BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2024

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN
and
THE HON'BLE MR.JUSTICE JUSTICE K.K.RAMAKRISHNAN

A.S.(MD) No.136 of 2015
and
M.P(MD)Nos.1 and 2 of 2015

A.Muthukumar

... Appellant

Vs.

1.P.Jothi
2.S.Alagananda Marthandan
3.A.Rathna Devi
4.A.Jawahar
5.S.Sekar
6.A.Balasaravanan
7.R.Jeyalakshmi
8.A.Uma
9.P.S.Rameshbabu
10.R.Ravichandran
11.I.S.Kalaimathi

... Respondents

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the Judgment and Decree dated 28.03.2014 passed in O.S.No.67 of 2011 on the file of the Principal District Judge, Tirunelveli.

For Appellant	:	Mr.T.R.Rajagopalan Senior Counsel for Mr.P.Thiagarajan
For Respondent	:	Mr.M.Thirunavukkarasu (for R1) Mr.T.Gowthaman Senior Counsel for Mr.R.S.Sivaram (for R3, R4 & R6 to R11)

J U D G M E N T

P.VELMURUGAN, J.

The first respondent in the appeal filed the suit in O.S.No.67 of 2011 on the file of the Principal District Judge, Tirunelveli against the appellant and the other respondents for partition and separate possession. In the said suit, preliminary decree was passed in part in respect of schedule 'a, c, d, g, h, i' in the first item of the suit properties and the suit in respect of 'b, e, f' in the first item and other item Nos.2 to 4 is dismissed. Aggrieved over the same, the third defendant in the suit has filed the present appeal. Neither the plaintiff has filed any appeal or cross objection for disallowed items nor any other defendants have challenged the preliminary decree passed for the certain items. Now, only the present appeal is before this Court, which is challenged by the third defendant in the suit.

2(i). The case of the first respondent/plaintiff in brief as per the plaint filed before the trial Court is that the 1st schedule of the suit properties belonged to one Suyambulinga Nadar, which are the ancestral properties of the said Suyambulinga Nadar and he derived income from the said ancestral properties and he constructed a house in the 'a' schedule property in the year 1940. He got two sons and three daughters. The said Suyambulinga Nadar, as a Kartha of the Hindu Joint Family, conducted agricultural activities and business and derived income from both. He sent his son/second respondent herein, who is the father of the appellant, to the Sri Lanka for doing business and he had provided fund from the income derived from the ancestral properties in the year 1948 and the second respondent came from Sri Lanka to native in the year 1952. Thereafter, the Kartha Suyambulinga Nadar gave money to both the sons to do the business at Chennai in the year 1955. The sons of the said Suyambulinga Nadar started Marthandan Stores at Chennai and they started business out of from the ancestral nucleus. Out of the income derived from the agricultural properties and business, the said Suyambulinga Nadar purchased several properties in the name of the second respondent, who is the father of the appellant, on 16.06.1971, 17.04.1972, 11.01.1973 and 16.02.1976 and some of the properties were purchased in the name of the Suyambu Marthandan, who is the uncle of the appellant, and his wife Annakili. The property purchased in the name of Annakili was subsequently gifted to the third respondent herein on 01.10.1974, who is the elder daughter-in-law of the said Suyambulinga Nadar. The third respondent herein is the wife of the second respondent herein. The respondents 4 to 6 are their sons and the respondents 1, 7 and 8 are the daughters of the respondents 2 and 3. From the year 1975, the second and third respondents along with their children were residing at Chennai. At that time, the appellant and the respondents 4 to 8 were helped the joint family business after completing their studies. From the income from the joint family properties, the other properties and buildings were purchased and the marriages were also solemnized.

