.4 and Ex-A.5 documents containing incorrect description of property as if it is self-acquired, with a view to defeat and defraud the legitimate rights of plaintiff over the Suit Properties including the maintenance rights of her mother and herself.



9.3.Further would submit that, 'C' schedule properties described in Ex-A.3 - Partition Deed are ancestral and joint family properties and merely by allotting the same to D1, it would not lose its ancestral character. In other words, the property allotted in partition of ancestral and joint family property, would not lose its character in the hands of the allottee. Hence, the plaintiff being a coparcener is entitled to share in the said property allotted to her father – D1.

9.4.Further would submit that, the recitals in Ex-A.4, clearly reveal that the properties described therein are ancestral and joint family properties, and Gift Settlement Deed *qua* ancestral and joint family properties is invalid and impermissible in law.

9.5.Further would submit that, properties acquired from and out of the joint family income, and the properties inherited and bequeathed from different sources have been clubbed together and put into common hotchpot under Ex-A.3. Therefore, the plaintiff is legally entitled to claim share in Item No.5 of the Suit Properties also.



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9.6.The Trial Court failed to consider and appreciate these points in proper perspective and negatived the claim of the plaintiff. Accordingly, he prayed to allow the appeal.

9.7.He would further submit that D1 did not lead evidence before Trial Court. Hence, he cannot be allowed to introduce new documents in appeal. Accordingly, he prayed to dismiss the petition filed under Order XLI Rule 27 of CPC.

10.Learned Counsels for the respondents / Defendants would submit that, on the date of execution of the earlier Partition Deed dated *May 2, 1963*, there was no ancestral property available for partition. The subject matter covered under the said Partition Deed is self-acquired property of V.K.Raju. The said V.K.Raju, with a view to maintain peace among the family members, partitioned and allotted his self-acquired properties to his three sons, each a land measuring about 2500 sq.ft. along with a thatched shed (விலலை கொட்டகை) containing four power looms inside. Thus, he



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allotted his three sons equally with a landed property of value Rs.1,000/-, and four power looms collectively worth Rs.2,000/-, while retaining the 'A' Schedule properties which had four landed properties worth Rs.13,500/- and seven power looms worth Rs.3,500/-, totally worth Rs.17,000/- for himself.

10.1. Thereafter, V.K.Raju died on *November 24, 1969* leaving behind his three sons, one daughter – Anusuyadevi and wife – Lakshmiammal. The 'A' schedule properties left behind by V.K.Raju shall devolve upon his legal heirs as separate properties as per Section 8 of 'Hindu Succession Act, 1956' (henceforth 'Succession Act') and thus, they do not bear any ancestral character. Hence, the properties allotted to Kannaiyan and his brothers under the said Partition Deed, and the properties devolved upon them post the demise of V.K.Raju as per Section 8 of Succession Act, does not bear any ancestral character and are their separate properties.

10.2. In the year 1970, as per Panchayat Partition, a portion of 'A' schedule property left behind by V.K.Raju was sold, and out of the sale



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proceeds, V.K.Raju's daughter – Anusuyadevi's marriage was celebrated and an immovable property was gifted as *Sridhana*.

10.3.Further would submit that, Kannaiyan's brother – Easwaran passed away in the year 1981. During his lifetime, Easwaran executed a Sale Deed in favour of Kannaiyan and Loganathan in respect of a land measuring 3622 ½ sq.ft. Thereafter, Kannaiyan also acquired Easwaran's remaining estate by way of a Release Deed from his wife Mahalakshmi.

10.4.Further would submit that, Loganathan died unmarried and left-Will dated *December 12, 1979*, whereby he bequeathed his separate properties to D1 and D2. Hence, the said properties are separate properties in the hands of D1 and D2. Further, D1 and D2 had sufficient income from these properties. Out of the said income and their own exertion, they purchased some other properties as their self-acquisitions.

10.5.Further would submit that in the year 2007, the following separate properties were partitioned vide Ex-A.3 - Partition Deed dated *De-*



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cember 27, 2007 among Kannaiyan, his mother – Lakshmiammal, D1 and D2,

- i) Kannaiyan's separate properties acquired through various modes as stated *supra*;
- ii) the separate properties of D1 and D2 obtained through Loganathan's Will dated *December 12, 1979*;
- iii) the properties devolved upon Lakshmiammal as separate properties as per Section 8 of Succession Act.

