BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 19.03.2024

Delivered On : **18.06.2024**

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

A.S.(MD)No.110 of 2015

1.S.Govindasamy
2.S.Rajaraman
3.S.Kalaiselvan ... Appellants

Vs.

1.P.S.Subramanian
S.Chinnammal (Died)
2.B.Pusphavalli (Died)
3.D.Tamilarasi
4.C.Umamaheswaran
5.Karthikeyan
6.Vadivelu (Died) ... Respondents
(Respondents 5 and 6 are brought on record as legal heirs of the deceased 2nd respondent vide Court order dated 06.02.2023 made in C.M.P.(MD)Nos.4220 to 4222 of 2019 in A.S.(MD)No.110 of 2015 by NMJ)
(Memo dated 23.12.2022 filed on 04.01.2023 in USR No.705 is recorded as R6 died, vide Court order dated 06.02.2023 made in C.M.P.(MD)Nos.4220 to 4222 of 2019 in A.S.(MD)No.110 of 2015 by NKJ)

PRAYER : Appeal Suit is filed under Order 41 Rule 1 r/w. Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 31.10.2014 in O.S.No.98 of 2006 on the file of the learned II Additional District and Sessions Judge, Thanjavur.

For Appellants	: Mr.G.Karnan
For 1st Respondent	: Mr.H.Lakshmi Shankar
For Respondents	: No Appearance

JUDGMENT

This Appeal Suit has been filed as against the judgment and decree passed in O.S.No.98 of 2006, dated 31.10.2014, on the file of the learned II Additional District and Sessions Judge, Thanjavur.

2.The appellants/plaintiffs have filed the above suit, claiming the following reliefs:-

"1.To pass a preliminary decree for partition in favour of the plaintiff directing the defendants to divide the suit properties by metes and bounds, and thereby allot 7/30 share to each of the plaintiffs in item No.1 to 10 of the suit properties by way of a preliminary decree for partition and permitting the plaintiffs and defendant No.1 to maintain the temple described in item No.11 by rotation.

2.To pass a final decree in favour of the plaintiffs for division of the shares of their 7/30 shares each as per the terms of the preliminary decree by appointing an Advocate Commissioner to *divide the suit properties in item No.1 to 10 and the plaintiffs be put in possession and enjoyment of the shares.*

3.To pass a decree for future mesne profits and direct the first defendant to pay the mesne profits to the plaintiffs as claimed.

4.To direct the defendants to pay the cost of the suit.

5.To pass such other reliefs as the Court deems fit and proper."

3.For the sake of convenience and brevity, the parties will herein after be referred as per the status/ranking in the original suit.

4.The plaintiff's case in short is as follows:-

(i)The suit properties are the joint family properties. The Item No.1 of the suit properties is the house property, Item No.2 of the suit properties is the family business with the building and the said business has been run in the name and style as "Anjeneyar Mark Surutu Company", the Item Nos.3 and 4 of the suit properties are the agricultural lands of the joint family properties of the plaintiffs and defendants 1 to 4. The Item No.5 of the suit properties is the manaicut of the joint family properties. The item Nos.6 to 10 are also the joint family properties which have been purchased out of the income derived from the joint family properties and joint family business by the said P.Shanmugam Pillai. The father of the plaintiffs, namely, P.Shanmugam Pillai had acquired the suit properties by way of a registered Partition deed dated 07.12.1957 entered into between himself, his mother and brothers. One Panchanatham Pillai is the grand father of the plaintiffs and defendants 1,3 and 4 and the said Panchanatham Pillai had 5 sons and one daughter and they are Narayanasamy Pillai, Shanmugam Pillai, Ganesan Pillai, Mariappan Pillai and Meenakshisundaram and a daughter by name Rajathiammal. The said Panchanatham Pillai's wife is one Kasiammal.

(ii)The suit properties item Nos.1 to 4 were the self acquired properties of the said Panchanatham Pillai, the grandfather of the plaintiffs and defendants 1,3 and 4. The said Panchanatham Pillai bequeathed the said properties i.e. item Nos.1 to 4 by way of a Will dated 07.11.1951. Likewise his wife Kasiammal also executed a Will dated 15.08.1950. Subsequently the said Panchanatham Pillai died leaving behind his wife Kasiammal and their sons Shanmugam Pillai, Ganesan Pillai, Mariappan PIllai and Meenakshisundaram, their daughter Rajathiammal and a grandson Dharmaraj, S/o.Narayanasamy Pillai. After his death, his wife Kasiammal and their sons Shanmugam Pillai, Ganesan Pillai, Mariappan Pillai and Meenakshisundaram, their daughter Rajathiammal and a grandson Dharmaraj, S/o.Narayanasamy Pillai became the absolute owners of the properties of the said Panchanatham Pillai. Therefore, they had entered into a registered partition deed dated 07.12.1957 and it was registered as document No.1613/1957. The recitals in the said partition deed indicate the properties mentioned in the partition deed were the subiect matter of the Will of Late. Panchanatham Pillai, but however they had voluntarily thrown the properties into the common stock of the joint family abandoning their separate claims, if any, by any one of them. Therefore, the properties in the name of the said Panchanatham Pillai and his wife Kasiammal were treated as joint family properties with all its usual incidence and rights. Thus the suit properties mentioned in item Nos.1 to 4 have already been treated as the joint family properties and available for partition between Shanmugam Pillai and his brothers themselves. Thus the nature and character of the properties mentioned in item No.1 to 4 already changed and treated by the ancestors of the plaintiffs and defendants 1 to 4 as joint family properties. Thus the plaintiffs are entitled to claim their coparcenary right in the said properties.

(iii)Item No.5 herein had been purchased out of the income derived from the items Nos.2 to 4 of the suit properties and family business and the same had been purchased in the name of Shanmugam Pillai as the eldest member of the joint family. Since the item No.5 has been purchased out of the income of the joint family business and landed properties, item No.5 is also treated as joint family property. The plaint item Nos.6 to 10 are landed properties purchased out of the joint family business and cultivable lands described in item Nos.2 to 4 herein by their father Shanmugam Pillai. Thus the plaint item Nos.6 to 10 are also the joint family properties of the plaintiffs and the defendants 1 to 4. The plaintiffs are also entitled to claim their share in the said item Nos.6 to 10. The plaintiff submit that the item No.11 of the suit property is the temple property, which is under the control and maintenance of the plaintiff family for more than 60 years and every year the family members are celebrating Hanumantha Jeyanthi in the temple and daily poojas are performed by appointing Battacharyar and now due to division of the family properties, the item No.11 shall be maintained by rotation by every male member of the joint family as ordered by the Court.

(iv)Shanmugam Pillai had already sold a portion in favour of the 5th defendant long back. The sale of the joint family properties by one of the joint family members is null and void. Since the 5th defendant is the purchaser of the undivided joint family properties, he has been added as the 5th defendant in the suit and the 5th defendant is the necessary party to the proceeding. The 1st plaintiff has sent a legal notice to the 1st defendant and his father Shanmugam Pillai on 23.02.1999 which were received by them on 27.02.1999 for which there was no reply from them. The silence by the said Shanmugam Pillai and 1st defendant would prove that the item Nos.1 to 4 are the joint family properties and the item No.5 was purchased out of the income of the joint family business and landed properties. The plaintiffs 1 and 2 are retired Government servants and the 3rd plaintiff is a government servant. They have their own separate funds and the property acquired from out of their earnings as Government Servants. Out of their income, the plaintiffs gave Rs.5,000/- each for the construction of the house in item Nos.1 and 2. They are also entitled to the equal share of value of the building in item Nos.1 and 2.

(v)P.Shanmagana Pillai died on 08.07.2006. The plaintiffs had attended the cremation and other ceremony of their father and they had also spent a sum of Rs.25,000/- for the death ceremonies of their father and after the completion of 30 days function of their father, the plaintiffs orally demanded for partition on 07.08.2006 to the first defendant and the defendants 2 to 4 for which the first defendant gave an evasive reply. Hence, the plaintiffs filed this suit for partition and mesne profits. The plaintiffs and the first defendant all are co parceners. Their father P. Shanmugam Pillai died intestate. The plaintiffs and the first defendant and deceased father Shanmugam Pillai are having equal rights in the entire properties. The defendants 2 to 4 being the female members of the joint family are entitled to claim their share only according to Hindu Women's Right to Property Act, 1956. Since the defendants 3 and 4 were married 25 years back, the Hindu Women's Right to Property Act 1/90 is not applicable. Thus each of the plaintiff is entitied to 8/35 share in all the suit properties and the first defendant is entitled to 8/35 share and the defendants 2 to 4 are each entitled to 1/35 share in all the suit properties. Since the 2nd defendant died during the pendency of the suit, her share shall be equally divided among her heirs. Therefore there is variation in the shares already claimed. After the death of the 2nd defendant, the plaintiffs are entitled to 7/30 share each in the entire suit properties and the 1st defendant is entitled to 7/30 share and the defendants 3 & 4 are entitled to 1/30 share each in all the suit properties (Amended as per order in I.A. No. 29/2008 dated 27.02.2009).

