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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.1030 OF 2019

1.Sneha

... Appellant / Plaintiff

(Sole appellant declared as major and Mother / Next friend discharged from Guardianship, vide order of this Court dated 13.07.2023 made in C.M.P.No. 13925 of 2023 in A.S.No.1030 of 2019)

Versus

1.K.Sakthivel

2.K.Rajendrakumar

3.Pooja Kanmani

... Respondents / Defendants

(3rd respondent was declared as Major in CMP No.9311 of 2016 in A.S.SR.No. 31952 of 2016 in A.S.No.505 of 2016 which is a connected Appeal)

PRAYER : First Appeal filed under Section 96 read with Order XLI of CPC, praying to set aside the judgment and decree dated 26.06.2014 made in O.S.No.260 of 2008 on the file of the I Additional District Court, Erode



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by allowing this First Appeal.

For Appellant	:	Mr.A.Prabakar
For Respondent 1	:	Mr.V.S.Kesavan
For Respondent 2	:	Mr.C.R.Prasanan

J U D G M E N T

R.SAKTHIVEL, J.

The appellant herein is the plaintiff in *O.S.No.260 of 2008* on the file of 'I-Additional District Judge, 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.Feeing aggrieved with the judgment and decree dated *June 26, 2014*, passed by the Trial Court in *O.S.No.260 of 2008*, 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 judgment and decree.



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4.Plaintiff's case

4.1.The case of the plaintiff is that, the marriage between the couple, K.Sakthivel / 1st Defendant (D1) and Sridevi, was solemnized on *September 10, 2000*. Out of their wedlock, plaintiff - Sneha was born on *July 7, 2001*. Around 2007, there arose some matrimonial dispute between the couple and they filed petition for divorce. In these circumstances, the minor plaintiff – Sneha (now major) represented by her mother – Sridevi filed *O.S.No.260 of 2008* for partition and other reliefs against the defendants.

4.2.According to the plaintiff, the 1st Item of the Suit Properties was originally purchased by Kannaiyan from and out of the income derived from joint family properties vide Sale Deed dated *September 23, 1992* and thereafter, as per the family arrangement at the time of partition, it was given to plaintiff's father vide the Gift Settlement Deed dated *November 13, 2007*.

4.3.Further, 2nd Item of the Suit Properties are ancestral and



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joint family properties that were allotted to D1 as 'D' Schedule properties under the Partition Deed dated *December 27, 2007*.

4.4.Further, 3rd Item of the Suit Properties are properties originally purchased by D2 from and out of the income derived from joint family properties, and thereafter, as per the family arrangement at the time of partition, it was allotted to plaintiff's family vide the Gift Settlement Deed dated *December 28, 2007*. Hence, according to the plaintiff, D3— daughter of D2, has no right whatsoever therein. D3 was impleaded as a party to the Suit vide order of the Court dated *March 12, 2012* made in *I.A.No.82 of 2012*.

4.5.Further, 4th Item of the Suit Properties are purchased by D1 from and out of the income derived from joint family properties vide Sale Deed dated *September 16, 1992*.

4.6.Further, 5th Item of the Suit Properties are the ancestral properties allotted to Lakshmiammal - grandmother of the plaintiff, as life estate without any power of alienation, as 'A' Schedule properties under the



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Partition Deed dated *December 27, 2007*. After the demise of Lakshmiammal on *March 24, 2011*, the plaintiff is entitled $\frac{1}{4}$ share, D1 is entitled $\frac{1}{4}$ share, D2 and D3 are jointly entitled $\frac{1}{2}$ share therein. Hence, as per the order of the Court made in *I.A.No.856 of 2011*, D2 was added as a necessary party.