10.6. In the said Partition Deed, 'A' schedule properties therein were allotted to Lakshmiammal for her lifetime without any right to alienation; after her lifetime, it shall devolve upon D1 and D2 absolutely. 'B' schedule properties were allotted to Kannaiyan, 'C' schedule properties were allotted to D1 and 'D' schedule properties were allotted to D2. After the demise of Lakshmiammal, D1 and D2 acquired 'A' schedule properties as separate properties, in which the plaintiff has no claim at all. All the other



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properties also retain their character of separate property and hence, the plaintiff has no right at all.

10.7. In a nutshell, the Suit Properties are all separate properties in the hands of D1 and the plaintiff has no right to seek partition in the same. Accordingly, he prayed to dismiss the appeal.

Points for consideration

11. Heard on either side. Perused the records. The following points arise for consideration in this appeal:

- i. Whether the petition under Order XLI Rule 27 filed by D1 praying to receive the additional documents, is allowable?
- ii. Whether properties allotted to the three sons of V.K.Raju under the Partition Deed dated *May 2, 1963* bear any ancestral character?
- iii. Whether the properties devolved upon Kannaiyan, Loganathan, Easwaran and



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Lakshmiammal as per Section 8 of the Succession Act are their separate or ancestral properties?

- iv. Whether the properties acquired by D1 under Loganathan's Will are his separate properties or properties of ancestral character?
- v. Whether Ex-A.5 – Gift Settlement Deed is valid and binding on the plaintiff?
- vi. Whether the property allotted to D1 as 'C' Schedule property in Ex-A.3 - Partition Deed dated *December 27, 2007*, bears any ancestral character?
- vii. Whether the plaintiff is entitled to claim share in the property covered under Ex-A.4 - Gift Settlement Deed?



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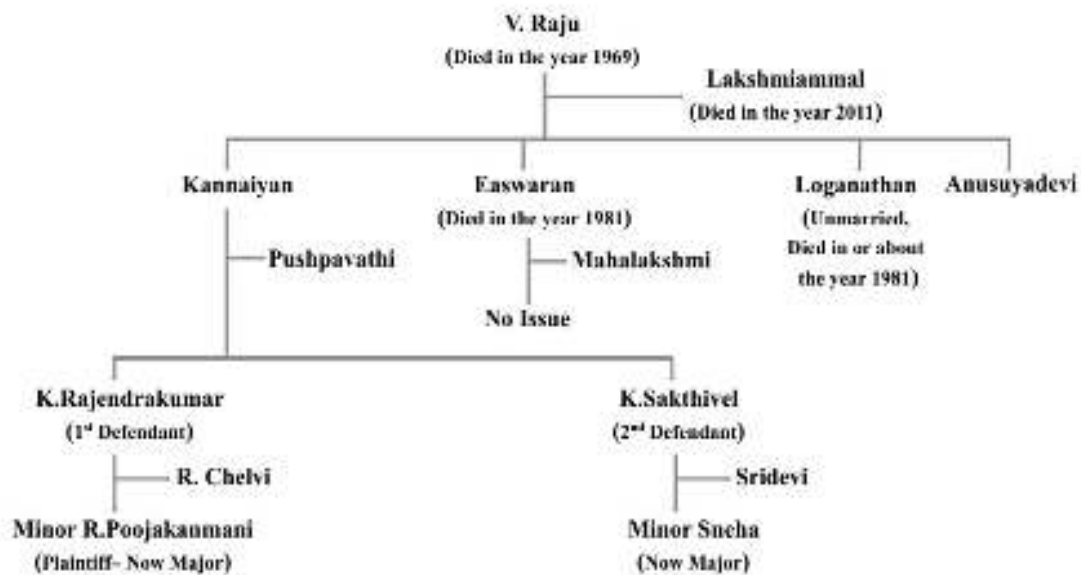


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viii. Whether the plaintiff is entitled to claim partition in the Item No.5 of the Suit Property?

Discussion and Decision

4. 12.The following genealogy chart throws clarity on the relationship among the individuals concerned in this case:



Point No.(i) - *Whether the petition under Order XLI Rule 27 filed by D1 praying to receive the additional documents is allowable?*



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13.D2's daughter – Sneha filed a Suit for partition and other reliefs against D1 and D2 in *O.S.No.260 of 2008* on the file of I-Additional District Court, Erode; the plaint was presented on *July 24, 2008*. In the said Suit, the plaintiff herein (Pooja Kanmani) was impleaded as D3 and she contested the case through her mother / next friend – R.Chelvi. R.Chelvi deposed as D.W.3 therein. The said Suit was dismissed after full trial on *June 26, 2014*. Certified copy of the judgment and decree were marked in this case as Ex-B.1 and Ex-B.2. The plaintiff therein – Sneha, preferred an appeal in *A.S.1030 of 2019* and the same was heard simultaneously with this appeal.