5.The defence of the first respondent in short is as follows:-

(i)The suit framed as if the plaintiffs are in joint possession and enjoyment of the suit properties is not correct. Only this defendant along with his family members and second defendant continues to reside and enjoy the suit first item house. The plaintiffs are out of possession for several decades and hence cannot claim common possession and enjoyment. As far as other suit items except properties already sold by (late) Shanmugam Pillai are concerned, this defendant became the absolute owner vide Wills dated 09.02.1999 and 17.02.1999 respectively. The plaintiffs are entitled to partition only for item No.1 and that too after the life time of second defendant. In other items they cannot claim either partition much less the claim of joint possession. Because at no stretch of imagination the other properties can be termed as ancestral or joint family properties in character so as to claim right by birth. The contentions that the suit properties are the Joint family properties, that "Anjaneyar Mark Suruttu Company" is a family business, and that item Nos.6 to 10 are properties acquired out of the income from the joint family business and income are all not true and correct. On the other hand except item No.1, the other 7 properties including the said cigar company are the absolute properties of (late) Shanmugam Pillai and item Nos.6 to 10 are his self acquisitions. The cigar business was also closed even in the year 1978 l.e., about 18 years prior to the death of (late) Shanmugam Pillai on 08.07.2006.

(ii)The claim of the plaintiffs in para No.3 as if (late) Shamugam Pillat derived the suit properties through registered family partition dated 07.12.1957, is yet another false hood. Infact suit item No.1, first item of item No.2 in T.S No.2310, item Nos.3 and 4 are alone the properties allotted vide Schedule I therein. It is also true that (late) Pancharatham Pillai was the paternal grandfather of the plaintiffs and this defendant and that (late) Kasiammal was their grandmother. The genealogy given in the plaint is admitted. It is not admitted that the suit item Nos.1 to 4 are all the self acquired properties of (late) Panchanatham Pillal. It is also equally false to contend that all these items were bequeathed by him vide his registered Will datel 17.11.1951. On other hand even item No.1. the house wherein (late) Shanmugam Pillai resided at T.S No.1192 was purchased by (late) Shanmugam Pillai in his name and that of his brothers Ganesan Pillai and Mariyappa Pillai out of his self earnings through registered sale deed dated 17.02.1951. Therefore even (late) Panchanatham Pillai has nothing to do with the said property. Since this was his self acquired in the joint names, the other ostensible owners does not stake claim over the same, which was allotted to him as item No.1 vide partition deed dated 07.12.1957.

(iii)In fact the only property possessed by (late) Panchanatham Pillai except the cigar business was his residential house in T.S No.1175 at East Neethuklara Street, Thanjavur. Vide his registered will dated 07.11.1951, he bequeathed the same infavour of his sons namely (1) (late) Shanmugam Pillai (2) (late) Mariyappa Pillai, (3) (late) Ganesan Pillai and (4) Meenakshi Sundaram as his one another son Narayanasamy Pillai predeceased him. In the partition of the year 1957, the house in TS No.1175 was entirely allotted to the share of Meenakshi Sundaram vide Schedule IV. As such it is reasserted that item Nos.1 to 4 are neither the properties of (late) Panchanatham Pillai nor comprised in his Will dated 07.11.1951 as claimed by the plaintiffs.

(iv)It is true that (late) Panchanathain Pillai after his retirement from Railway Service, started the "Anjaneyar Mark Suruttu Company" for his son (late) Shanmugani Pillai, as rest of his sons were well placed even by that time. Infact though his other son were given education and consequent upliftment, (late) Shanmugam Pillai was retained by him to look after the business and domestic affairs in addition to the independent earnings of (late) Shanmugam Pillai, since (late) Shanunugam Pillai took much pain in the business, vide his Will dated 07.11.1951 he bequeathed the entire business to him. While bequeathing the business, he specifically excluded his grandsons through (late) Shanmugam Pillai viz. the plaintiffs and this defendant, as if the business is a coparcenery property. Therefore the said cigar business became the absolute property of (late) Shanmugam Pillai soon after the death of (late) Panchanatham Pillai well before the year 1957. As such the income therein is his self earnings, and the plaintiff cannot claim any interest by birth. Therefore the contentions that suit item Nos.6 to 10 are the properties acquired out of the income of the coparcenery properties and business income is not sustainable. On the other hand as stated above, they are all self acquisitions of (late) Shanmugam Pillai and disposition can be made by him as per his wishes.

(v)It is also true that, Kasiammal executed a registered Will dated 15.08.1950 with respect to properties purchased by her out of her self earnings and savings. By the same, she bequeathed item Nos.2, 3 and 4 along with other properties for all the 4 sons (1)(late) Shanmugam Pillai (2) (late) Mariyappa Pillai (3) (late) Ganesan Pillai and (4) Meenakshi Sundaram. Suit item No.2 in T.S.No.2310 is the shop and manufacturing unit for the cigar company, item No.3 in T.S No.2810-11 cents in Sungan Thavilthan village and item No.4 in TS No.3457-95 cents, in the same village. Since these items are the self acquired properties of his wife Kasiammal, in which (late) Panchanatham Pillal has no right of disposition, the same were not included in his Will dated 07.11.1951. Therefore in law, these items cannot be termed as coparcenery properties or joint family properties. The legal concept is that the property should have been devolved from grandfather or great grandfather, so as to claim right by birth. Inheritance from female ancestors are not ancestral in character. Therefore items No.2 in T.S No.2310, item Nos.3 and 4 inherited by (late) Shanmugam Pillai vide partition dated 07.12.1957, are all his absolute properties and not otherwise.

(vi)It is true that the Will of Kasiammal did not take effect. But the Will of (late) Panchanatham Pillai as far as the cigar business came into force after his death, (late) Shanmugam Pillai succeeded the same absolutely and that is why the same was not the subject matter of subsequent partition dated 07.12.1957. As such the plaint averment should not mean that (late) Panchanatham Pillai, and (late) Shanunugam Pillai voluntarily thrown the properties into the common stock of the joint family by abandoning their separate claims. Because (late) Panchanatham Pillai was not alive during partition. Only the self acquired properties of Kasiammal were placed for partition by superseding her Will. Further item No.1 belongs to (late) Shanmugam Pillai was also placed to confirm his ownership, as the purchase was in the joint names. The property referred as accumulated by Panchanadam Pillai (bequeathed vide his Will dated 07.11.1951) in the partition deed refers to T.S No.1175 at Keeza Neethukkara Street was allotted to Meenakshi Sundaram vide Sch. IV. Therefore the character of item No.1, being the absolute property of (late) Shanmugam Pillai even before partition vide his purchase date with independent income, never changed, simply because the same was included in the partition.

(vii)The repeated contentions that the properties are joint family properties is not correct. Because it is not the case of the plaintiff, that (late) Panchanatham Pillai, his wife and sons constituted a joint family or that of (late) Shanmugam Piliai and his sons. Joint family status requires contribution of all joint family members and such contribution by the plaintiffs was not pleaded. As such the plaintiff is precluded from saying that the properties are joint family properties.

(viii)The contentions that the plaintiffs jointly enjoyed and developed the joint family estate, that they are entitled to 1/5th share each are also equally false. Because as stated earlier all the properties are absolute properties of (late) Shanmugam Pillai and he was alone in enjoyment. He alone accumulated the rest of the properties. Therefore the plaintiffs are not entitled to any share. Further no occasion arose for joint enjoyment and contribution by the plaintiffs. Just like his father (late) Shanmugam Pillai also retained this defendant being the eldest son without providing education and paving way for his employment and earning, to look after the business and domestic affairs. (late) Shanmugam Pillai after he became the absolute owner of house item No.1, started living therein separately with his family members. Out of his self earnings, he pulled down the old superstructure therein and put up a pucca RCC terraced house in or about the year 1968. He imparted higher education to the first plaintiff to complete D.C.E. and to secure a job in PWD as Asst. Engineer in the year 1968. He got married on 07.12.1970 and thereafter has been living separately till date. Likewise the second plaintiff was imparted with DME diploma, secured job in FCI in or about the year 1969, got married and started living separately. The third plaintiff also was provided with prestigious M.A.,M.Ed., P.G.D.TE(CIEFL), in the year 1985, secured employment as teacher in the year 1986, got married in the year 1989 and settled separately. They never contributed anything. On the other hand, they accumulated immovable assets such as house, etc by completely investing their self earnings.

(ix)Only this defendant became a victim after the upliftment of the plaintiffs. Until his life time (late) Shanmugam Pillai lived with this defendant at suit item No.1, and even now he is taking care of his mother the second defendant and living therein. The contentions that all the properties are purchased by (late) Shanmugam Pillai out of income derived from items Nos.1 to 4 and from family business is again not correct. As stated earlier (late) Shanmugam Pillai had his independent income even during the life time of his father (late) Panchanatham Pillai. Out of the same, he purchased suit items Nos.

6,8 and 9 from C.S.Iyengar vide registered sale deed dated 16.05.1957, I.e., 7 months prior to family partition dated 07.12.1957. The fact that these properties are his self acquisitions is evident, by the absence of including the same in the partition dated 07.12.1957. At the time of acquisition his father was not alive. Therefore, apart from his independent income, he had also got the income from the absolute cigar business vide Will of his father to mobilize funds to purchase the properties.

(x)Suit item No.5, the backyard behind item No.1, was purchased by him undoubtedly out of his resources vide registered sale deed dated 01.08.1970 from Arunachala Pathar and others.

TS No.2311 located on the south of T.S No.2310 (shop) shown as item No.2 in the plaint was also purchased by him out of his own funds on 17.07.1966 from Angammal vide registered sale deed.

Item No.7 was also purchased by him on 07.06.1981 out of his funds from A.Ganesan vide registered sale deed.

Item No.10 was also accumulated by him, out of his own funds.