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

5. D1's Case

5.1.D1 admits that the plaintiff is born out of his wedlock with Sridevi on *July 7, 2001*. According to him, his wife – Sridevi left her matrimonial house on *December 26, 2000* and never came back. It is admitted that a partition was effected on *December 27, 2007* and the defendant was allotted “D” schedule therein. But it is incorrect to assert that,



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the subject matter of properties covered under the said Partition were purchased out of joint family income. The Settlement Deeds dated *November 13, 2007* and *December 28, 2007*, executed in his favour by his father - Kannaiyan and his brother – Rajendrakumar (D2) respectively are true, valid and genuine. Those properties cannot be treated as joint-family or ancestral properties for the following reasons:-

i) Grandparents of D1, namely Lakshmiammal and V.K.Raju, had three sons, namely Kannaiyan, Easwaran, Loganathan, and a daughter by name Anushayadevi. 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 properties, Kannaiyan was allotted 'B' schedule properties, Easwaran was allotted 'C' schedule properties and Loganathan was allotted 'D' schedule properties.

ii)V.K.Raju died intestate on *November 24, 1969*, survived by his three sons, one daughter – Anusuyadevi and wife – Lakshmiammal. Thereafter, aforementioned legal heirs entered into a family arrangement on



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December 2, 1970 partitioning the properties allotted to V.K.Raju in 'A' schedule of the Partition Deed dated *May 2, 1963*. In lieu of the same, a list was also prepared. Some of the properties allotted under the earlier Partition Deed dated *May 2, 1963* were rearranged for their convenience and better enjoyment of the family arrangement.

iii)In the said family arrangement, a specific portion was allotted for the marriage expenses of V.K.Raju's daughter - Anusuyadevi. In fact, a portion of the property was sold, and the proceeds were used for Anushayadevi's marriage, and an immovable property was purchased in her name and offered to her as Sridhana. Thereafter, 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.

iv)Subsequently, Easwaran sold an extent of 3,622 ½ sq.ft., allotted to him in 'C' schedule under the registered Partition Deed dated *May*



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2, 1963 and subsequently, rearranged in the aforementioned family arrangement dated *December 2, 1970*, in favour of his other two brothers, namely Kannaiyan and Loganathan, by way of a registered Sale Deed dated *November 13, 1978*. Hence, Kannaiyan was entitled to half extent comprised in the Sale Deed and it was his self-acquisition.

5.2. 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 as the absolute owner of Loganathan's estate. Further, there have been several valid, true and genuine transfer among the family members.

5.3. As per the said transfers, Item 2(1) of the Suit properties is the property allotted to the said Kannaiyan in the family arrangement dated *December 2, 1970*. Item 2(2) of the Suit properties belonged to Kannaiyan by virtue of the Sale Deed dated *November 13, 1978* executed by Easwaran and thereafter to D1 and his brother (D2) by virtue of the Will dated *December 12, 1979*. Item 2(3) of the Suit properties belonged to D1 by virtue of the registered Will dated *December 12, 1979* who always treated



the same as his separate property. He had already sold the same in favour of third parties. Hence it is not available for partition.

5.4.Further, his father Kannaiyan, brother Rajendrakumar (D2) and himself were having separate income from the properties bequeathed to them by their paternal uncle - Loganathan through Will dated *December 12, 1979*. Out of the said income, D2 purchased Item No.3(1) and 3(2) of the Suit properties by way of two registered Sale Deeds dated *September 17, 1992* and *September 23, 1992* and later, bequeathed the same in favour of D1 through registered Gift Settlement Deed dated *December 28, 2007*. The gift was acted upon and since then, D1 is in absolute possession and enjoyment of the same as his separate property. Hence in the said Item No.3, the plaintiff has no share.

5.5.Further, Item No.1 of the Suit Properties originally belonged to his father - Kannaiyan by way of Sale Deed dated *September 23, 1992*. It was his self-acquired property purchased out of his separate income. Later on *November 13, 2007* the said Kannaiyan gifted the Item No.1 of the Suit Properties, namely the 3rd Item under registered Gift



Settlement Deed dated *November 13, 2007* in favour of D1. The Gift Deed was acted upon. Hence, Item No.1 of the Suit properties is the separate property of the defendant in which the plaintiff has no share.

5.6.Regarding item No.2(1) of the Suit Properties, D1's father – Kannaiyan became the absolute owner of it by virtue of Sale Deed dated *November 13, 1978*, and the aforesaid family arrangement dated *December 2, 1970*. Subsequently, D1, his father, his grandmother, and D2 entered into a registered Partition Deed dated *December 27, 2007*, wherein Item No.2 (1) was allotted to D1. Hence, the same is separate property of D1.

5.7.Further, it is denied that the defendant purchased Item No.4 from the ancestral nucleus. They are his self-acquisitions purchased out of his own income from car dealing and power looms. Hence the plaintiff has no share in it at all.