14.On perusal of Trial Court's records it came to light that, in both the Original Suits, trial commenced contemporaneously in different courts of same cadre. Judgments in *O.S.No.260 of 2008* was pronounced on *June 26, 2014* and the Judgment in the Original Suit herein was pronounced on *December 22, 2015*. Further, D1 herein has filed a written statement in this Suit and also cross-examined P.W.1. When the Original Suit herein was posted on *January 8, 2015*, D1 side had no representation. Hence, the Trial



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Court, set D1 *ex-parte*. Hence, though D1 was technically set *ex-parte*, he had participated in the proceedings and cross-examined P.W.1. Therefore, this Court is of the view that the present petition under Order XLI Rule 27 is maintainable.

15.Out of the six documents sought to be received by way of this petition, Documents in Serial No. 1 to 4 have already been marked in *O.S.No.260 of 2008* as Exs- B.1, B.5, B.6 and X.1 respectively. Serial Nos.5 and 6 are the registration copy of the Sale Deeds dated *June 11, 1997* and *June 30, 1987* respectively. The said documents have been referred to in Ex-A.3 – Partition Deed. The said documents (Sl. Nos.1 to 5) were marked by D2 herein in the presence of the plaintiff and D1 herein during the proceedings of *O.S.No.260 of 2008*. Hence, both the parties are aware of the contents of these documents. The petitioner / D1 herein, has stated that he and his brother (D2), are not in good terms and the aforesaid documents were in D2's custody and only in the month of June 20, 2022, he found that these documents are absolutely necessary for the disposal of the above appeal.



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16. In view of the above facts and circumstances of the case and in the interest of justice, this Court is inclined to allow the petition and receive the documents. Accordingly, the documents are hereby received. Since the documents are already marked and sufficient cross-examination has been done in *O.S.No.260 of 2008*, and the appeal therefrom was heard simultaneously with this appeal, this Court is inclined to mark the documents without oral evidence as tabulated hereunder.



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S.No.	Date	Description of Documents	Remarks	Marked as
1.	May 2, 1963	Partition Deed entered among R.Kannaiyan, Minor Easwaran and Loganathan	Certified Copy	Ex-B.3
2.	November 13, 1978	Sale Deed executed by R.Easwaran in favour of R.Kannaiyan and Loganathan	Certified Copy	Ex-B.4
3.	July 8, 1981	Release Deed executed by Mahalakshmi in favour of R.Kannaiyan	Certified Copy	Ex-B.5
4.	December 12, 1979	Will executed by Loganathan in favour of R.Rajendrakumar and R.Sakthivel	Certified Copy	Ex-B.6
5.	June 11, 1987	Sale Deed in favour of R.Kannaiyan	Certified Copy	Ex-B.7
6.	June 30, 1987	Sale Deed in favour of R.Rajendrakumar and R.Sakthivel	Certified Copy	Ex-B.8

17. Accordingly Point No.(i) is answered in favour of D1 and against the plaintiff.



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Point No.(ii) - Whether properties allotted to the three sons of

V.K.Raju under the Partition Deed dated May 2, 1963

bear any ancestral character?

18.This Court has perused Ex-B.3 - Partition Deed dated *May 2, 1963*. It reveals that there existed a joint family (Avibhakta Kutumba / அவிபக்த குடும்பம்) consisting of V.K.Raju, his 3 sons, namely Kannaiyan, Eswaran and Loganathan; his daughter by name Anusuyadevi; and his wife – Lakshmiammal. It further reveals that the said joint family did not possess any joint family or ancestral property. The said V.K.Raju owned self-acquired properties consisting of landed properties and 19 power looms. To maintain peace and avoid conflicts among the family members, he executed Ex-B.3 - Partition Deed. Through the said Partition Deed, he retained major landed properties along with seven power looms to his share as ‘A’ schedule properties, totally worth Rs.17,000/-. Kannaiyan was allotted ‘B’ schedule properties, Easwaran was allotted ‘C’ schedule properties and Loganathan was allotted ‘D’ schedule properties. B, C and D schedule properties each contains a



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land measuring about 2500 sq.ft. along with a thatched shed (வில்லை கொட்டகை) containing four power looms inside.