(ii) The Kartha of the joint family Suyambulinga Nadar and two of his sons were orally partitioned the properties in the year 1980. As per the oral partition, the properties which are standing in their individual names, were belong to them and the remaining joint family properties were to be partitioned by way of a registered partition deed. The second respondent and his brother Suyambu Marthandan partitioned the properties on 19.08.1980. As per the partition deed, the first item 'a' schedule of the property to be enjoyed by the said Suyambulinga Nadar and his wife till their life time and after their life time, the properties goes to their two sons namely, the second respondent and his brother Suyambu Marthandan. The Kartha of the joint family, the said Suyambulinga Nadar died in the year 1985. Thereafter, both the sons partitioned the suit properties. All the suit properties were purchased only from the joint family income. Prior to the partition deed, dated 19.08.1980, the appellant and the respondents were jointly enjoying the same. The properties allotted to the second respondent herein in the partition deed was shown as First Schedule. Prior to the partition, the properties purchased in the name of the second respondent herein from the joint family income were shown as Second Schedule. The buildings constructed in the vacant site from the joint family income were shown as Third Schedule. The properties purchased in the name of the appellant from the joint family income was shown as 4th schedule. Hence, the suit properties belong to the both the appellant and the respondents as joint family properties. As per the Hindu Succession Act, except the third respondent, the appellant, the respondents 1, 2, 4 to 8 are each entitled to 1/8th share. The appellant as a coparcener is entitled to 1/8th share.

3.The appellant, as a defendant, filed a written statement and except the 4th respondent/4th defendant, all other respondents/defendants have adopted the written statement filed by the appellant, wherein, the appellant denied the allegations that the second respondent was never provided any fund from the ancestral nucleus. The second respondent had his own business in Sri Lanka and out of his own business, he derived income. The so called ancestral properties situated in the village did not yield income. The second respondent started the business at Chennai after returning from Sri Lanka out of his own fund. He started individual business from his own fund. The same way, his brother Suyambu Marthandan also started his business out of his own fund. There was no joint family or joint family business as alleged in the plaint. Even in the year 1980, the second respondent and his brother Suyambu Marthandan and his father Suyambulinga Nadar partitioned the properties and each one had his own income from their independent business and they purchased the properties out of their own income and they started independent business and they derived income from those businesses and purchased the properties in their name individually. There is no joint family property and there is no income or surplus nucleus from the joint family property to purchase the other items and all other items are purchased in the individual name of the respective members. The first respondent is not a coparcener. The first respondent was also given in marriage even several decades ago and the marriage of the first respondent was celebrated by the second respondent out of his own hard earned money and she was also provided sufficient jewels and cash at the time of her marriage. She was given to the marriage to one Chartered Accountant and she is presently residing at Sivakasi. The respondents 7 and 8 were also provided with sufficient fund and jewels by the second respondent. The same way, the sons of the second respondent are having independent business and income and there was no undivided joint family and there was no Hindu Joint Family Assessment for the purpose of income tax and other tax in the name of the undivided Hindu Joint Family business. Even the 4th respondent and his wife also had their own independent business and income tax assessment in their individual names under the individual capacity. The second respondent is the affectionate father to all the appellant and other respondents 4 to 8. The fourth respondent was provided with financial assistance by the second and third respondents to an extent of Rs.30 lakhs. The respondents 1, 7 and 8 got separated from the family. There was no chance for the first respondent to assist the second and third respondents in their business. The suit as framed is not maintainable and the first respondent is not entitled to any share in the properties much less than 1/8th share and also there was no Hindu Joint Family and there was no ancestors nucleus to purchase the suit properties. Therefore, the suit is liable to be dismissed.

4.The fourth respondent/fourth defendant filed the written statement independently and others filed the written statement jointly. The fourth respondent/4th defendant assailed on the case of the first respondent/plaintiff in the suit. Except Ex.A6-partition deed, which clearly shows that there was no ancestral nucleus, all other documents are not binding by the fourth respondent and the execution of the settlement deed by the second respondent to his son, the 6th respondent and the appellant shall not bind the fourth respondent. The sale deed executed by the second respondent in favour of the appellant shall also not bind the fourth respondent. All the suit properties are under the joint enjoyment of both the appellant and respondents and till date, no partition was effected among them. The fourth respondent also paid Court Fee for his 1/8th share.

5. Based on the pleadings and the documents produced by both the parties, the Trial Court framed the following issues:

> "(1) Whether the suit properties are coparcenary properties of the plaintiff and defendants 1, 3 to 8?
>
> (2) Whether the suit properties items 1, 2 and 3 and 4 are self acquired properties of the defendants 1 to 3 respectively?
>
> (3) Whether the Court fee paid under Section 37(2) is correct?
>
> (4) Whether the suit is bad for non-joinder of necessary parties of purchasers?
>
> (5) Whether the plaintiff is entitled to the relief of partition of 1/8 share as prayed for?