5.8.Further, it is admitted that the paternal grandmother of D1 died on *March 24, 2011*. It is also admitted that on *December 27, 2007*, a registered Partition was effected between D1, D2, their father - Kannaiyan and grandmother - Lakshmiammal, but it is denied that the property that



underwent partition is joint family or ancestral property. In the said partition, the said Lakshmiammal was given only a life estate and after her death the same shall devolve upon D1 and D2 equally. Therefore, the said property is the separate property in which the plaintiff has no entitlement.

5.9.Further, this Suit is bad for non-joinder of necessary parties viz., the purchasers and bad for misjoinder of properties not belonging to the defendant.

5.10.In a nutshell, for the aforesaid reasons, the defendant states that the Suit Properties are not ancestral, and the plaintiff is not entitled to share therein.

6.D3's Case

6.1.On *December 28, 2007*, D2 executed a Gift Settlement Deed in favour of D1 and the same is not binding on D3's share therein. The said document is sham, nominal and not acted upon.

6.2.The Suit properties are the ancestral properties of the D1 & D2. D2's father - Kannaiyan purchased the Item No.3 (1) and Item No.3 (2)



of the Suit Property in the name of D2 on *September 17, 1992* and *September 23, 1992* respectively as D2 was a student then, using the joint family funds derived from the ancestral properties.

6.3. On *December 27, 2007*, Kannaiyan, his mother-
Lakshmiammal, D1 and D2 entered into a registered Partition of their ancestral properties. 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 D2. 'D' schedule properties were allotted to D1. The properties purchased in the name of D2 by way of registered Sale Deeds dated *September 17, 1992* and *September 23, 1992* using the income derived from the ancestral properties, were not included in the said Partition Deed dated *December 27, 2007*.

6.4. D2 deserted his wife and his daughter – D3. With a view to defeat and defraud D3's legitimate rights on the Suit Property, D2's father - Kannaiyan in collusion with D1 and D2, executed a registered Settlement Deed on *November 13, 2007* in favour of his two sons settling certain



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properties purchased from and out of ancestral nucleus; and thereafter, D2 executed a registered Settlement Deed on *December 28, 2007* settling the entire Item No.3(1) and Item No.3 (2) of the Suit Properties in favour of his brother / D1. Since the aforementioned Settlement Deed dated *December 28, 2007* is neither for the benefit and nor for the welfare of the minor / D3, and since the minor / D3 is not a *yeo nominee* to the aforementioned Settlement Deed dated *December 28, 2007*, it does not bind D2.

6.5.The grandmother of D1 and D2 - Lakshmiammal was allotted 'A' schedule property in the family Partition Deed dated *December 27, 2007*. The property being ancestral in nature, after her demise in the year 2011, D1 and D2 are entitled to 1/2 share each. D3 is entitled to 1/4 share therein through D2.

6.6.Therefore, the Suit properties are ancestral properties of D3. D3 has an unfettered right in the Suit Properties. She is a co-parcener and deemed to be in joint possession of the Suit Properties along with D2.



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7. Based on these pleadings, the Trial Court framed the following five issues:

- “1) Whether the plaintiff is entitled to the relief of partition and separate possession of ½ share in the Suit Property?*
- 2) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?*
- 3) Whether the claim of the plaintiff that the Suit Properties are ancestral is correct?*
- 4) Whether the Suit is bad for non-joinder and mis-joinder of parties?*
- 5) To what other relief the plaintiff is entitled?”*

7.1. Thereafter, on *January 6, 2011*, Trial Court framed the following additional issue:

- “1) Whether the Suit Property in Item No.4 was purchased from and out of the income derived from ancestral property?”*

7.2. Thereafter, on *October 16, 2011*, Trial Court framed the following additional issue.

- “2) Whether the Suit Property in Item No.5 is amenable to partition?”*



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7.3.Before the Trial Court, two witnesses were examined as P.W.1 and P.W.2 on the side of the plaintiff and Ex-A.1 to Ex-A.4 were marked. On the side of the defendants, D.W.1 to D.W.4 were examined and Ex-B.1 to Ex.B.12 along with Ex-X.1 were marked.