19.The plaintiff failed to plead and prove the existence of any joint family property prior to the execution of Ex-B3. It is important to note that Ex-B.3 explicitly states that the properties it covers are self-acquired properties. At the time Ex-B.3 –Partition Deed was executed, Kannaiyan was the only adult son, while Loganathan and Easwaran were minors. It is reasonable to infer that Kannaiyan might have demanded property from his father, leading to the execution of Ex-B.3. Although the property was self-acquired, V.K. Raju, with a view to foster peace and harmony within the family, chose to distribute shares of equal value to his three sons as part of a family arrangement for their livelihood. Despite the language in Ex-B.3 indicating that the self-acquired properties were treated as joint family properties, a thorough and comprehensive reading of Ex-B.3 would reveal that V.K.Raju's primary intention was to maintain familial peace and harmony. If V.K.Raju had truly intended to convert his self-acquired properties into joint family properties, he would have allocated equal shares to



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all members. Instead, he retained a significant portion, approximately 65%, of the property, for himself and allocated only about 11.5% each to his three sons. It is pertinent to note here that recitals are decisive but not conclusive. Recitals must be viewed through the lens of facts and circumstances of the case, as well as intentions of the parties involved.

20. Therefore, this Court concludes that the properties allotted to the three sons under Ex-B.3 are not joint family properties but their separate properties. Further, another rationale supporting this conclusion is that, during V.K. Raju's lifetime, his three sons had no right to claim a share in the self-acquired properties. Had V.K. Raju passed away without executing Ex-B.1, the property would have devolved upon his legal heirs as separate properties as per with Section 8 of the Succession Act.

21. Coming to the submission of the learned counsel for the appellant about the doctrine of blending, the lack of coparcenary property remains an issue. It is obvious that existence of coparcenary property is essential to invoke the doctrine of blending. Existence of coparcenary,



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coparcenar's separate property and coparcenary property forms the basis for applying the doctrine of blending. As stated *supra*, Ex-B.3 reveals the fact that there existed no joint family or ancestral property. Hence, the question of doctrine of blending does not arise at all in this case.

22.Hence, the properties allotted to the Kannaiyan, Loganathan and Easwaran under Ex-B.3 – Partition Deed dated *May 2, 1963* are their separate and absolute properties and does not bear any ancestral character. Point No.(ii) is answered accordingly in favour of D1 and D2 and against the plaintiff.

Point No.(iii) - *Whether the properties devolved upon Kannaiyan, Loganathan, Easwaran and Lakshmiammal as per Section 8 of the Succession Act are their separate or ancestral properties?*

23.As per Ex-B.3 – Partition Deed, 'A' schedule property described therein was allotted to V.K.Raju. Admittedly, he died on *November 24, 1969 i.e.*, after the commencement of the Succession Act. Hence, as per



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Section 8 of the Succession Act, the legal heirs of V.K.Raju are entitled equal shares.

24.It is settled law that property allotted to the father in a partition (be it partition of ancestral, separate, or joint family property), after the demise of the father, devolves upon his legal heirs under Section 8 of the Succession Act, as separate property, and does not belong to the joint family.

25.Thus, even while assuming that the 'A' schedule property allotted to V.K.Raju vide Ex-B.3 – Partition Deed is ancestral and joint family property, after the demise of V.K.Raju, the property would devolve upon his legal heirs viz., his three sons, his daughter – Anusuyadevi and his wife - Lakshmiammal as their separate property.

26.Moreover, as per Section 8 of the Succession Act, in the presence of son, son's son are not Class-I legal heirs. As far as this case is concerned, when V.K.Raju passed away, his son Kannaiyan was alive and thus inherited the property as separate property under Section 8 of the



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Succession Act. As a matter of fact, Kannaiyan is still alive. Hence, the said property being separate property of Kannaiyan, D1 and D2 have no right over it.

27.As far as the property devolved upon Lakshmiammal *qua* legal heir of V.K.Raju under Section 8 of the Succession Act is concerned, she also acquired it as her separate and absolute property, over which during her lifetime, no one has any claim. Similarly, the property devolved upon Loganathan and Easwaran under Section 8 of the Succession Act are their respective separate property.

28.In this regard, it is pertinent to cite *Additional Commissioner of Income Tax Vs. P.L.Karuppan Chettiar* reported in *AIR 1979 Mad 1*, wherein it has been held that property inherited by a son from his divided father, even assuming that it was ancestral property in the hands of the father, would be his separate property and not that of the joint family. The said view has been affirmed by the Hon'ble Supreme Court in *Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen* reported in *(1986) 3 SCC*



567 and in *Commissioner of Income Tax Vs. P.L.Karuppan Chettiar*

reported in *1993 Supp (1) SCC 580*. The Hon'ble Supreme Court has reaffirmed *Chander Sen's case (supra)* in *Yudhishter Vs. Ashok Kumar* reported in *(1987) 1 SCC 204*.