(6) Whether the 4th defendant is entitled to the relief of 1/8th share as prayed for?

(7) Whether the plaintiff is entitled to *mesne* profits?

(8) Whether the plaintiff is entitled to the relief of declaration in respect of deeds executed by the defendants 1 and 2 in respect of suit properties?

(9) Whether the plaintiff is entitled to the relief of permanent injunction?

(10) To what other relief, the plaintiff and the fourth defendant are entitled to?"

6. After completion of the pleadings, during trial, on the side of the respondents, she has examined herself as P.W.1 and 14 documents were marked as Ex.A1 to Ex.A14. On the side of the appellant and other respondents, the respondents 3 and 5 examined as D.W.1 and D.W.2 respectively and 4 documents were marked as Ex.B1 to Ex.B4.

7. The Trial Court, after hearing the arguments of both sides and considering the oral and documentary evidence, passed the preliminary decree for partition and separate possession of 1/8th share each in favour

of the respondents 1 and 4 with equal moiety with reference to good and bad soil in the suit schedule 1st items a, c, d, g, h, i. Further, the Trial Court granted decree of permanent injunction restraining the defendants from alienating or encumbering the above said properties till final decree for partition is passed and the first respondent is also entitled to *mesne* profits from the above properties which are to be relegated under Order 20 Rule 12 C.P.C by separate proceedings. The first respondent/plaintiff was further granted decree of declaration that Ex.A13 settlement deed in respect of 'c' and 'd' in first item of suit properties and Ex.A14 sale deed in respect of 'a' in 1st item of suit properties are not binding on the first respondent. The suit in respect of suit properties 'b, e, f' in first item, 2 to 4 is dismissed.

8.Challenging the said judgment and decree passed by the Trial Court, the third defendant alone has filed present appeal on the ground that the properties are not the ancestral properties and they are not purchased from the ancestral nucleus and the first respondent has not proved the surplus nucleus and in and out from the surplus nucleus, the suit other items have been purchased and the first respondent was not a coparcener. The Trial Court erroneously held the finding that the first and the fourth respondents are entitled to 1/8th share in the above said suit schedule a, c, d, g, h, i of 1st item.

9.The learned Senior Counsel appearing for the appellant would submit that the decree for partition in favour of the first and fourth respondents in the first item of the suit properties is unsustainable. The first and fourth respondents are not coparceners and the properties are not coparcenary properties. There was a partition among the second respondent, his brother and their father Suyambulinga Nadar in the year 1980. Schedule 'a' in the first item of the suit properties was allotted to the father Suyambulinga Nadar for his life interest and after his life time, the children, the second respondent and his brother Suyambu Marthandan are entitled to and accordingly, after life time of his father, they partitioned the said properties. Therefore, they are not coparcenary properties. In the year 1980 itself, it was partitioned and at that time, the first respondent was not coparcener. In the year 1989, the State Act came into force and in the year 2005, the Central Act came into force. At that time, there was no property for partition. Already the properties were divided among the father and sons and at that time, in the year 1980, female members were not coparceners by birth and therefore, when the State Act, 1989 and the Central Act 2005 came into force, no ancestral property was existing and the first respondent was not a coparcener. The properties were already divided much earlier to the both the Central Act and the State Act came into force, and already the partition took place and they enjoyed the same. Therefore, under these circumstances, no property was available for partition on the date when the State and Central Acts came into force. There is absolutely no evidence let in by either the first respondent or the fourth respondent to prove that the suit properties are the coparcenary properties of the appellant and the respondents.