7.4.Upon hearing both sides, the Trial Court concluded that the plaintiff miserably failed to prove that the Suit Properties are ancestral properties; that Suit is bad for non-joinder of necessary parties, namely Kannaiyan and his sister – Anushiyadevi; that hence, the plaintiff is not entitled to the relief of partition and permanent injunction. Accordingly, the Trial Court answered Issue Nos.(1) to (5) and Additional Issue Nos.(1) and (2) in favour of D1 and D2 and against the plaintiff and D3.

8.Aggrieved with the Judgment and Decree passed by the Trial Court, the plaintiff has proffered this Appeal.

Arguments

9.Learned counsel for the appellant / plaintiff would argue that



originally one V.K.Raju owned properties that were partitioned among himself and his three sons vide Ex-B.1 - Partition Deed dated *May 2, 1963*.

The properties so allotted to one of his son – Kannaiyan, were ancestral in nature and included four power looms. From and out of the property, the said Kannaiyan purchased some other properties in his name and in the name of his two sons – D1 and D2. Hence, the properties allotted to Kannaiyan and the properties purchased by Kannaiyan in the name of his two sons and himself bear ancestral character. The Trial Court miserably failed to appreciate the said fact. Further, the Trial Court miserably failed to note that the plaintiff is a coparcener and by birth entitled to equal share along with D1 in the Suit properties.

9.1.Further he would submit that, the said Kannaiyan instead of partitioning the ancestral and joint family property, executed Ex-A.3 = Ex.B.3- Gift Settlement Deed in favour of D1 and D2 and hence, the property bequeathed to D1 and D2 also bears ancestral character. If the intention of the executant – Kannaiyan is otherwise, the Gift Settlement Deed would become void since the properties are ancestral and joint family properties.



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9.2.Further would submit that, Item No.4 of the Suit Property was purchased on *September 17, 1992* when D1 and D2 were hardly aged about 18 to 22 years and were students. At that time, they would not have had any independent source of income to purchase the Suit Properties. Hence, the Trial Court's decision that the Suit Item No.4 is not ancestral property is erroneous.

9.3.Further would submit that, the Trial Court failed to note that as per Ex-B.2 – Partition Deed, after the lifetime of Lakshmiammal, D1 and D2 are entitled to equal share in the 'A' schedule property, and the plaintiff is entitled to $\frac{1}{2}$ share in D1's share as the property is ancestral.

9.4.Further would submit that, the plaintiff claims the properties allotted to D1 under Ex-A.1 = Ex.B.2 and the properties allotted to D1 in the family arrangement. Hence, Kannaiyan and Anusuyadevi are not necessary parties to the Suit. Accordingly, he prayed to allow the appeal.

10.Learned Counsel for the 1st respondent / D1 would submit that, on the date of execution of Ex-B.1 – Partition Deed, there was no



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ancestral property available for partition. The subject matter covered under Ex-B.1 – 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 (விஸ்லை கொட்டகை) containing four power looms inside. Thus, he 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. 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 Ex-B.1, 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.



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10.1.Further would submit that 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 proceeds, his daughter – Anusuyadevi's marriage was celebrated and an immovable property was gifted as *Sridhana*.

10.2.Further would submit that, Kannaiyan's brother – Easwaran passed away in the year 1981. During his lifetime, Easwaran executed Ex-B.5 – Sale Deed in favour of Kannaiyan and Loganathan in respect of a land measuring 3622 ½ sq.ft. Thereafter, Kannaiyan acquired Easwaran's remaining estate by way of Release Deed under Ex-B.6.

10.3.Further would submit that Loganathan died unmarried and left Ex-X.1 – 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 properties as their self-acquisitions.



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10.4.Further would submit that in the year 2007, the following separate properties were partitioned vide Ex-B.2 - Partition Deed dated *December 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* (Ex-X.1);
- (iii) the properties developed upon Lakshmiammal as separate properties are per Section 8 of Succession Act.

10.5.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 D2 and 'D' schedule properties were allotted to D1. 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.

10.6. In a nutshell, the Suit Properties are all separate properties in the hands of D1, plaintiff & D3 have no right or claim over the same.