29.Further, had the properties covered under Ex-B.3 been ancestral properties, in view of Section 6 of the Succession Act as amended by Act No.39 of 2005, the daughter of V.K. Raju – Anusuyadevi could have laid claim of $\frac{1}{2}$ share as a coparcener. If so, the remaining $\frac{1}{2}$ share of V.K.Raju, would have devolved as per Section 8 of the Succession Act upon his legal heirs after his demise. Even in these circumstances, D1 and D2 would not have any claim over the property devolved upon Kannaiyan being Class-I legal heir as per Section 8 of the Succession Act, since it is his separate property. So would be the case of the property that devolved upon Loganathan and Easwaran under Section 8 of the Succession Act. In other words, the properties would be their respective separate properties.



30. Therefore, this Court is of the view that properties devolved upon Kannaiyan, Loganathan, Easwaran and Lakshmiammal as per Section 8 of the Succession Act are their separate properties, and not ancestral or joint family properties. Accordingly, Point No.(iii) is answered in favour of D1 and D2.

Point No.(iv) - *Whether the properties obtained by D1 under Loganathan's Will are his separate properties or properties of ancestral character?*

31. As stated *supra*, the 'D' schedule properties allotted to Loganathan under Ex-B.3 are separate properties; the properties of his divided father devolved upon him under Section 8 of the Succession Act are also separate properties. Admittedly, Loganathan died unmarried in or about the year 1981. He did not possess any ancestral property nor was there any joint family business / property. Hence, any property acquired by him during his lifetime would be his separate property. Loganathan executed and registered Will in the year 1979 (Ex-B.6). At the time of death of Loganathan, his mother Lakshmiammal alone was his legal heir as per Section 8 of the Succession Act. Admittedly, she died in 2011. After her demise, as per Sec-



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tion 15 of the Succession Act, her son – Kannaiyan and daughter – Anusuyadevi alone are entitled to deny Ex-B.6 – Will. The plaintiff is not entitled to deny Ex-B.6 – Will, since neither the plaintiff nor D1 and D2 are legal heirs of Lakshmiammal.

32.Perusal of Ex-B.6 reveals that the testator intended to bequeath all his properties equally and absolutely in favour of D1 and D2. Relevant portion of the Ex-B.6 – Registered Will reads thus.

“...என் ஜீவ திசை வரை நானே தானாதி
விக்கிரைய வினியோகங்களுக்கு யோக்கியமாய் சர்வ
சுதந்திரமாய் ஆண்டனுபவித்துக்கொண்டு வந்து என்
ஜீவ திசைக்குப் பிறகு என் தமையனாரும் ஐடி லேட்
V.K.ராஜலிகவுண்டர் குமாரரும் R.கண்ணையன்
அவர்களின் குமாரர்களான தற்போது மைனர்களாக
இருக்கும் சுமார் 12 வயதுள்ள K.ராஜேந்திரகுமார்,
சுமார் 8 வயதுள்ள K.சக்திவேல் ஆகிய இருவர்
மட்டுமே அடைந்து ஐடி இருவரும் மேஜரான பின்
சொத்துக்களை சரிசமபாகமாக அடைந்து தானாதி



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விக்கிரைய வினியோகங்களுக்கு யோக்கியமாய் சர்க்கார்
வரி வகையரா செலுத்திக்கொண்டு சர்வ சுதந்திர
பாத்தியங்களுடன் ஆண்டனுபவித்துக்கொள்ள
வேண்டியது.

என் ஜீவ திசைக்குப் பிறகு லை என்
தமையனார் R.கண்ணையன் அவர்களின் குமாரர்களான
K.ராஜேந்திரகுமார், K.சக்திவேல் ஆகிய இருவர்
மட்டுமே சர்வ சுதந்திரமாய் அடைந்துகொள்ள
வேண்டுமே தவிர வேறு யாருக்கும் எந்தவித பாத்திய
சம்மந்தமும் பின் தொடர்ச்சியும் கிடையாது....”

5. 33.It is pertinent to cite here ***C.N.Arunachala Mudaliar Vs. C.A.Muruganatha Mudaliar*** reported in ***AIR 1953 SC 495***. In Paragraph No.16, it has been held as follows.