Admittedly Item No.1 is a residential house for (late) Shanmugam Pillai without any rental income and item Nos.3 and 4 are only small extent of agricultural landed properties. Therefore, the claim of the plaintiffs that these income was appropriated to effect purchase of other items is ridiculous.

(xi)As such all suit properties are the absolute properties of (late) Shanmugam Pillai. The plaintiffs conveniently suppressed the registered Wills executed by (late) Shanmugam Pillai for the sake of filing this suit for partition. The two Wills of (late) Shanmugam Pillai clearly reflects his sound disposing state of mind, with reference to the sacrifices of this defendant through out. Vide his first registerd Will dated 09.02.1909 he bequeathed suit item No.2 (T.S Nos.2310 and 2311), and suit item No.5 infavour of this defendant. Thus the Will came into effect after his death on 08.07 2006 and this defendant is enjoying the same as absolute owner. Vide the second Will dated 17.02.1999, he bequeathed the rest of properties in 3 Schedule. A Schedule comprises of suit item No.1, for common succession of plaintifis and first defendant that too after the life time of his wife Chimammal the second defendant herein. B Schedule comprises of suit Item No.9 agricultural land of 1 acre in T.S No.3467 bequeathed to his daughters defendants 3 and 4. C Schedule comprises of suit items Nos.6 to 8 bequeathed exclusively to this defendant. Since both Wills came into force, they have to work out their remedy only in terms of the disposition in the Wills and not by resorting to this kind of vexatious litigations.

(xii)Item No.10 of the suit property is adjacent to item No.4, got by him vide family partition dated 07.12.1957. But long back on 11.06.1990 itself he conveyed both items to one T.Radha of Big Street, Sungan Thevilthan village, Thanjavur. Therefore filing this suit by including these items after 16 years of its conveyance is nothing but mischievous which shows the litigating mind of the plaintiffs. In this context the notice issued by the plaintiffs dated 23.02.1999 is relevant, wherein the first plaintiff admitted knowledge about conveyance of these items. But even after notice kept quite for 7 years to file this suit. Therefore their right if any to challenge the alienation is barred by limitation.

(xiii)It is true that, there is a family Anjaneyar temple on the north of suit item No.2 under one Management of (late) Shanmugam Pillai. But it is not correct to say that the plaintiffs are having right of management by rotation inview of the court order. It is true that the first plaintiff alone sent a registered notice dated 23.02.1990 to (late) Shanmugam Pillai, this defendant and the 5th defendant demanding partition of suit items Nos.1, 2 (T.S No.2310 only). It means that they admitted the absolute title of (late) Shanmugam Pillai for rest of the suit items. Preferring to issue notice is relevant in the context that, the first plaintiff immediately after having knowledge about the execution of Wills of (late) Shanmugam Pillai dated 09.02.1999 and 17.02.1999 issued the notice within a week. But neither challenged the right to execute Will for suit properties nor filed a suit for partition immediately after notice during his life time. The plaintiffs kept quite for 7 years knowing the disposition by (late) Shanmugam Pillal by Wills. It is true that the plaintiffs are government servants having their own funds and properties. But the claim that they gave Rs.5,000/- each for the constructions in items Nos.1 and 2 is not true and correct.

(xiv)It is not correct to say that the plaintiffs spent Rs.25,000/- for the final rites of their father. It is only this defendant, who met the expenses besides medical expenses during his last days. Likewise the claim of the plaintiffs that they made oral demand for partition after 30th day ritual is also equally false. There was no such demand, as they knew very well about the disposition by Wills. The contentions in para No.12 as if defendants 3 and 4 are entitled to equal share as per provisions of Hindu Women's Right to Property Act, 1/1990 is not correst. Since no part of the suit properties are ancestral in character, no such right accrues in this case. The contentions in para No.11, as if the plaintiffs are in enjoyment of the rooms in the first floor with their belongings is yet another falsehood. The entire suit item was under the enjoyment of (late) Shanmugaun Pillai during his life time and after his death remains with this defendant. Therefore the plaintiffs have no right to interfere with his possession and enjoyment. It is not correct to say that (late) Shanmugam Pillai supported of this family of this defendant. On other hand this defendant was made as a scape goat for the affluent status of the plaintiffs. In view of the contentions supra, the plaintiffs are not entitled to any mesne profits. Thus the plaintiffs are not entitled to partition with respect to item nos.2 to 11. Regarding item No.1, the suit is premature. Because right to partition accrues only after the death of second defendant in accordance with the Will of Late. Shanmugam Pillai dated 17.02.2006. Therefore, the suit lacks merits and liable to be dismissed at the threshold.

6.The defence of the second respondent in short is as follows:-

(i)The plaintiffs are entitled to partition only for item No.1 and that too after the life time of this defendant and in other items, they cannot claim either partition much less the claim of joint possession. Because at no stretch of imagination, the other properties can be termed as ancestral or joint family properties in character so as to claim right by birth and became the absolute and self acquired properties of (late) Shanmugam Pillai.

(ii)The contentions that the suit properties are the joint family properties that "Anjaneyar Mark Suruttu company" is a family business, and that items Nos.6 to 10 are properties acquired out of the income from the joint family business and income are all not true and correct on the other hand except item No.1, the other properties including the said cigar company are the absolute properties of (Late) Shanmugam Pillai and items Nos.6 to 10 are his self acquisitions. The cigar business was also closed over in the year 1978 i.e., about 18 years prior to the death of (late). Shanmugam Pillai on 08.07.2006. The contentions in para Nos.6 and 7 that items Nos.5,6 to 10 are all properties purchased by (Late) Shanmugam Pillai out of income derived from item Nos.1 to 4 and from family business is again not correct. As stated earlier (late). Shanmugam Pillai had his independent income even during the life time of his father (late) Panchanatham Pillai and out of the same, he purchased suit items Nos.6,8 and 9 from C.S. Iyenger vide registered sale deed dated 16.05.1957, that is 7 months prior to family partition deed 07.12.1957. The first that these properties are his self acquisition is evident, by the absence of including the same in the partition deed 07.12.1957. At the time of acquisition his father was not alive. Therefore, apart from his independent income, he had also got the income from the absolute cigar business vide Will of his father to mobilize funds to purchase the properties.

(iii)As such all suit properties are the absolute properties of (late). Shanmugam Pillai. The plaintiffs conveniently suppressed the registered Will executed by Late.Shanmugam Pillai for the sake of filing this suit for partition. Vide his first registerd Will dated 09.02.1990, he bequeathed suit item No.2 (T.S Nos.2310 and 2311), and item No.5 in favor of first defendant. Then the Will came into effect after his death on 08.07.2006 and the first defendant is enjoying the same as absolute owner. Vide the second Will dated 17.02.1999, he bequeathed the rest of properties in third Schedule & Schedule comprises of suit item No.1, for common succession of plaintiffs and first defendant, that too after the life time of his wife Chinnammal, this defendant herein. B Schedule comprises of suit item No.9 agricultural land of 1 acre in T.S No.3467 bequeathed to his daughters defendants 3 and 4. C Schedule comprises of suit items nos.6 to 8 bequeathed exclusively to the second defendant. Since both Wills came into force, they have to work out their remedy only in terms of the disposition in the Wills and not by resorting to this kind of vexatious litigations.

(iv)Thus the plaintiffs are not entitled to partition with respect to item Nos.2 to 11. Regarding item No.1, the suit is premature. Because right to partition accrues only after the death of second defendant in accordance with the Will of (late) Shanmugam Pillai dated 17.02.2006 Therefore the suit lacks merits and liable to be dismissed at the threshold.

7.The defense of the third and fourth respondents in short is as follows:-

The plaintiff's case is not maintainable in law and on merits and in the interest of justice. The plaintiff's claim that the suit property is joint family property of Shanmugam Pillai, and that each plaintiff is entitled to 8/35th share is not correct. These suit properties are to be considered as the personal properties of Shanmugam Pillai. As Shanmugam Pillai died intestate in the year 2006, by virtue of the Indian Succession Act 30/1956, amended by Act 39/2005, the defendants 3 and 4 have an equal share declaring that each of them has 8/49th share in the property as the plaintiffs. Whether the property is considered joint family property or personal family property, the defendants are entitled to an equal share. Therefore, the plaintiff's claim of an 8/35 portion is incorrect. The defendants 3 and 4 are co-parcenars and are entitled to one part in 1/7 of the suit property. In Shanmugam Pillai's 1/7th portion of share, the respondents 3 and 4 are entitled to 7 portions. The 3rd and 4th defendants are entitled to 8/49 portions each separately. Contrary to this whatever has been mentioned in the plaint is denied by the 3rd and 4th defendants. Therefore, it is prayed that in favour of the defendants 3 and 4, it be declared that each have 8 portions in the suit property's 8/49 portions, that boundaries of their shares in the property be demarcated by a court Commissioner and that they be allowed separate possession of their respective shares. The 3rd and 4th defendant have each paid Rs.375/- for the demarcation and are not liable for the cost of the suit. Therefore, the Court may be pleased to grant a declaratory relief that the 3rd and 4th defendants have a share in the 8/49 portion of the suit property, based on that, the Court may appoint a Commissioner to demarcate boundaries and apportion it to the 3rd and 4th defendants and such other remedies the Court may deem fit.

8.The defense of the fifth defendant in short is as follows:-

(i)This defendant submit that the property purchased and under the enjoyment of this defendant is not the joint family property of the said Shanmugam Pillai. Having purchased the same from the said Shanmugam Pillai, this defendant constructed a pucca house in the said site out of bank loans. For constructing house in the said property, this defendant mortgaged the said property with the Karanthattangudi Dravida Cooperative Urban Bank, Thanjavur. The original title deed and other documents pertaining to the said item were with the bank and this defendant undertakes to send for the same at the time of trial.