10.7. Further, the Suit is bad for non-joinder of necessary parties. Accordingly, he prayed to dismiss the appeal.

11. The 2nd respondent / D2 adopted the arguments on the side of the 1st respondent / D1.

12. The 3rd respondent / D3 represented by her mother has not filed major declaration petition and discharged herself as guardian.

Points for consideration

13. Heard on either side. Perused the records. The following



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points arise for consideration in this appeal:

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(i) Whether the properties allotted to the three sons of V.K.Raju under Ex-B.1 – Partition Deed dated *May 2, 1963* bear any ancestral character?

(ii) Whether the properties devolved upon Kannaiyan, Loganathan, Easwaran and Lakshmiammal as per Section 8 of the Succession Act are their separate or ancestral properties?

(iii) Whether the properties obtained by D1 under Ex-X.1 – Will are his separate properties or properties of ancestral character?

(iv) Whether the plaintiff is entitled to claim the property covered under Ex-B.3 - Gift Settlement Deed?

(v) Whether D3's claim in respect of the property covered under Ex-B.4 – Gift Settlement Deed is sustainable?

(vi) Whether the property allotted to D1 as 'D'



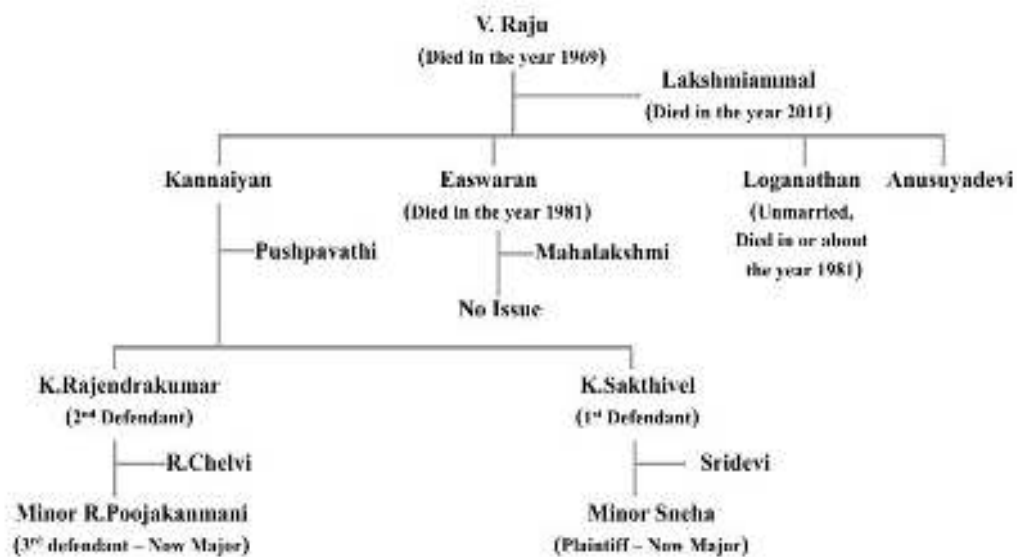
Schedule property in Ex-A.1 = Ex-B.2 – Partition Deed dated *December 27, 2007*, bears any ancestral character?

(vii) Whether the plaintiff and D3 are entitled to claim partition in the Item No.5 of the Suit Property?

(viii) Whether the Suit is bad for non-joinder of necessary parties?

Discussion and Decision

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



Point No.(i) - *Whether the properties allotted to the three sons of V.K.Raju under Ex-B.1 – Partition Deed dated May 2, 1963 bears*



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any ancestral character?

15.This Court has perused Ex-B.1 - 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.1 - 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 Loganath was allotted ‘D’ schedule properties. B, C and D schedule properties contained a land measuring about 2500 sq.ft. along with a thatched shed (விலலை கொட்டகை) containing four power looms inside each.

16.The plaintiff failed to plead and prove the existence of any joint family property prior to the execution of Ex-B1. It is important to note



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that Ex.B1 explicitly states that the properties it covers are self-acquired properties. At the time Ex.B1 –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.B1. 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-B1 indicating that the self-acquired properties were treated as joint family properties, a thorough and comprehensive reading of Ex-B1 would reveal that V.K. Raju's primary intention was to maintain familial peace and harmony. Recitals are decisive but not conclusive. Recitals must be viewed through the lens of the facts and circumstances of the case, as well as the intentions of the parties involved. If V.K. Raju had truly intended to convert his self-acquired properties into joint family properties, he would have allocated equal shares to 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. Therefore, this Court believes that the properties allotted to the three sons under Ex-B.1 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-B1, the property would have devolved upon his legal heirs as separate properties as per with Section 8 of the Succession Act.