“16. As the law is accepted and well settled that a Mitakshara father has complete powers of disposition over his self-acquired property, it must follow as a necessary consequence that the father is quite competent to provide expressly, when he makes a gift, either that the donee would take it exclusively for himself or that the gift would be for the benefit of his branch of the family. If there are express provisions to that effect either in the deed of gift or a will, no difficulty is likely to arise and the in-



terest which the son would take in such property would depend upon the terms of the grant. If, however, there are no clear words describing the kind of interest which the donee is to take, the question would be one of construction and the court would have to collect the intention of the donor from the language of the document taken along with the surrounding circumstances in accordance with the well-known canons of construction. Stress would certainly have to be laid on the substance of the disposition and not on its were form.

The material question which the court would have to decide in such cases is, whether taking the document and all the relevant facts into consideration, it could be said that the donor intended to confer a bounty upon his son exclusively for his benefit and capable of being dealt with by him at his pleasure or that the apparent, gift was an integral part of a scheme for partition and what was given to the son was really the share of the property which would normally be allotted to him and in his branch of the family on partition. In other words, the question would be whether the grantor really wanted to make a gift of his properties or to partition the same. As it is open to the father to make a gift or partition of his properties as he himself chooses, there is, strictly speaking, no presumption that he intended either the one or the other.”

6. 34.Hence, the properties obtained by D1 under Ex-B.6 – Will are separate properties in the hands of D1 and have no ancestral character.



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Point No. (v) - *Whether Ex-A.5 – Gift Settlement Deed is valid and binding on the plaintiff?*

35.D1 executed Ex-A.5-Gift Settlement Deed dated *December 28, 2007* in respect of Item No.1 and 2 of the Suit Properties, in favour of D2. The plaintiff questions the legality and validity of Ex-A.5 in her plaint. According to the plaintiff, Ex-A.5 was executed with a view to defeat and defraud her rights over the property covered under Ex-A.5. The contention of the plaintiff is that at the time of purchase, D1 was a student and had no independent income to purchase the property. In this regard D.W.1 (D2), deposed that D1 was a medical student; that D1 had the property acquired through Ex-B.6 – Will in the year 1980; and that D1 had independent income to purchase the property covered under Ex-A.5.

36.Property covered under Ex-A.5 was purchased vide Sale Deeds dated *September 17, 1992* (Ex-A.1) and *September 23, 1992* (Ex-A.2) by D1. In Ex-A.5, it has been described as his self-acquired property. As stated *supra*, the property covered under Ex-B.6 – Will is the



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separate property of D1 and D2. This Court has perused Ex-B.8 – Sale Deed dated June 30, 1987. It reveals that in the year 1987, D1 and D2 purchased an extent of 90 Cents in Suriyampalayam Village for a sum of Rs.44,500/- (Rupees Forty-Four Thousand Five Hundred only). At that time, D2 was a minor. Hence, D1 for himself and as a guardian of minor D2, purchased the property. Conjoint reading of the recitals in Ex-B.8 and the evidence of D.W.1 (D2) would establish that D1 and D2 had sufficient income from the properties acquired vide Ex-B.6 – Will. The plaintiff failed to establish that there was surplus joint family income, from and out of which, the property covered under Ex-A.5 was purchased. Hence, this Court concludes that the property covered under Ex-A.5 was separate property of D1 and he had power to dispose of it as he desires. P.W.1 – R-Chelvi, mother of the plaintiff, in her evidence has admitted that, properties covered under Ex-A.5 are in possession and enjoyment of D2; it shows that Ex-A.5 has been acted upon. Therefore, the properties covered under Ex-A.5 – Gift Settlement Deed being the separate properties of the executant (D1), it is valid and binding on the plaintiff. The issue is answered accordingly in favour of D1 and D2, and against the plaintiff.



Point No.(vi) - *Whether the property allotted to D1 as 'C' Schedule property in Ex-A.3 - Partition Deed dated December 27, 2007, bears any ancestral character?*

37.The following properties are covered under Ex-A.3 – Partition Deed dated *December 27, 2007*,

- i) the properties covered under Ex-B.3 – Partition Deed dated *May 2, 1963*;
- ii) the properties covered under Ex-B.4 – Sale Deed dated *November 13, 1978*;
- iii) the properties covered under Ex-B.4 - Release Deed dated *July 8, 1981*;
- iv) the properties covered under Ex-B.6 – Will;
- v) the properties covered under Ex-B.7 - Sale Deed dated *June 11, 1987*;
- vi) the properties covered under Ex-B.8 - Sale Deed dated *June 30, 1987*.