(ii)This defendant after purchusing a portion of the 3 item of the suit property, constructed the same with a R.C.C., roof by investing a sum of Rs. 3,00,000/- and he has been enjoying the same as his own right ever since its purchase from the year 1995. This defendant submits that tax receipts and electricity and tap connections all stand in his name and the plaintiffs are aware of all the above facts. Being fully aware of the same, the plaintiffs have wantonly and willfully dragged this defendant into their family tussle, which is quite unwarrented and uncalled far, so far as this defendant is concerned. The said item is not the joint family property of Shanmugam Pillai. The said Shanmugam Pillai who is the vendor of this defendant at the time of registering the sale deed handed over the xerox copy of the sale deed in his favour. As already stated, this defendant has purchased a portion of the suit item No.5 through registered sale deed dated 07.04.1995, the said document has been registered as document No.490/1995. The valuation of the suit property is not proper. The description of property given for the suit item No.5 is not correct. The suit is devoid of any merits and is liable to be dismissed with costs.

9.The learned Trial Court, upon considering the above pleadings, has framed the following issues:-

"(i)Whether the suit properties are joint family properties consists of plaintiffs and 1st defendant ?

(ii)Whether the plaintiffs are entitled for partition of 7/30 shares in the suit properties items 1 to 10?

(iii)Whether the plaintiffs are entitled to maintain the 11th item of temple by rotation as prayed for?

(iv)Whether the 5th defendant is the bonafide purchase of the 5th item of suit property?

(v)To what other reliefs the plaintiffs are entitled?"

10.The first plaintiff Mr.Govindasamy, son of P.Shanmugam Pillai was examined as P.W.1 and Ex.A1 to Ex.A7 were marked through him. On the defendant's side, one S.Subramaniam, son of Late.Shanmugam Pillai and C.Uma Maheswaran, son of Chokalingam, that is, the first and fifth defendants were examined as D.W.1 and D.W.3 respectively. That apart, one Mr.Baskar, son of Sundaram Pillai and Mr.Ravi John Brito, son of Savuriraj Pillai were examined as D.W.2 and D.W.4 respectively and Ex.B1 to Ex.B37 were marked through D.Ws.

11.The learned Trial Judge, upon considering the pleadings, evidence both the oral and documentary, on hearing the arguments on both sides, has passed a judgment and decree, dated 31.10.2014 by answering issue No.1 as against the plaintiffs, issue No.2 partly in favour of the plaintiffs, issue No.3 in favour of the plaintiffs and issue Nos.4 and 5 as against the plaintiffs, thereby, partly allowing the original suit.

12.Aggrieved by the impugned judgment and decree, the appellants/ plaintiffs have preferred the present Appeal Suit.

Submissions:-

13.The learned counsel appearing for the appellants/plaintiffs submitted that, the judgment and decree passed by the learned Trial Court and the findings in the said judgment are contrary to law, weight of evidence and probabilities of the case. He further submitted that the learned Trial Court erroneously gave finding that the father of the plaintiffs, first defendant, defendants 3 and 4 got the property through Ex.B8 partition deed, but taking into consideration only $\frac{1}{4}^{th}$ share from the aforesaid partition deed. He further submitted that the learned Trial Court erred in considering the Ex.B15, Ex.B16 and Ex.B17, Wills and gave weightage to the same, while those Wills were not valid in eye of law. That apart he categorically contended that the learned Trial Court erred by giving a finding that as per Ex.B8, partition deed, Shanmugam Pillai who is the father of the plaintiffs have got item Nos.1 to 4 but had given share only with respect to the first item and negatived the share pertaining to item Nos.2 to 4 of property. The factum of partition between Shanmugam Pillai and his brothers which is not at all connected with the present suit has been erroneously considered by the learned Trial Court. The learned Trial Court erred by negativing the claim of partition on the ground of joint family property as not proved without considering the evidence as well as the documents filed by the plaintiffs. The learned Trial Court's findings that the plaintiffs have not filed any document to prove the contribution of the plaintiffs to the joint family is absolutely erroneous. Contending that all the suit properties are family properties, the learned counsel submitted that the first defendant miserably failed to prove the genuinity of the Wills which have been marked as Ex.B5 and Ex.B16. He further contended that since item Nos.6 to 10 of the plaint schedule properties being purchased out of the income of the Cigar company and the income of the plaintiffs by their father Shanmugam Pillai all those properties also would form a part of joint family property. Categorically contending that Shanmugam Pillai and the first defendant never ever had independent income and substantiating his stand that the suit properties item Nos.1 to 10 are joint family properties, the learned counsel contended that the plaintiffs are entitled to 7/30 shares and on that basis, pressed for allowing the appeal.

14.Per contra the learned counsel appearing for the first defendant submitted that the partition deed, which was marked as Ex.A1 and Ex.B8 do not cover all the prime schedule property item Nos.1 to 10. All the suit schedule properties are the self acquired properties of the grandfather of the plaintiffs, the defendants 1, 3 and 4 namely Panchanatham Pillai and their grandmother namely Kasiammal. Categorically contending that no pleading elaborating joint family business has been made and that the same does not figure out in the schedule of property, the learned counsel contended that the plaint is absolutely shallow. He further insisted that all the plaintiffs, the defendants 1 to 4 are joint owners by inheritance and the suit schedule properties are not joint family properties but those which have devolved on the plaintiffs and defendants 1 to 4 under Section 8 of Hindu Succession Act, 1956 and not under Section 6 of the same. Further the learned counsel submitted that the father of the plaintiffs namely Shanmugam Pillai and the first defendant were not employed and they were undertaking the Cigar business, namely, Anjeneyar Mark Surutu Company. He further contended that the calculation of the Trial Court with respect to the shares is incorrect and as per the Wills marked as Ex.B15 and Ex.B16 the plaintiffs are entitled to $1/4^{th}$ shares. He further submitted that the suit came to be filed after 7 years from the issuance of the notice dated 23.02.1999, that is, after the death of the father Shanmugam Pillai, that is, in the year 2006. Since the properties in Ex.A1, partition deed are all the self acquired properties of the father Panchanatham Pillai and mother Kasiammal that is the father and mother of Shanmugam Pillai who is the father of the plaintiffs, the children of Panchanatham Pillai and Kasiammal do not have birth right over the said properties in view of Section 8 of Indian Succession Act, 1956. Thus, categorically contending that the judgment of the learned Trial Court need to be modified with respect to the property in item No.1 of the plaint schedule property and 11th item, that is the temple property and all the other reliefs as granted by the learned Trial Court is absolutely valid and on that basis, pressed for disposing the Appeal.

15.The learned counsel for the 4th defendant submitted that Shanmugam Pillai died intestate in the year 2006 and by virtue of Indian Succession Act 30 of 1956, amended by Act 39 of 2005, the defendants 3 and 4 have equal share declaring that each of them has got 8/49th share in the plaint schedule property. He further insisted that irrespective of the fact whether the properties is considered as joint family property or a personal family property, the defendants 3 and 4 are entitled to an equal share in the capacity of co-parceners and they are entitled to $1/7^{th}$ share in the suit schedule properties. That apart he further submitted that as far as Shanmugam Pillai's $1/7^{th}$ portion of share is concerned, they are entitled to 7 portions, that is, third and fourth defendants are entitled to $8/49^{th}$ portions each separately. In terms of his arguments, the learned counsel pressed for disposing of the Appeal.

16.The points for consideration is as follows:-

"1.Whether the Trial Court erred in holding that the plaint schedule properties are not joint family properties of the Plaintiffs and Defendants 1 to 4?

2.Having held that Shanmugam Pillai, the father of plaintiffs and first defendants was allotted with Survey Nos.1192, 2310, 2819 and 3457 as per the partition deed marked as Ex.B8, whether the learned Trial Court erred in holding that the said Shanmugam Pillai is entitled only to one-fourth share of which the plaintiffs 1 to 3, defendants 3 and 4 are entitled to 1/24th share each in the first item of property and that the plaintiffs and defendants 3 and 4 are not entitled for partition with respect to the other properties?

3.Whether the learned Trial Court erred by holding that the plaintiffs and the defendants are entitled to the administration of Anjaneya Temple scheduled as 11^{th} item by rotation?

4.Whether the learned Trial Court erred by holding that the 5^{th} defendant is a bonafide purchaser of portion of the 5^{th} item of the plaint schedule property?

5.Whether the suit as framed is maintainable?