17.Further, it is reasonable for a legal person to consider the doctrine of blending at this point. Though the plaintiff claims that the Suit Properties are ancestral and joint family properties, there is no direct plea of blending or common hotchpot in this case. Even while assuming that there is a plea of blending or common hotchpot, the lack of coparcenary property remains an issue. It is obvious that coparcenary property is essential to invoke the doctrine of blending. Existence of coparcenary, coparcener's separate property and coparcenary property forms the basis for the doctrine of blending. As stated *supra*, Ex-B.1 reveals the fact that there exist no joint family or ancestral property. Hence, the question of doctrine of blending does not arise at all in this case.

18.Hence, the properties allotted to the Kannaiyan, Loganathan and Easwaran under Ex-B.1 – Partition Deed dated *May 2, 1963* are their



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separate and absolute properties and does not bear any ancestral character.

Point No.(i) is answered accordingly in favour of D1 and D2.

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

19.As per Ex-B.1 – 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 Section 8 of the Succession Act, the legal heirs of V.K.Raju are entitled equal shares.

20.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.

21.Thus, even while assuming that the ‘A’ schedule property allotted to V.K.Raju vide Ex-B.1 – 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 properties.

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

23.As far as the property devolved upon Lakshmiammal *qua* Class-I legal heir 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.

24.In this regard, it is pertinent to cite ***Additional Commissioner of Income Tax Vs. P.L.Karuppan Chettiar*** reported in ***AIR***



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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**.

25.Further, had the properties covered under Ex-B.1 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 ½ share as a coparcener. If so, the remaining 1/2 share of V.K. Raju, would have devolved as per Section 8 of the Succession Act upon his legal heirs. Even in these circumstances, D1 and D2 would not have any claim over the property devolved upon Kannaiyan *qua* Class-I legal heir as per Section 8 of the Succession Act since it is his separate property. So



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would be case of the property devolved upon Loganathan and Easwaran under Section 8 of the Succession Act. In other words, they would also be their respective separate property.

26. 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.(ii) is answered in favour of D1 and D2.

Point No.(iii) - *Whether the properties obtained by D1 under Ex-X.1 – Will are his separate properties or properties of ancestral character?*

27. As stated *supra*, the 'D' schedule properties allotted to Loganathan under Ex-B.1 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 Ex-X.1 – Will in the year 1979. The scribe thereof was examined as D.W.4; the original Will was shown, and a copy was marked as Ex-X.1. At the time of death of Loganathan, his mother – Lakshmiammal alone is his legal heir as per Section 8 of the Succession Act. Admittedly, she died in 2011. After her demise, as per Section 15 of the Succession Act, her son – Kannaiyan and daughter – Anusuyadevi alone are entitled to deny Ex-X.1 – Will. The plaintiff is not entitled to deny the Ex-X.1 – Will, since neither the plaintiff nor D1 and D2 are legal heirs of Lakshmiammal.

28.Perusal of Ex-X.1 reveals that the testator intended to bequeath all his properties equally and absolutely in favour of D1 and D2. Relevant portion of the Ex-X.1 – Registered Will reads thus.

“...என் ஜீவ திசை வரை நானே தானாதி
விக்கிரைய வினியோகங்களுக்கு யோக்கியமாய் சர்வ
சுதந்திரமாய் ஆண்டனுபவித்துக்கொண்டு வந்து என்
ஜீவ திசைக்குப் பிறகு என் தமையனாரும் ஷே லேட்
V.கராஜலிகவண்டர் குமாரரும் R.கண்ணையன்
அவர்களின் குமாரர்களான தற்போது மைனர்களாக



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இருக்கும் சுமார் 12 வயதுள்ள K.ராஜேந்திரகுமார், சுமார் 8 வயதுள்ள K.சக்திவேல் ஆகிய இருவர் மட்டுமே அடைந்து னை இருவரும் மேஜரான பின் சொத்துக்களை சரிசமபாகமாக அடைந்து தானாதி விக்किரைய வினியோகங்களுக்கு யோக்கியமாய் சர்க்கார் வரி வகையரா செலுத்திக்கொண்டு சர்வ சுதந்திர பாத்தியங்களுடன் ஆண்டனுபவித்துக்கொள்ள வேண்டியது.