38.As stated *supra*, the aforementioned properties are all separate properties of the parties to Ex-A.3, namely Lakshmiammal, Kannaiyan, D1 and D2. Though Ex-A.3 has a recital that the properties



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covered therein are joint family properties, a thorough and comprehensive scrutiny of Ex-A.3 would show that the intention of the parties in partitioning the said properties, is only to ascertain / divide their respective shares therein. As stated *supra* under point No.(ii) recitals are decisive but not conclusive. Their significance lies in how they align with the factual context and the intentions of the involved parties. Considering the facts and circumstances of the case and the intention gathered from a comprehensive scrutiny of Ex-A.3, this Court is of the opinion that the properties covered under Ex-A.3, Partition Deed dated *December 27, 2007* are not ancestral properties.

39.It is correct to assert that, in case of partition of ancestral properties, the property allotted to son, though it would be separate property in respect of other relations, it remains as coparcenary property *qua* son's male descendants up to three degrees below him. In view of Section 6 of the Succession Act as amended by Act No.39 of 2005, son's daughter(s) is also a coparcener and thus, entitled to seek partition of the properties (vide ***Shyam Narayan Prasad Vs. Kirshna Prasad*** reported in ***AIR 2018 SC 3152*** and ***Arshnoor Singh Vs. Harpal Singh*** reported in ***AIR 2019 SC 3098***).



40. However, the subject matter of Ex-A.3 is not ancestral property but separate property. 'C' schedule property in Ex-A.3 was originally allotted to V.K. Raju vide Ex-B.3 – Partition Deed as 'A' schedule property. After demise of V.K. Raju, 'A' schedule property devolved upon his legal heirs as separate properties as per Section 8 of the Succession Act. Hence, the property allotted to D1 as 'C' schedule property in Ex-A.3 – Partition Deed dated *December 27, 2007*, bears no ancestral character and is his separate property. Therefore, the plaintiff cannot seek partition in it. Point No.(vi) is answered accordingly.

Point No.(vii) - *Whether the plaintiff is entitled to claim share in the property covered under Ex-A.4 - Gift Settlement Deed?*

41. Kannaiyan executed Ex-A.4– Gift Settlement Deed dated *November 13, 2007* in favour of D1 and D2. The property covered under Ex-A.4 were purchased by Kannaiyan vide Sale Deeds dated *July 13, 1990, April 10, 1991 and September 23, 1992*. As alluded to *supra*, the property



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allotted to Kannaiyan under Ex-B.3 as 'B' schedule property is his separate property. Even while considering 'B' schedule property as ancestral property for the sake of argument, the burden is upon the plaintiff to prove the factum of surplus income and that the same was utilized to purchase the property covered under Ex-A.4. The plaintiff has miserably failed to prove this aspect. Considering the extent and nature of the property, and the size of the family, this Court is of the view that there would not have been any surplus income from the 'B' schedule property. Hence, the property covered under Ex-A.4 is separate property and therefore, Kannaiyan is entitled to dispose of the property as he desires. To be noted, the plaintiff questioning the validity of Ex-A.4, ought to have added Kannaiyan as a party to the Suit to decide the said issue. But she failed to do so.

42.Perusal of Ex-A.4 would reveal that the property has been given to D1 and D2 as separate property. There is nothing to infer that the donor intended the property to be ancestral property in the hands of D1 and D2. Hence, bearing in mind *C.N.Arunachala Mudaliar's case (supra)*, they are separate property in the hands of D1 and D2, over which, the plaintiff has



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no right at all. The Point is answered accordingly in favour of D1 and D2 and against the plaintiff.

Point No.(viii) - *Whether the plaintiff is entitled to claim partition in the Item No.5 of the Suit Properties?*

43.The 5th Item of the Suit Properties are properties allotted to Lakshmiammal who is the great grandmother of the plaintiff, as life estate without any power of alienation, as ‘A’ schedule properties under the Partition Deed dated *December 27, 2007* (Ex-A.3).

44.The 5th Item of the Suit Properties were originally allotted to V.K.Raju as Item No.1 in ‘A’ schedule of Ex-B.3 – Partition Deed dated *May 2, 1963*. After his demise, the properties were inherited by his legal heirs as their separate property as per Section 8 of the Succession Act. Hence, the property bears no ancestral character. Therefore, property allotted to Lakshmiammal as ‘A’ schedule properties under the Partition Deed dated *De-*



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September 27, 2007 (Ex-A.3), is her absolute property. She may dispose of it as she desires.