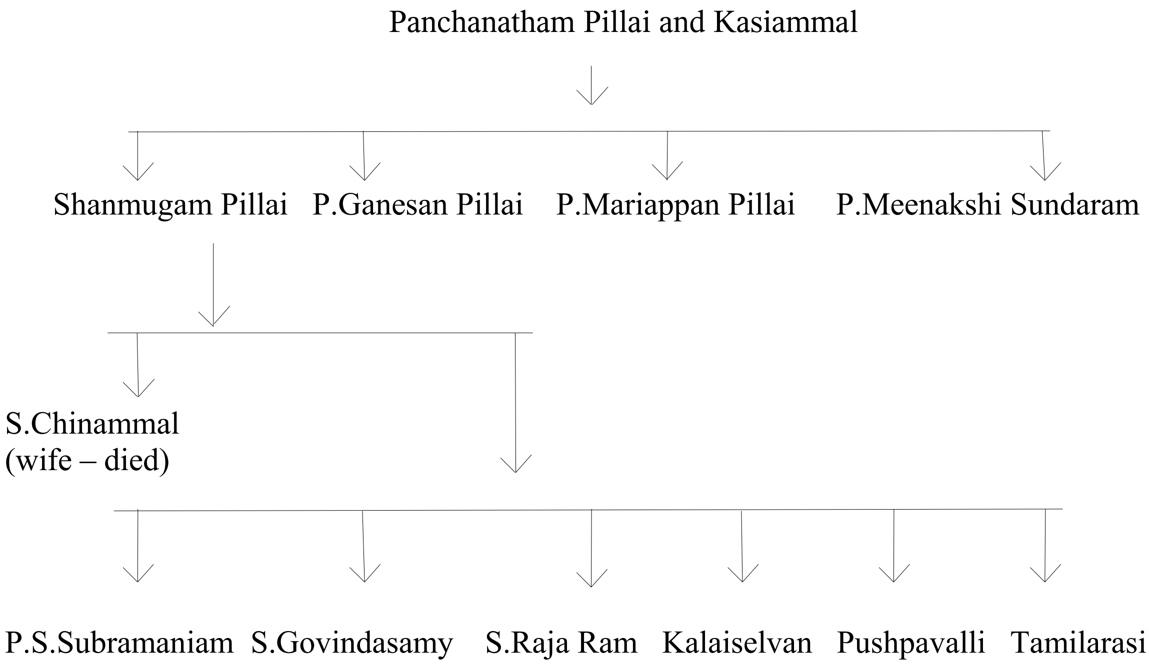
6.Whether the learned Trial Court ought to have framed a separate issue as to the genuinity of the Exhibit Wills marked as Ex.B15 and Ex.B16?

*7.*Whether the judgment and decree dated 31.10.2014 passed in O.S.No.98 of 2006 is liable to be interfered with?

8.To what reliefs, the parties are entitled to?

Analysis:-

17.In order to appreciate the entire controversy between the parties, it may be appropriate to reproduce the genealogy of the family of the plaintiffs and the defendants 1 to 4. The genealogy of the whole family is as under:-



18.The propositus of the said family are one Panchanatham Pillai and his wife Kasiammal. The date of death of Panchanatham Pillai is nowhere pleaded either in the plaint or in written statement. However, the first defendant himself who examined as D.W.1 in his cross examination dated 27.06.2012, has deposed that, though he has not produced the death certificate of his grandfather Panchanatham Pillai, he passed away on the month when he executed the Will marked as Ex.B17. Hence, a careful perusal of the said Ex.B17 would lead way to presume that the grandfather of the plaintiffs, the defendants 1 to 3 passed away during November 1951. The aforesaid Panchanatham Pillai served in the workshop of Southern Railway and in the year 1944, he commenced a business in the name and style of 'Anjeneyar Mark Surutu Company'. At the time of execution of Ex.B17 Will, the grandfather of the plaintiffs, namely, Panchanatham Pillai was 71 years old and he has categorically recited in the aforesaid Will that he had five sons, namely, Narayanasamy, Shanmugam Pillai, Ganesan Pillai, Mariyappa Pillai and Meenakshi Sundaram and three daughters namely Pushpavalli, Tamilarasi and Raniammal. The recitals make it clear that the said Panchanatham Pillai had given appropriate education to all the sons except P.Shanmugam Pillai and had settled them in decent jobs and each of them have been residing separately. The recitals would reveal that he had arranged the marriage of his daughter

Rajathiammal with considerable dowry and that apart yet another daughter Raniammal had married his grandson through Narayanasamy, namely Dharmaraj. The said Narayanasamy died before 16 years from the date of Will i.e., from 07.12.1951. The wife of the predeceased son Narayanasamy, namely, Krishnammal and the grandson Dharmaraj together filed a civil suit in the District Munsif Court, at Thanjavur in O.S.No.8 of 1935 as against the Panchanatham Pillai in which a compromise has been arrived at between the parties, on the basis of which, Panchanatham Pillai has settled daughter in law, namely, Krishnammal with certain amounts and properties. During the marriage of his daughter Raniammal with his grandson Dharmaraj, the entire expenditure was borne by Panchanatham Pillai to the tune of Rs.1,500/- and he has also gave considerable sridhana to his daughter Raniammal. Therefore, the said Panchanatham Pillai excluded his grandson Dharmaraj from being the beneficiary of the aforesaid Will.

19.Having recited that he commenced a Cigar business in the name and style of 'Anjeneyar Mark Surutu Company' in 1944, the recitals would also reveal that he possessed an amount of Rs.4,000/- in cash, of which making it clear that it was only Shanmugam Pillai who exclusively assisted and worked along with him in the aforesaid business and he had bequeathed an amount of

Rs.2,000/- in favour of Dharmaraj and the remaining amount of Rs.2,000/- in favour of his wife Kasiammal. Though the said Will has scheduled only one house property situated in T.S.No.1175 of Thanjavur Town, Thanjavur District, it has been categorically recited in the aforesaid Will that after Panchanatham Pillai, all his four sons excluding Dharmaraj, namely, Shanmugam Pillai, Ganeshan Pillai, Mariappa Pillai and Meenakshi Sundaram are entitled equally to the properties earned by Panchanatham Pillai and they are entitled to acquire possession and title over the same after the lifetime of Panchanatham Pillai and Kasiammal. However, the details of the other properties other than the house property in T.S No.1175 left by Panchanatham Pillai is not clearly mentioned in the aforesaid Will.

20.It is pertinent to mention here that the execution of the Will executed by Panchanatham Pillai dated 07.12.1951 which has been marked as Ex.B17 is not disputed by the plaintiffs and they have duly admitted the same in Para 4 of their pleadings. According to the plaintiffs, the said Panchanatham Pillai bequeathed the suit properties item Nos.1 to 4 by way of his Will. Exactly after 6 years from the date of death of Panchanatham Pillai, that is, on 07.12.1957, a partition deed came to be executed between (1).Shanmugam Pillai, (2).Ganesan Pillai, (3).Mariyappan Pillai, (4).Meenakshi Sundaram, (5).Dharmarajan, son of

Late.Narayanasamy, (6).Rajathi Ammal, (7).Kasiammal with respect to the properties belonging to Panchanatham Pillai, properties earned by Kasiammal and the properties earned together by Shanmugam Pillai, Ganesan Pillai, Mariyappan Pillai and Meenakshi Sundaram. Though the recitals of the aforesaid partition deed has recited that the properties which are partitioned by the aforesaid deed were the self-earned properties of Panchanatham Pillai and his wife Kasiammal, a careful perusal of the flow of title of the various properties involved in the said partition would reveal that properties earned together by Shanmugam Pillai, Ganesan Pillai, Mariyappan Pillai and Meenakshi Sundaram was also made a subject of the aforesaid partition. That apart, the grandson of Panchanatham Pillai, namely Dharmarajan, son of late. Narayanasamy who has been excluded in the registered Will executed by late. Panchanatham Pillai marked as Ex.B17 has been made a party to the said partition deed which has been marked as Ex.A1 and Ex.B8. Therefore, the plaintiff's claim that the recitals in the said partition deed indicate that the properties mentioned in the partition deed though been the subject matter of Ex.B17 Will executed by Late.Panchanathan Pillai by the aforesaid partition deed marked as Ex.A1 and Ex.B8, the parties to the aforesaid partition had voluntarily thrown the properties into the common stock of the joint family, abandoning their separate claims, if any, by any one of them. For the purpose of substantiating the said claim made by the plaintiffs, it is necessary to trace the title of the various properties involved in the aforesaid partition deed. That apart, by making a claim that the parties to the partition deed marked as Ex.A1 and Ex.B8 have thrown the subject matter of the properties in the aforesaid deed to the common hotch potch of joint family nucleus, has given rise to a question that whether the exclusive self-earned property of a female be thrown into a common stock paving way for partition, by doctrine of blending by the female heir. The recitals of Ex.A1 and Ex.B8 partition deed further reveals that though the grandson of Panchanathan Pillai, namely, Dharmaraj has been specifically excluded from being a legatee of his Will marked as Ex.B17, for the purpose of giving quietus to the continuing and prevailing family dispute, the said grandson, namely, Dharmaraj has been made party No.5 in the aforesaid partition deed. Hence, the allocation of shares in the aforesaid partition deed contrary to the recitals of the Ex.B17 Will would obviously vitiate the same. However, there is no quarrel between the parties to the aforesaid partition deed namely Shanmugam Pillai, Ganesan Pillai, Mariyappan Pillai, Meenakshi Sundaram, Dharmaraj, Rajathi Ammal and Kasiammal.