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

28.1.It is pertinent to cite *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.



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“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 interest 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 mere 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



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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.”

28.2.Hence, the properties obtained by D1 under Ex-X.1 – Will are separate properties in the hands of D1 and have no ancestral character.

Point No. (iv) - *Whether the plaintiff is entitled to claim the property covered under Ex-B.3 – Gift Settlement Deed?*

29.Kannaiyan executed Ex.A.3 = Ex-B.3– Gift Settlement Deed dated *November 13, 2007* in favour of D1 and D2. The property covered under Ex-B.3– Gift Settlement Deed were purchased by Kannaiyan vide Sale Deeds dated *July 13, 1990, April 10, 1991 and September 23, 1992*. As alluded to supra, the property allotted to Kannaiyan under Ex-B.1 as ‘B’ schedule property are 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 alleged factum of surplus income



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and utilization of the same to purchase the property covered under Ex-B.3.

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-B.3 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-B.3, ought to have added Kannaiyan as a party in the Suit to decide the said issue. But she has failed to do so.

30.Perusal of Ex-B.3 would reveal that the property covered therein 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)*, this Court is of the view that it is separate property in the hands of D1 and D2, over which, the plaintiff has no share at all. The issue is answered accordingly in favour of D1 and D2 and against plaintiff.

Point No. (v) - *Whether D3's claim in respect of the property covered under Ex-B.4 – Gift Settlement Deed is sustainable?*



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31.D2 executed Ex-B.4 - Gift Settlement Deed dated *December*

28, 2007, in favour of D1. D3 raised the question of validity of Ex-B.4 in her written statement. According to D3, Ex-B.4 was executed with a view to defeat and defraud her legitimate rights over the property covered under Ex-B.4. The contention of D3 is that at the time of purchase, D2 was a student and had no independent income to purchase the property. According to D2, he had property acquired through Ex-X.1 – Will in the year 1980, and also had independent income to purchase the property covered under Ex-B.4.

32.Property covered under Ex-B.4 were purchased vide Sale Deed *September 17, 1992* and *September 23, 1992* by D2. In Ex-B.4, it has been described as his self-acquired property. As stated *supra*, the property covered under Ex-X.1 – Will is his separate property of D2. D3 failed to establish that there was joint family income, from and out of which, the property covered under Ex-B.4 was purchased. Hence, this Court concludes that the property covered under Ex-B.4 are separate property of D2 and he has power to dispose of it as he desires. Therefore, the claim of D3 in respect of the property covered under Ex-B.4 is not sustainable. The issue is



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answered accordingly in favour of D1 and D2 and against D3.

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Point No.(vi) - *Whether the property allotted to D1 as 'D' Schedule property in Ex-A.1 = Ex-B.2 – Partition Deed dated December 27, 2007, bears any ancestral character?*

33.The following properties are covered under Ex-A.1 = Ex-B.2

– Partition Deed dated *December 27, 2007*,

- (i)the properties covered under Ex-B.1 – Partition Deed dated *May 2, 1963*;
- (ii)the properties covered under Ex-B.5 – Sale Deed dated *November 13, 1978*;
- (iii)the properties covered under Ex-B.6 - Release Deed dated *July 8, 1981*;
- (iv)the properties covered under Ex-X.1 – Will; and
- (v)the properties covered under the Sale Deed dated *June 11, 1987*.

33.1.As stated *supra*, the aforementioned properties are all separate properties of the parties to Ex-A.1 = Ex-B.2, namely Lakshmiammal, Kannaiyan, D1 and D2. Though Ex-A.1 = Ex-B.2 has a recital that the properties covered therein are joint family properties, a thorough and comprehensive scrutiny of Ex-A.1 = Ex-B.2 would show that



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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.(i), the recitals are decisive but not conclusive. Their significance lies in how they align with the factual context and the but decisive. Hence, considering the facts and circumstances of the and the intention of the parties gathered from a thorough scrutiny of Ex-A.1 = Ex-B.2, this Court is of the view that the properties covered under Ex-A.1 = Ex-B.2 – Partition Deed dated *December 27, 2007* are not ancestral properties.