10.The learned Senior Counsel would further submit that the evidences of the first and fourth respondents are unbelievable and untrustworthy. Very long back, they got married and they left the matrimonial home and they were also provided with sufficient jewels and they were settled in their life and they never contributed any labour either prior to the partition or even subsequent to the partition and they are not coparceners and there was no joint family property existing while amendment Act came into force. Since the first respondent was not coparcener, she is not entitled to file a suit for partition. When the partition took place in the year 1980, she filed the suit in the year 2011. Even assuming that she had some right, her right was ousted and she was not in joint possession and no profit or yield was given, since she has sought for relief of *mesne* profits, which itself shows that the first respondent is out of possession and she is not entitled to any relief as sought for and the Court fee paid by the first respondent is also not correct. On that ground also, the suit is not maintainable. Since the second respondent being the absolute owner is entitled to execute a settlement deed in favour of the other respondents/defendants whomsoever. The first respondent is not the competent person to question or challenge the same. The settlement deed and the sale deed executed by the second respondent in favour of the appellant are valid and binding on all the parties. However, unfortunately, the Trial Court failed to consider the fact that there was no ancestral property.

11.The learned Senior Counsel would further submit that even assuming that there was a small portion of ancestral property and it is used as building and there was no nucleus or income derived from the ancestral property, the first respondent has not established that there was sufficient surplus nucleus and from and out of the surplus nucleus, the other properties were purchased. Even in the partition deed, dated 19.08.1980, the said Suyambulinga Nadar and the second respondent and his brother one Suyambu Marthandan were alone coparceners and they divided the properties. Once they divided, it is an individual property of them and therefore, originally, the first respondent was not a coparcener and even though subsequently the female members have become coparceners by birth, however, the suit properties are not liable for partition when the State Act 1989 came into force and in 2005, when the Central Act came into force. Though the female members have become coparceners by birth, if the partition was not effected prior to the amendment, they are entitled to equal share on par with the male members or otherwise not. Admittedly, the partition took place in the year 1980 itself. As per the partition deed, they were enjoying the properties separately and they have treated the properties as separate properties and also they are enjoying the property as their own. However, the first respondent got married even in the year 1988 itself and even much prior to State Act came into force and also the properties were already partitioned and there was no joint family property existing at the time of either the Central Act or the State Act came into force. Therefore, the judgment of the learned Single Judge is liable to be set aside.

12.The first respondent either filed appeal or cross objection.

13.The learned counsel for the first respondent would submit that even the recital in the partition deed dated 19.08.1980 (Ex.A6) is very clear that there were ancestral properties and the said Suyambulinga Nadar and his two sons viz., the second respondent herein and his brother Suyambu Marthandan were the joint family members and they divided the ancestral properties. Schedule 'a' in the first item of the suit property was allotted to the said Suyambulinga Nadar and the life interest was given to him and after his life time, it has to go to the first respondent and his brother. Admittedly, the said Suyambulinga Nadar died in the year 1985. The first respondent is the none other than the daughter of the second respondent. The second respondent got schedule 'a' in the first item of the suit properties. The second respondent derived that properties only from

Ex.A6-partition deed. Ex.A6-partition deed clearly referred about the ancestral property and they divided the properties and the second respondent got the share from the ancestral properties alone and subsequently, till the Amendment Act came into force on 25.02.1989, as per the State Act, the properties were not divided between the second respondent and other sons of the second respondent. Therefore, once it is proved that the second respondent got the property from the ancestral properties by partition and subsequently, that were not divided among the male members till the State Amendment Act came into force, all the properties shown in the partition deed as ancestral properties. When the Amendment Act came into force, the first respondent has become a coparcener and she is entitled to get equal share on par with the male members. Once she has become a coparcener, whatever the sale or alienation or any other encumbrance subsequent to the date on 25.02.1989, the same will not bind the share of the first respondent herein, the plaintiff in the suit. Though they have stated that as per Ex.A6-partition deed, Kartha Suyambulinga Nadar and his two sons, namely, the second respondent and his brother Suyambu Marthandan, divided the properties, whatever the properties are not covered in the partition and whatever the properties stand in the name of the respective members of the family i.e., their absolute property and therefore, under these circumstances, the Trial Court dismissed the suit in respect of the other items and granted the preliminary decree only for the property covered under Ex.A6-partition deed. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

14.The learned counsel would further submit that though the appellant is the one of the sons of the second and third respondents, since the properties are ancestral properties, all the sales or settlements in favour of the appellant, after the State Amendment Act, 1989 and the Central Act 2005 came into force, are not valid in respect of the shares of the other shareholders/coparceners. He would further submit that the partition deed (Ex.A6) dated 19.08.1980 has not been disputed by either of the parties and hence, contrary to the recital in the document cannot be taken into for consideration. Therefore, the appeal is liable to be dismissed as devoid of merits. In support of his contention, the learned counsel for the first respondent has placed reliance on the judgment of this Court reported in **2021(4) CTC 314 (P.Saravanan vs. M.Sivasubramanian and others)**.