21.That apart, the lis in hand, is with respect to the definite share which has been allotted to Shanmugam Pillai among the legal heirs of the second son of Panchanathan Pillai, that is Shanmugam Pillai. In addition to that, the learned Trial Court has rightly held that doctrine of blending is not applicable to a Hindu female. For better appreciation, in "Mulla Hindu Law" - 21st Edition at page No.342 is referred herein and the same is extracted as follows:-

> *"225.Property through into common stock.-(1)Property which was originally the separate or self-acquired property of a member (coparcener) of a joint family may, by operation of the doctrine of blending, become joint family property, if it has been volundarily thrown by him into the common stock with the intention of abandoning all separate claims upon it. A clear intention to waive his separate rights must be established.*
>
> *A Hindu female cannot be a coparcener and the doctrine of blending cannot apply to her. This was re-affirmed by the Supreme Court."*

22.Though she cannot blend her separate property with the joint family property, she can make a gift of such property to the joint family as pointed out in the case of ***Pushpa Devi v. Commissioner of Income Tax***. The true rule of blending is that the right to blend is limited to co-parceners only. It is the co-parcener who alone can blend his separate property with joint family property and the said right is not available to a female, who, though a member of joint family, is not a co-parcener. Whether that separate property is the female's absolute property or whether she has limited state in that property would make no difference to that position. Thus, the expression "blending" is inapposite, in the case of a Hindu female, who puts her separate property, be it her absolute property or limited estate, in the joint family stock. As far as Ex.A1 and Ex.B8 partition deed is concerned, the only aspect which has been made contrary to the recitals of the registered Will executed by Panchanatham Pillai (Ex.B17) is allotting a share to his grandson Dharmaraj. In the aforesaid partition deed fifth schedule property has been allotted to Dharmaraj in which Rs.1,400/- in cash, 11 cents land in T.S.No.2819 of Thanjavur Town, Thanjavur District, and 48 cents land in T.S.No.3457 of Thanjavur Town, Thanjavur District, has been allotted to Dharmaraj. Ex.B17 Will is only with respect to the self-earned properties of Panchanadam Pillai and it has nothing to do with the self-earned properties of his wife Kasiammal. All the properties which has been allotted to Dharmaraj in fifth schedule property of Ex.A1 and Ex.B8 partition deed that is the property comprised in T.S.No.2819 and more were the separate properties of his grandmother Kasiammal. We have already seen that there is no bar for a female to gift her separate property to anyone at her pleasure. Hence, the recital in Ex.A1 and Ex.B8 partition deed particularly to the context of including the grandson, namely, Dharmaraj of Panchanadam Pillai and Kasiammal as fifth party in the aforesaid partition deed cannot be considered as something contrary to the recitals of Ex.B17 Will. The mother, Kasiammal, has at her own volition and pleasure has given a part of her separate property in partition in favor of her grandson, namely, Dharmaraj, as well and that has nothing to do with the self earned properties of the deceased Panchanatham Pillai.

23.It is pertinent to ascertain the meaning of "separate property" for the purpose of this case. As per Chapter 12 "Mulla Hindu Law" 21st Edition Pg.348 the concept of separate property has been elaborated. The same reads as follows:-

> *"228. Separate property. Property acquired property ways is the separate property of the acquirer, it is called 'self-acquired' property, and is subject to the incidents mentioned in § 222 above:*
> *(1) Obstructed heritage.-Property inherited as obstructed heritage (saprati-bandha daya), ie, property inherited by a Hindu from a person other than his father, father's father, or father's father's father (see §§ 216, 220 and 221 sub-§ (1)).*
> *(2) Gift.-A gift of a small portion of ancestral movable property made through affection by a father to his male issue, is his separate property (§ 223).*
> *(3) Government grant.-Property granted by government to a member of a joint family is the separate property of the donee, unless it appears from the grant that it was intended for the benefit of the family.*
> *(4) Property lost to family-Ancestral property lost to the family, and recovered by a member without the assistance of joint family*

property (see § 230). Property acquired by a father by adverse possession is his separate property and not ancestral property.

(5) Income of separate property-The income of separate property and purchases made with such income.

(6) Share on partition.-Property obtained as his share on partition by a co- parcener who has no male issue (see § 221 (4)). This position is now materially altered with the inclusion of daughters of a coparcener as coparceners in their own right by the amendment in the Hindu Succession Act in 2005. If therefore, even if a coparcener who has obtained a share on partition has no male issue but has a female issue, the property allotted to him on partition will partake the nature of coparcenery property. The above proposition will therefore have to be read as a coparcener having been allotted a share on partition, takes it as his separate property when he has no issue. This is since, by virtue of the amendment, as the distinction between male and female children of a coparcener stands abrogated and abolished, both having been given equality of status as coparceners.

(7) Property held by sole surviving coparcener-Property held by a sole surviving coparcener, when there is no widow in existence who has power to 50 adopt.

(8) Separate earnings - Separate earnings of a member of a joint family (§ 229).

(9) Gains of learning - All acquisitions made by means of learning are declared by the Hindu Gains of Learning Act, 1930, to be the separate property of the acquirer (§ 229A).

Separate property is also called self-acquired property. -

Self-acquired property, is technical sense, means property obtained by a Hindu without any detriment to ncestral property. As to property described in cll (1)-(3) and (5) of this section, it is clear that it cannot be said to be acquired at the expense of the patrimony of ancestral estate. Such property is, therefore, self-acquired in the technical sense of the term. As property described in cl (4), it is a question of fact as to whether it constitutes self-acquired property or not. In practice, the expression 'self-acquired' property is used as referring to property acquired by Hindu by his own exertions without the assistance of family funds."

24.Coming to the lis in hand, the suit has been filed by the plaintiffs, that is, the three sons of Shanmugam Pillai, as against his first son Subramanyam, wife Chinnamal, daughters Pushpavalli and Tamilarasi and another Uma Maheshwaran. Totally 11 items of property have been scheduled as suit scheduled properties. Claiming all the suit scheduled properties as the nucleus of the joint family property, this suit for partition has been filed seeking to pass a preliminary decree for partition allotting 7/30th share to each of the plaintiffs in plaint schedule properties 1 to 10. For the purpose of substantiating whether the suit properties items 1 to 10 are the joint family properties of the plaintiffs and defendants 1 to 4 or the separate property of the deceased Shanmugam Pillai, the flow of title of the suit schedule properties have to be traced. For the sake of convenience, the flow of title of the plaint schedule properties from item No.1 to 10 is hereunder tabulated:-

S.No.	Particulars
1	**Plaint Schedule Item no. 1** – Madras terraced House and site situated in T.S. No. 1192 of Thanjavur town, Thanjavur District. ? Sale deed in favour of P. Shanmugam Pillai Ganeshan Pillai Mariappa Pillai & Meenakshi Sundaram executed by Thiyagaraja Pillai, S/o., Lakshmana Pilai dated 17.02.1951. **(Exhibit B.2)** ? Partition deed effected between Kasiammal, P. Shanmugam Pillai, Ganeshan Pillai, Mariappa Pillai & Meenakshi Sundaram dated 07.12.1957 **(Exhibit A1 & B.8)** **?** In the aforesaid partition, P. Shanmugam Pillai was allotted with Plaint Item No. 1 Registered Will executed by Shanmugam Pillai dated 17.02.1999 **(Exhibit B.16)** Allotted to the common succession of S.Subramanian (D1), S. Govindasamy (P1), S. Rajaram (P2), S. Kalaiselvan (P3), mother Chinammal (D2) – died.
2	**Plaint Schedule Item No. 2 – Item No. 1 –** Madras terraced building with shops and sites in T.S.No. 2310 of of Thanjavur town, Thanjavur District. ? Sale deed in favour of Kasiammal executed by Bala Subbu Ammal dated 23.06.1948 **(Exhibit B.4)** ? Partition deed effected between Kasiammal, P. Shanmugam Pillai, Ganeshan Pillai, Mariappa Pillai & Meenakshi Sundaram dated 07.12.1957 **(Exhibit A1 & B.8)** ? Registered Will executed by Shanmugam Pillai dated 09.02.1999 **(Exhibit B.15)** ? Allotted to S.Subramanian(D1)
3	**Plaint Schedule Item No. 2 – Item No. 2 –** Madras terraced building with shops and sites in T.S.No. 2311 of of Thanjavur town, Thanjavur District. ? Sale deed in favour of Shanmugam Pillai executed by Angammal dated 17.07.1966 **(Exhibit B.5)** ? Registered Will executed by Shanmugam Pillai dated 09.02.1999 **(Exhibit B.15)** ? Allotted to S.Subramanian(D1)

4	**Plaint Schedule Item No. 3 –** 11 cents land comprised in T.S.No. 2819 of Thanjavur town, Thanjavur District. ? Will executed by Kasiammal dated 15.08.1950 **(Exhibit B.1)** ? Partition deed effected between Kasiammal, P.Shanmugam Pillai, Ganeshan Pillai, Mariappa Pillai & Meenakshi Sundaram dated 07.12.1957 **(Exhibit A1 & B.8)** ? **<u>Allotted to P. Shanmugam Pillai</u>**
5	**Plaint Schedule Item No. 4 –** 47 cents land comprised in T.S.No. 3457 of Thanjavur town, Thanjavur District. ? Partition deed effected between Kasiammal, P.Shanmugam Pillai, Ganeshan Pillai, Mariappa Pillai & Meenakshi Sundaram dated 07.12.1957 **(Exhibit A1 & B.8)** ? Allotted to Shanmugam Pillai ? This property has been **sold** by P. Shanmugam Pillai in favour of one Radha vide sale deed dated 11.06.1990 **(Exhibit B.13)**
	Plaint Schedule Item No. 5– Backyard of Item No. 1 comprised in T.S. Nos. 1192/1 & 2 of of Thanjavur town, Thanjavur District. ? Sale deed executed by Arunachalapathar & Ors., in favour of P. Shanmugam Pilai dated 04.08.1970 **(Exhibit B.3)** ? Registered Will executed by Shanmugam Pillai dated 09.02.1999 **(Exhibit B.15)** ? Allotted to S.Subramanian(D1)
6	**Plaint Schedule Item No. 6 –** 11 cents land comprised in T.S.No. 2881 of Thanjavur town, Thanjavur District. ? Sale deed executed by C.S. Iyyengar in favour of P. Shanmugam Pilai dated 16.05.1957 **(Exhibit B.6)** ? ? ? Registered Will executed by executed Sale deed (Exhibit B.20) Shanmugam Pillai dated by Shanmugam Pillai in favour of 17.02.1999 **(Exhibit B.16)** Uma Maheswaran (Defendants) ? Allotted to S.Subramanian(D1)