45.Perusal of Ex-A.3 reveals that she wanted to retain it for her lifetime and thereafter, allot the same equally and absolutely to D1 and D2 as vested remainder. Accordingly, after the demise of Lakshmiammal on March 24, 2011, D1 and D2 acquired the property as their absolute property. Hence, the plaintiff is not entitled to seek partition in it. Accordingly, Point No.(viii) is answered in favour of D1 and D2 and against the plaintiff.

Conclusion

46.Totally there are 5 Items in the Suit Properties.

46.1.As stated *supra* in Point No.(v), Item Nos.1 and 2 of the Suit Properties are properties originally purchased by D1 vide Sale Deeds dated September 17, 1992 (Ex-A.1) and September 23, 1992 (Ex-A.2) respectively as his separate properties, and thereafter, gifted to D2 vide the Gift



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Settlement Deed dated *December 28, 2007* (Ex-A.5). Hence, the plain-tiff's claim of partition is not sustainable.

46.2.The 3rd Item of the Suit Properties were properties allotted to D1 vide the Partition Deed dated *December 27, 2007* (Ex-A.3) under 'C' schedule therein. As stated *supra* in Point No.(vi), it is the separate property of D1. Hence, the plaintiff has no right to seek partition in it.

46.3.As stated *supra* in Point No.(vii), the 4th Item of the Suit Property along with one another property, was originally purchased by Kannaiyan vide Sale Deed dated *July 13, 1990, April 10, 1991 and September 23, 1992*. The plaintiff failed to establish the availability of joint family property and surplus income therefrom. Hence, the properties covered under the above mentioned Sale Deeds are separate properties of Kannaiyan. He



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executed Gift Settlement Deed dated *November 13, 2007* (Ex-A.4) in respect of the aforementioned properties, in favour of D1. As stated *supra*, the same is separate property of D1 and hence, the plaintiff has no right to seek partition in it.

46.4.As pointed out in Point No.(viii), 5th Item of the Suit Property was absolutely acquired by D1 and D2 as vested remainders, over which, the plaintiff has no right to partition.

47.Before parting with this judgment, this Court would like to make the following observation: The plaintiff and her mother are separated from her father – D1. On perusal of plaint, it appears that the plaintiff had filed a maintenance case. The parties are Hindus. Subject to Hindu Adoption and Maintenance Act, 1956, and other Maintenance laws, the plaintiff and her mother are entitled to claim maintenance from her father – D1. In such a



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scenario, the plaintiff and her mother may have maintenance rights over the

Suit Properties in view of Section 39 of the Transfer of Property Act, 1882.

Maintenance includes food, shelter, clothing, residence, education, medical attendance and treatment, and in the case of an unmarried daughter, the expenses of her marriage also. Needless to mention that legitimate maintenance rights of the plaintiff and her mother, if any over the Suit Properties, would not be affected by this judgment.

48.Resultantly, C.M.P No.11856 of 2022 is allowed; documents received and recorded. The Appeal Suit is dismissed. No Costs.

[R.S.M., J.]

[R.S.V., J.]

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Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking Order

krk/tk

List of Additional Documents marked vide order of this Court in C.M.P



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No.11856 of 2022 in A.S.No.505 of 2016

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S.No.	Date	Description of Documents	Remarks	Marked as
1.	May 2, 1963	Partition Deed entered among R.Kannaiyan, Minor Easwaran and Loganathan	Certified Copy	Ex-B.3
2.	November 13, 1978	Sale Deed executed by R.Easwaran in favour of R.Kannaiyan and Loganathan	Certified Copy	Ex-B.4
3.	July 8, 1981	Release Deed executed by Mahalakshmi in favour of R.Kannaiyan	Certified Copy	Ex-B.5
4.	December 12, 1979	Will executed by Loganathan in favour of R.Rajendrakumar and R.Sakthivel	Certified Copy	Ex-B.6
5.	June 11, 1987	Sale Deed in favour of R.Kannaiyan	Certified Copy	Ex-B.7
6.	June 30, 1987	Sale Deed in favour of R.Rajendrakumar and R.Sakthivel	Certified Copy	Ex-B.8

[R.S.M., J.]

[R.S.V., J.]

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To

The II Additional District Judge
II Additional District Court
Erode.



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A.S.NO.505 OF 2016

R.SUBRAMANIAN, J.
AND
R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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