15.Heard both sides and perused the materials available on record.

16.Since the first Appellate Court is the final Court of fact finding, this Court has to re-appreciate the entire evidences and give independent finding, for which, this Court has taken the following points for determination:

> "(1) Whether the first respondent is entitled to get the preliminary decree for 1/8th share as decreed by the Trial Court? and
>
> (2) Whether the Judgment of the Trial Court is erroneous in passing the preliminary decree?"

Point Nos.1 and 2:

17.Admittedly, one Suyambulinga Nadar is the father of the second respondent herein. The third respondent is the wife of the second respondent. The appellant and the respondents 4, 5 and 6 are the sons of the respondents 2 and 3. The respondents 1, 7, 8 and 9 are the daughters of the respondents 2 and 3. The first respondent filed the suit for partition.

The relationships of the parties are not in dispute and also all the parties have agreed that there was a partition between the said Suyambulinga Nadar, the second respondent and his brother Suyambu Marthandan on 19.08.1980. The said partition deed was marked as Ex.A6. Ex.A6 clearly shows that there was a partition among Suyambulinga Nadar and the second respondent, namely, Alaganantha Marthandan and his brother Suyambu Marthandan. It has been recited that the schedule mentioned properties are the ancestral properties and they were enjoying jointly till the date of the partition deed Ex.A6. Due to the old age of the said Suyambulinga Nadar and further to improve the properties, with the help of the middlemen, the partition was entered into. Since all the parties admitted Ex.A6-partition deed, in which, it is clearly recited that there were ancestral properties for Suyambulinga Nadar and the second respondent and Suyambu Marthandan are the sons. However, the daughters of the said Suyambulinga Nadar relinquished their rights in the ancestral properties and further, in those days, the female members are not the coparceners by birth. Ex.A6-partition deed was executed among the than coparcener, now subsequently it cannot be denied that there was no ancestral property or coparcenary property. However, in the said partition deed, it is recited that already movable properties and other things were orally partitioned. Further, it has been recited that the first item in the said partition deed was allotted to the said Suyambulinga Nadar for his life interest. During the life time, he could only enjoy the said properties and after his life time, the same would go to the second respondent and his brother. The second item was allotted to the second respondent herein and the third item was allotted to Suyambu Marthandan. Therefore, the suit properties covered under the second item in the said partition deed which are the ancestral properties of the second respondent. However, in the said partition deed, it is also further recited that whatever the properties stand in the individual name of the members of all the three parties, it would be their individual properties and the other members or the parties are not entitled to any right or interested in those properties. Therefore, in short, it is understood that whatever the properties mentioned in Ex.A6-partition deed, the same are only treated as ancestral propertes and the first item was allotted to the father of the second respondent for the life interest and the second item was allotted to the second respondent. Therefore, the contention of the appellant is not acceptable that there was no ancestral property.

18.Though the first respondent got married in the year 1988, the State Amendment Act came into force on 25.02.1989, the pre-condition was that if the female married prior to the Amendment Act came into force or the ancestral properties were already divided by the male member of the family prior to the date of that amendment, subsequently, the female member cannot get any share as coparcener as per the State Amendment Act 1989. However, the Act says that from the date of the amendment, the female members become coparceners by birth. If any property continues as the ancestral property without any partition on the date of the amendment Act came into force, since the female members have become a coparcener by birth, they are entitled to get share in the ancestral property on par with the male members on the date of the Amendment Act came into force. Therefore, there is no iota of evidence to show that all the properties shown in the first and second items in Ex.A6 were subsequently divided prior to 1989, when the State Amendment Act came into force or even otherwise, prior to 2005, when the Central Act came into force. Even all the sale deeds and the settlement deeds in favour of the appellant are only subsequent to the Central

Amendment Act. Therefore, on the date of the Central Amendment Act came into force, since there was no partition or alienation by the father of the appellant, namely, the second respondent and whatever, the properties were existing out of the partition deed in the name of the second respondent and the first respondent become a coparcener, she is entitled to equal share. Since the respondents 1, 2 and 4 to 9, all the 8 members have become coparceners, they are entitled to get equal share in the properties. However, the other items are concerned, since Ex.A6 itself very clearly recited that whatever the property stands in the name of the individual members, it would be treated as individual property and there cannot be any further holding of right in those properties of any of the members of the family. Therefore, under these circumstances, this Court finds that there is no merit in the appeal and hence, the points are answered accordingly.