7	**Plaint Schedule Item No. 7–** 0.**23** cents land comprised in T.S.No. 2880/2 of Thanjavur town, Thanjavur District. ? Sale deed executed by A. Ganeshan in favour of P. Shanmugam Pilai dated 07.06.1981 **(Exhibit B.9)** ? Registered Will executed by Shanmugam Pillai dated 17.02.1999 **(Exhibit B.16)** ? Allotted to S.Subramanian(D1)
8	**Plaint Schedule Item No. 8–** 0.42 cents land comprised in T.S.No. 3363 of Thanjavur town, Thanjavur District. ? Sale deed executed by C.S. Iyyengar in favour of P. Shanmugam Pilai dated 16.05.1957 **(Exhibit B.6)** ? Registered Will executed by Shanmugam Pillai dated 17.02.1999 **(Exhibit B.16)** ? Allotted to S.Subramanian(D1)
9	**Plaint Schedule Item No. 9–**1 Acre land comprised in T.S.No. 3467 of Thanjavur town, Thanjavur District. ? Sale deed executed by C.S. Iyyengar in favour of P. Shanmugam Pilai dated 16.05.1957 **(Exhibit B.6)** ? Registered Will executed by Shanmugam Pillai dated 17.02.1999 **(Exhibit B.16)** ? Allotted to Pushpavalli (D3) & Tamilarasi (D4)
10	**Plaint Schedule Item No. 10–** 0.48 cents land comprised in T.S.No. 3457 of Thanjavur town, Thanjavur District. ? Sale deed in favour of Kasiammal dated 10.12.1941 **(Exhibit B7)** ? Partition deed effected between Kasiammal, P. Shanmugam Pillai, Ganeshan Pillai, Mariappa Pillai & Meenakshi Sundaram dated 07.12.1957 **(Exhibit A1 & B.8)** ? ***Allotted to P. Shanmugam Pillai***
11	**Plaint Schedule Item No. 11–** "Veera Anjenaya Temple" situated near Vadavar Palam, Gandhiji main road, Municipal Ward 1, Thanjavur town, Thanjavur District. ? Family temple of Shanmugam Pillai

Plaint schedule Item No.1:-

25.The mother deed with respect to item No.1 pertaining to the Madras terraced house and house site situated in T.S.No.1192 of Thanjavur town, Thanjavur District is the sale deed marked as Ex.B2 in favor of P.Shanmugam Pillai, Ganesan Pillai, Mariyappan Pillai and Meenakshi Sundaram. A careful reading of the said Ex.B2 would reveal that the aforesaid property has been purchased together by Shanmugam Pillai and three of his brothers. That apart in Ex.A1 and Ex.B8 partition deed, it has been recited that though the said property was together purchased by Shanmugam Pillai and his three brothers, the same had been in possession and enjoyment of Shanmugam Pillai and hence, the same was allotted to Shanmugam Pillai in the aforesaid partition. The said Shanmugam Pillai passed away on 08.07.2006. However, he did not die intestate as far as the aforesaid property is concerned and he had executed a registered Will dated 17.02.1999 marked as Ex.B16, with respect to plaint item No.1 in favor of S.Subramaniam (D1), S.Govindasamy (P1), S.Rajaram (P2), S. Kalaiselvan (P3) and mother Chinnamal (D2). It has been made clear in the aforesaid Will that, the aforesaid Will, would come into force after the death of Shanmugam Pillai and his wife Chinnamal. Hence, the said property will not form a part of joint family nucleus. On the other hand, though succession opens on 08.07.2006, that is, the date of death of Shanmugam Pillai, in terms of the recitals of the aforesaid Will marked as Ex.B16, the same came into force only on the date of death of the second defendant's mother on 27.02.2009 and accordingly, the plaintiffs and the first defendant are entitled to one-fourth share in the aforesaid property respectively in terms of Ex.B16.

Plaint schedule Item No.2 and Item No.1:-

26.Madras terraced building with shops and sites in T.S.No.2310 of Thanjavur Town, Thanjavur District, is the subject matter of the sale deed in favour of Kasiammal (mother) executed by Bala Subbuammal dated 23.06.1948, that is, Ex.B4. Hence, the same is the separate property of mother Kasiammal. We have already seen that the doctrine of blending is not applicable to a female heir. The substantial question of law as to the right of a female member of a joint Hindu family to impress her self-acquired property with the character of joint Hindu family has already been dealt with by the Hon'ble Apex Court in Pushpavalli's case, the Hon'ble Apex Court has clearly and categorically held that the expression 'blending' is inapposite in the case of a Hindu female who puts her separate property, be it her absolute property or limited estate, in the joint family stock. In the instant *lis*, though the plaint schedule item No.2, item No.1 is the self-acquired property of mother Kasiammal vide Ex.B4, she had allowed her sons P.Shanmugam Pillai, Ganesan Pillai, Mariappan, Meenakshi Sundaram, her daughter Rajathiammal and grandson Dharmaraj to effect partition with respect to her separate properties as well, vide Ex.A1 and Ex.B8. Though her properties have been allowed to partition, a transaction with respect to the mother, Kasiammal's properties in Ex.A1 and Ex.B8 partition deed can amount to a gift in favour of the parties to the partition deed marked as Ex.A1 and Ex.B8. In the aforesaid partition, the said item has been allotted to Shanmugam Pillai and Shanmugam Pillai by his registered Will dated 09.02.1999 marked as Ex.B5 has allotted the same to his son S.Subramaniam, that is, the first defendant. Hence, it is needless to state that the same is the separate property of S. Subramaniam and neither the plaintiffs nor defendants 3 and 4 are entitled to any share with respect to the said property.

Plaint schedule Item No.2 :-

27.The Madras terraced building with shops and sites in T.S.No.2311 of Thanjavur Town, Thanjavur District, in which the Cigar business has been conducted by the father of the plaintiff's Shanmugam Pillai was originally purchased by Shanmugam Pillai on 17.07.1966 by the sale deed marked as Ex.B5. The said self-acquired property of Shanmugam Pillai has been bequeathed in favour of S.Subramaniam, that is, the first defendant, by a registered Will executed by Shanmugam Pillai dated 09.02.1999, that is, Ex.B15 and hence, the said property is the absolute exclusive property of the first defendant and the plaintiffs, the defendants 3 and 4 have no right over the same.

Plaint schedule Item No.3:-

28.The parent document of 11 cents land comprised in T.S.No.2819 of Thanjavur Town, Thanjavur District, could not be traced. However, the Will executed by Kasiammal dated 15.08.1950 marked as Ex.B1 would reveal that the same is the self-earned property of mother Kasiammal. Hence, the same is the separate property of the female heir of Panchanathan Pillai, namely, Kasiammal. The said property is allotted to P.Shanmugam Pillai in the partition effected between Kasiammal, Shanmugam Pillai, Ganesan Pillai, Mariyappan Pillai and Meenakshi Sundaram dated 07.12.1957 marked as Ex.A1 and Ex.B8. Though the same has been allotted to Shanmugam Pillai, he has died intestate with respect to the said property is concerned. The succession to the aforesaid property opens on the date of death of Shanmugam Pillai, that is, on 08.07.2006. Hence, the plaintiffs, 1st defendant, the 3rd and 4th defendants are entitled to one-sixth share each with respect to plaint schedule item No.3.

Plaint schedule Item No.4:-

29.The parent deed of 47 cents land comprised in T.S.No.3457 of Thanjavur Town, Thanjavur District, is the partition deed marked as Ex.A1 and Ex.B8. A careful tracing of title of the various deeds produced by the plaintiffs and defendants respectively, would reveal that, plaint schedule item No.4 is neither the property jointly earned by Shanmugam Pillai and his brothers, or the separate property of Kasiammal. Hence, it could be presumed that, the same is the property left by Panjanatham Pillai. The father of Shanmugam Pillai, that is Panchanathan Pillai has categorically bequeathed all his properties vide registered Will marked as Ex.B17 in favour of his sons, Shanmugam Pillai, Ganesan Pillai, Mariyappan Pillai and Meenakshi Sundaram. The same is partitioned between mother and the four sons, vide Ex.A1 and Ex.B8 and the same has been allotted to Shanmugam Pillai. Since Panchanathan Pillai has declared that all the properties owned by him are the self acquired properties of him, he is entitled to bequeath the same at his pleasure.