33.2.It is correct to assert that, in case of partition of ancestral properties, the property allotted to son, though it is a separate property in respect of other relations, would remain as coparcenary property *qua* their male descendants up to three degrees below them. 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***).



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33.3. However, as stated above, the subject matter of Ex-A.1 = Ex-B.2 is not ancestral properties but separate properties. Hence, the property allotted to D1 as 'D' schedule property in Ex-A.1 = Ex-B.2 – 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.(vii) - *Whether the plaintiff and D3 are entitled to claim partition in the Item No.5 of the Suit Property?*

34. 5th item of the Suit Properties are properties allotted to Lakshmiammal who is the 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.1=Ex.B2).

35. 5th item of the Suit Properties were originally allotted to V.K.Raju as Item No.1 in 'A' schedule of Ex-B.1 – 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 *December 27, 2007* (Ex-A.1=Ex.B2), is her absolute property. She may dispose of it as she desires.

36.Perusal of Ex-A.1=Ex.B2 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 and D3 are not entitled to seek partition in it. Accordingly, Point No.(vii) is answered in favour of D1 and D2 and against the plaintiff and D3.

Point No.(viii) - *Whether the Suit is bad for non-joinder of necessary parties?*

37.It is the claim of the plaintiff that the Suit Properties are all ancestor properties. As per her claim, she ought to have added Kannaiyan and Anusuyadevi as necessary parties to the Suit. However, in view of the above findings that all the properties concerned are their respective separate



properties, the issue of non-joinder of Kannaiyan and Anusuyadevi as parties to the Suit pales into insignificance.

Conclusion

38. Totally there are 5 items in the Suit Properties.

38.1. As stated *supra* in Point No.(iv), the 1st Item of the Suit Properties were originally purchased by Kannaiyan vide Sale Deed dated *September 23, 1992* (Ex.B-8). The plaintiff failed to establish the aspect of joint family property and surplus income therefrom. Hence, the property is separate property of Kannaiyan. He executed Gift Settlement Deed dated *November 13, 2007* (Ex-A.3 = Ex-B.3), in favour of D1. As stated *supra*, the same is separate property of D1 and hence, plaintiff has no share in it.

38.2. 2nd Item of the Suit Properties are properties allotted to D1 vide the Partition Deed dated *December 27, 2007* (Ex-A.1=Ex-B.2) under 'D' schedule therein. As stated *supra* in Point No.(vi), it is the separate property of D1 and hence, the plaintiff has no share in it.



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38.3. As stated *supra* in Point No.(v), Item Nos.3(1) and 3(2) of the Suit Properties are properties originally purchased by D2 vide Sale Deeds dated *September 17, 1992* (Ex-B.7) and *September 23, 1992* (Ex-B.9) respectively as his separate properties, and thereafter, gifted to D1 vide the Gift Settlement Deed dated *December 28, 2007* (Ex.A-4 = Ex.B.4). Hence, D3's claim of partition is not sustainable.

38.4. It is stated by the plaintiff that 4th Item of the Suit Properties were purchased in the name of D1 from and out of the income derived from the joint family properties. Both sides have not filed the alleged Sale Deed. However, the plaintiff failed to discharge the burden upon her to prove the existence of joint family properties and the income therefrom. In view of the decision in Point No.(iii), it can safely be concluded that D1 had separate property / income to purchase the 4th item of Suit Properties and therefore, they are separate properties of D1.

38.5.As pointed out in Point No.(vii), 5th Item of the Suit Property were absolutely acquired by D1 and D2 as vested remainders, over which the plaintiff and D3 have no right to seek partition.



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39. 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 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.

40. Resultantly, the Appeal Suit is dismissed. No Costs.

[R.S.M., J.]

[R.S.V., J.]

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Neutral Citation : Yes
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A.S.No.1030 of 2019

R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

krk/tk

To

The I Additional District Judge,
I Additional District Court,
Erode.

PRE-DELIVERY JUDGMENT MADE IN
A.S.NO.1030 OF 2019

06 / 06 / 2024

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