19. As far as plea of ouster is concerned, since it is held that the suit properties are ancestral properties and the respondents 1 and 4 are coparceners and the appellant has not pleaded and proved in the manner known to law in this regard, it is pertinent to refer the case of **Jai Singh**

and others vs. Gurmej Singh reported in **2009(15) SCC 747**. The relevant paragraphs 7 and 8 read as follows:-

"7. The principles relating to the inter-se rights and liabilities of co- sharers are as follows:

> "(l) A co-owner has an interest in the whole property and also in every parcel of it.
>
> (2) Possession of joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.
>
> (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.
>
> (4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies, that of the other.
>
> (5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.
>
> (6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners. (7) Where a co-owner is in possession of

> separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition."

8. It is thus evident that when a co-sharer is in exclusive possession of some portion of the joint holding he is in possession thereof as a co-sharer and is entitled to continue in its possession if it is not more than his share till the joint holding is partitioned. Vendor cannot sell any property with better rights than himself. As a necessary corollary when a co-sharer sells his share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession what he transfers is his right as a co-sharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all co-sharers."

Further, in Subura Ammal and others Vs. Ali Md. Nachiar and others reported on 1970(2) MLJ 398. a Division Bench of this Court,while laying down the essentials of plea of ouster, has observed as follows:

> "A party who sets up a hostile title to the exclusion of co- heirs must be definite and equivocal in his assertions. When the assertions are in the nature of "hide and seek", that is to say mutually contradictory and merely intended for the purpose of taking a tactical advantage out of a

> litigious situation, it cannot be considered as an assertion of a hostile title adequate for the purpose of becoming the starting point in the acquisition of title by adverse possession The co-owner's assertion of a hostile title must be one exclusively for himself in the property. It should be such as would be Inconsistent with any other co-sharer being entitled to possession. It would thus be clear that the co-sharer in possession may not admit title of a particular co-sharer, because in his view the real co-sharer Is somebody else, and not the co- sharer who puts forward his title. In such circumstances, the co- sharer claiming adverse title must be considered as not having put forward his title of any other co-sharer; he should be considered as only expressing his doubt about the title of a particular co-sharer who claims such title but he has not gone further and set up title exclusively in himself to the whole property ."

20.As far as the *mesne* profits are concerned, the appellant admitted that he is in continuous possession of the properties. Since the same are ancestral properties, the appellant is liable to pay *mesne* profit. As far as the *mesne* profits in partition suit is concerned, Order 20 Rule 12 C.P.C will not be applicable and Order 20 Rule 18 C.P.C only is applicable.

21. Since Ex.A6 document was not denied, as contended by the learned counsel for the first respondent, no oral evidence contra to the

recitals of Ex.A6 can be adduced which is barred under Section 92 of the Indian Evidence Act. As far as the genuineness of the document is concerned, it is the 30 years old document. As far as *mesne* profits in the partition suit is concerned, final decree proceedings can be initiated at any point of time and there is no limitation for initiating the final decree proceedings. As per the decision of the Honourable Supreme Court in the case of ***Kattukandi Edathil Krishnan and another Vs. Kattukandi Edathil Valsan and others*** reported in ***2022 LiveLaw (SC) 549***, the Trial Court is directed to comply with para 33 of the said Judgment in case the plaintiff has not filed application for final decree so far. The relevant portion of the said Judgment reads as follows:

> *"33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the*

Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.

22.In the result, the Appeal Suit is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[P.V., J.] **[K.K.R.K., J.]**
29.10.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes
skn

To:

1.The Principal District Judge, Tirunelveli.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

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