30.Having bequeathed the same in favour of his sons, Shanmugam Pillai, Ganesan Pillai, Mariyappan Pillai and Meenakshi Sundaram, after his death, the same has been partitioned and the said property is allotted to Shanmugam Pillai. Though the same is bequeathed by way of Will in favour of his four sons, as described supra, the succession for the same opens on the death of Panchanathan Pillai, that is, in the month of November 1951. The Hon'ble Apex Court in the case of ***Arshnoor Singh v. Harpal Kaur and others*** reported in ***2019-5-CTC-110***, has dealt with a case in which the succession had opened up in the year 1951, that is prior to the commencement of the Hindu Succession Act, 1956 and the relevant portion of the same is extracted here under:-

> "*7. With respect to the first issue, it is the admitted position that Inder Singh had inherited the entire suit property from his father Lal Singh upon his death. As per the Mutation Entry dated 16.01.1956 produced by Respondent No. 1, Lal Singh's death took place in 1951. Therefore, the succession in this case opened in 1951 prior to the commencement of the Hindu Succession Act, 1956 when Inder Singh succeeded to his father Lal's Singh's property in accordance with the old Hindu Mitakshara law.*
>
> *7.1. Mulla in his commentary on Hindu Law (22 nd Edition) has stated the position with respect to succession under Mitakshara law as follows:*
>
> *Page 129 "A son, a grandson whose father is dead, and a great-grandson whose father and grandfather are both dead, succeed simultaneously as single heir to the separate or self-acquired property of the deceased with rights of survivorship." Page 327 "All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great-grandsons of*

the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth.

A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons, and son's son's sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property." (emphasis supplied) 7.2. In Shyam Narayan Prasad v. Krisha Prasad & Ors.,2 this Court has recently held that :"

31.In the instant case, the succession opened in 1951 on the death of Panchanathan Pillai. The nature of the property inherited by his four sons, namely, Shanmugam Pillai, Ganesan Pillai, Mariyappan Pillai and Meenakshi Sundaram was co-parcenary in nature. Even though they had effected a partition of the co-pacenary property among them in 1957 by partition deed marked as Ex.A1 and Ex.B8, the nature of property inherited by them would remain as co-parcenary property and their main descendants upto 3 degrees below them. Though plaint schedule item No.4 was allotted to Shanmugam Pillai in the aforesaid partition, the share of Shanmugam Pillai through partition remained co-parcenary with his sons and daughters, that is, the plaintiffs and defendants 3 and 4, who became co-parceners in the suit property, in the plaint schedule item No.4 on their birth. However, the said Shanmugam Pillai had sold the said property in favour of one Radha vide sale dated 11.06.1990, which has been marked as Ex.B13. Though the plaintiffs have issued a suit notice to the first defendant and Shanmugam Pillai on 02.03.1999, which has been marked as Ex.A2, they have failed to file a suit for partition during the lifetime of the Shanmugam Pillai and only after his demise on 08.07.2006, this suit for partition came to be filed in the year 2006. Having not challenged the same for 16 years and slept over their rights, now the plaintiffs cannot seek partition over the same since the same has been sold to one Radha, who is a bona fide purchaser for value.

Plaint schedule Item No.5:-

32.This item is the backyard of item No.1 comprised in T.S.No.1192/192 of Thanjavur Town, Thanjavur District. The said property was purchased by Shanmugam Pillai from one Arunachalapadar and others vide sale deed dated 04.08.1970, which has been marked as Ex.B3. Thereafter, by a registered Will executed by Shanmugam Pillai on 09.02.1999, that is, Ex.B15, the same was allotted to S.Subramanyam, that is, the first defendant. However, during his lifetime, 520 square feet in T.S.No.1192/2 of Thanjavur Town was sold by P.Shanmugam Pillai in favor of the 5th defendant, namely, Uma Maheshwaran, by a registered sale deed and the same has been marked as Ex.B20. It is pertinent to mention here that, in Ex.B15 Will executed by Shanmugam Pillai, the area which has been already sold out to the 5th defendant, has been excluded while bequeathing the same in favor of the 1st defendant. Since the said plaint schedule item has been exclusively purchased by Shanmugam Pillai, he has got all rights to bequeath the same in favor of the 1st defendant and also to sell the same in favor of the 5th defendant. Accordingly, I have no hesitation to hold that the 5th defendant is a bonafide purchaser for value and that the portion which has been allotted to S.Subramanyam, that is, the first defendant in plaint schedule item No.5 also is his absolute property.

Plaint schedule Item No.6:-

33.The parent document with respect to the 7 cents land comprised in T.S.No.2881 of Thanjavur Town, Thanjavur District, is a sale deed in favor of P.Shanmugam Pillai dated 16.05.1957 marked as Ex.B6. The said property which was the absolute property of Shanmugam Pillai by the strength of the aforesaid sale deed has been bequeathed by the registered Will marked as Ex.B16 in favor of the 1st defendant and I have no hesitation to hold that the same is the absolute property of the 1st defendant.

Plaint schedule Item No.7:-

34.The parent document of 0.23 cents land comprised in T.S.No.2880/2 of Thanjavur Town, Thanjavur District, is the sale deed in favor of P.Shanmugam Pillai dated 07.06.1981 which has been marked as Ex.B9. The same has been bequeathed by P.Shanmugam Pillai in favor of the 1st defendant by a registered Will dated 17.09.1999 marked as Ex.B16 and the same is the absolute property of the 1st defendant.

Plaint Schedule Item No.8:-

35.The parent document of 0.42 cents land comprised in T.S.No.3363 of Thanjavur Town, Thanjavur District, is the sale deed in favor of P.Shanmugam Pillai dated 16.05.1957 which has been marked as Ex.B6. The same has been bequeathed by P.Shanmugam Pillai in favor of the 1st defendant by a registered Will dated 17.02.1999 marked as Ex.B16 and I have no hesitation to hold that the said property is the absolute property of the 1st defendant.

Plaint schedule Item No.9:-

36.The parent document of 1 acre land comprised in T.S.No.3467 of Thanjavur Town, Thanjavur District, is the sale deed in favor of P.Shanmugam Pillai dated 16.05.1957, which has been marked as Ex.B6. The said property which has been purchased by P.Shanmugam Pillai was bequeathed by him by his registered Will dated 17.02.1999 marked as Ex.B16 in favor of his daughters, Pushpavalli and Tamilarasi, that is, the 3rd and 4th defendants. Hence, it is needless to state that the aforesaid property is the absolute and exclusive property of the 3rd and 4th defendants and the plaintiffs and the 1st defendant have no title over the same.

Plaint schedule Item No.10:-

37.The parent document of 0.48 cents land comprised in T.S.No.3458 of Thanjavur Town, Thanjavur District, is the sale deed in favor of the mother of P.Shanmugam Pillai, namely, Kasiammal dated 10.12.1941 which has been marked as Ex.B7. As elaborately discussed earlier, the aforesaid separate property of Kasiammal has been partitioned and the same has been allotted to P.Shanmugam Pillai. However, Shanmugam Pillai has died intestate as far as the said item is concerned. Hence, the succession to the said property opens on 08.07.2006, that is, on the date of his death. He has died interstate with respect to the said property and the plaintiffs, 1st defendant and the 3rd and 4th defendants are entitled to one-sixth share each with respect to the aforesaid item.

Plaint schedule Item No.11:-

38.The Veera Anjaneya Temple situated near Vadavar Palam, Gandhiji Main Road, Municipal Ward 1, Thanjavur Town, Thanjavur District, is the plaint schedule item No.11. From the pleadings of the plaintiffs and the defendants respectively, it can be understood that the same is being maintained by the 1st defendant. However, as far as, the plaintiffs claim right over the administration of the temple on rotation basis, neither the plaintiffs nor the defendants have produced any title documents with respect to plaint schedule Item No.1, to substantiate that, the said temple is situated in the property belonging to the family of Panchanathan Pillai/Kasiammal/Shanmugam Pillai/plaintiffs, 1st defendant, 2nd defendant and 3rd defendant. In the absence of description of property boundaries to the property in which the said Veera Anjaneya Temple is situated, this Court cannot adjudicate as to the title of the same. However, the plaintiffs are given liberty to decide the issue of administration over the aforesaid temple by means of a separate suit in accordance with law.

39.Thus, the findings of the learned Trial Court as far as issue No.1 that the entire properties of the plaint schedule are not the joint family properties of the plaintiffs is incorrect as far as plaint schedule item No. 4 is concerned. As far as plaint schedule item No.10 is concerned, though the said item cannot be construed as the joint family property of Panchanathan Pillai, the same is the separate property of the mother of Shanmugam Pillai namely Kasiammal. However, the same is allotted to P.Shanmugam Pillai, that is, the father of the plaintiffs and defendants 1, 2 and 3 by the partition deed dated 07.12.1957. Since he had died intestate, the plaintiffs, 1st defendant, 2nd defendant and the 3rd defendant are entitled to inherit the same equally. As far as the findings of the learned Trial Court with respect to issue No.2 is concerned, the same is set aside and the respective shares to which the plaintiffs and the defendants 1, 2 and 3 are entitled to are elaborately discussed and modified item wise as explained supra. As far as the findings of the learned Trial Court pertaining to issue No.3 is concerned, in the absence of specific description of property and boundaries with respect to the Anjaneya temple scheduled as item No.7 situated in ward No.1, Gandhiji Main Road, Thanjavur town is concerned, the findings of the learned Trial Court is set aside by observing that this Court is of the considered view that the same has to be adjudicated by initiating a separate suit by the respective parties. As far as the findings of issues Nos.4 and 5 are concerned, I concur with the same.

40.In the result, this Appeal Suit is partly allowed by modifying the learned Trial Court's findings as far as plaint schedule item No.1, plaint schedule item No.3 and plaint schedule item No.11 respectively. Both the parties are directed to bear their own costs. Consequently, connected miscellaneous petitions are closed.

18.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Mrn

To

1.The II Additional District and Sessions Judge, Thanjavur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

L.VICTORIA GOWRI, J.

Mrn

Order made in
A.S.(MD)No.110 of 2015

18.06.2024