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S.A.No.261 of 2



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED:28.02.2024**

**CORAM**

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**S.A.No.261 of 2021**  
**and**  
**C.M.P.No.5202 of 2021**

Manimegalai

... Appellant

**Vs.**

Rangappan

... Respondents

**Prayer:-** Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 05.11.2020 made in A.S.No.29 of 2019 on the file of the Additional District, Judge, Namakkal confirming the Judgement and Decree dated 05.03.2019 made in O.S.No.278 of 2018 on the file of the Sub-ordinate Judge, Paramathy.

For Appellant : M/s.S.Vijayakumar

For Respondent : No Appearance



## **JUDGEMENT**

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The 2nd plaintiff has filed the above Second Appeal challenging the concurrent judgement and decree passed against her. The facts are briefly set out herein below and parties are referred to in the same array as before the Trial Court.

2. The plaintiffs who are the wife and daughter respectively of the defendant had filed the suit O.S.No.261 of 2005 on the file of the District Munsif, Paramathy for a partition and separate possession of their 2/3rd share in the suit schedule property and to direct the defendant to pay monthly maintenance of Rs.2,500/- to the 1st plaintiff and create a charge over the suit property towards the share of the defendant for due realization of the maintenance amount.

3. It is the contention of the plaintiffs that most of the properties are ancestral properties and some of the properties had been purchased by the defendant in his name from out of the proceeds



derived from the ancestral properties. The revenue records stand in the name of the defendant. However, the plaintiffs and the defendant are in joint possession of the property.

4. The plaintiff would submit that 6 years prior to the filing of the suit, the defendant had deserted them without any justifiable and reasonable cause and had married one Latha and was residing with her in the same locality. The defendant and Latha have no children. The plaintiff would further submit that the 1st plaintiff had given birth to a 2nd son Raju who died intestate on 05.05.2004. His wife Vasanthi had also passed away. Therefore, the 1st plaintiff became entitled to the share of the Raju in the suit property. The defendant had deserted the plaintiffs without any justifiable cause and the defendant is bound to maintain the 1st plaintiff and therefore the suit for partition and maintenance had come to be filed. Pending the suit, the 1st plaintiff had died and therefore, the relief of maintenance was deleted.



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5. The defendant had filed a written statement inter alia contending that the suit properties are not the ancestral properties but the self-acquired properties of the defendant and therefore not liable for partition. The defendant would submit that the suit 1st item of the property was purchased by the defendant by doing cattle business and therefore the same is a self-acquired property of the defendant.

6. The Trial Court had framed necessary issues and conducted trial of the suit. During the course of the trial, the 1st plaintiff had examined herself as P.W.1 and Ex.A.1 to A.5 were marked. On the side of the defendant, the sole defendant had examined himself as D.W.1 and Ex.B.1 and B.2 were marked. Ultimately, the Trial Court had decreed the suit partially. The suit 2nd and 3rd item of property was directed to be partitioned into 2 halves and one half was to be allotted to the 2nd plaintiff and the other half to the defendant.



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7. Challenging the said judgement and decree in so far as the plaintiff's right to the 1st item of the property was denied the 2nd plaintiff had filed A.S.No.29 of 2019 on the file of the Additional District Court, Namakkal. The learned Judge also concurred with the findings of the Trial Court and held that the 1st Item of the property was the self-acquired property of the defendant and accordingly had dismissed the appeal.

8. Heard the counsel for the appellant, as the matter was listed under the caption "*adjourned admission*".

9. The Courts below had taken note of the fact that under the partition deed dated 13.03.1996, the defendant, his father, brothers and minor sons had entered into a partition deed in and by which the joint family properties were partitioned. Suit items 2 and 3 were allotted to the share of the defendant and the 1st item was not



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included therein. Even prior to the partition the 1st item of the property had been purchased by the defendant on 21.01.1983.

Consciously, this property had not been included in the partition deed which only goes to show that the same is the self-acquired property of the defendant and this fact has been acknowledged by the family. Therefore, the Courts below have rightly dismissed the plaintiff's claim with reference to the 1st item. I see no reason to set aside the concurrent judgement and decree of the Courts below. Further no substantial question of law have been made out in the above Second Appeal, accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

**28.02.2024**

Index: Yes/No  
Speaking order/non-speaking order  
Neutral Citation: Yes/No  
shr

To

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1. The Additional District, Judge, Namakkal.

2. The Sub-ordinate Judge, Paramathy.

3. The Section Officer,  
V.R.Section,  
High Court, Madras.

**P.T.ASHA, J.,**

shr

**S.A.No.261 of 2021**

**and**

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