



A.S.No.3 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10.06.2025

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

A.S.No.3 of 2016

R.Kamaraj

... Appellant

Versus

1.R.Alagesan (Died)
2.Lalitha Alagesan
3.A.Rajaram
4.A.Vijay
5.S.Sowmiya

... Respondents

Appeal Suit filed Under Section 96 r/w of XLI Rule 1 of the Code of Civil Procedure, praying to set aside the Judgment and decree dated 20.07.2015 in O.S.No.1735 of 2011 on the file of VI Additional City Civil Court, Madras.

For Appellant	:	Mrs.V.Srimathi
For R2 to R5	:	Mr.R.Thiagarajan
For R1	:	Died



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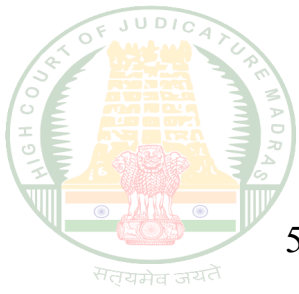
JUDGMENT

The appellant has filed this appeal to set aside the Judgment and decree dated 20.07.2015 in O.S.No.1735 of 2011 on the file of VI Additional City Civil Court, Madras.

2. Heard Mrs. V.Srimathi, learned counsel for the appellant and Mr.R.Thiagarajan, learned Counsel for the respondents 2 to 5 and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The appellant is the defendant in O.S. No. 1735 of 2011 (originally filed as C.S. No. 1 of 2003) instituted by his brother, Alagesan, as the plaintiff, who filed suit sought for partition, claiming two equal half shares, along with directions to render true and proper accounts, and the appointment of an Advocate Commissioner to measure the properties described as Schedule A and Schedule B in the plaint.



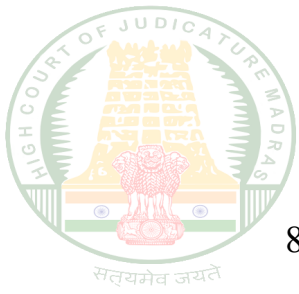
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5. The appellant/defendant contested the suit, arguing that it was not maintainable due to non-joinder of necessary parties, as another brother and a sister were not impleaded. He also challenged the correctness of the court fee paid by the plaintiff and contended that another property situated at Mohaper was not included in the suit.

6. Before the trial court, both parties adduced oral and documentary evidence. On the side of the plaintiff, plaintiff was examined as P.W1 and Ex.P1 to Ex.P5 were marked. On the side of the defendant, defendant was examined as D.W.1 and no documents were marked.

7. Upon considering the evidence, the learned Trial Judge framed five key issues. The court concluded that, with respect to the A-Schedule property, the plaintiff ought to have impleaded his brother Murugesan and sister Patchayammal since the property was allotted to their mother Srirangammal and Murugesan through a partition deed dated 06.07.1989 (Ex.P5). Therefore, the suit in respect of A-Schedule property was barred due to non-joinder of necessary parties, and no share was granted to the plaintiff in that property.



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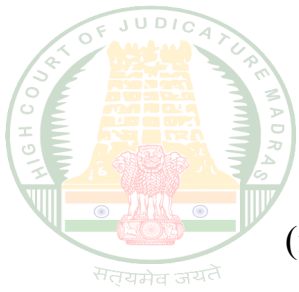
8. Regarding the B-Schedule property, it was found to have been purchased by the plaintiff, the defendant, their brother Murugesan, and their mother Srirangammal. As per the partition deed dated 06.07.1989, this property was allotted to the plaintiff and the defendant alone. Hence, the plaintiff was held entitled to a half share in the B-Schedule property. The Trial Judge also held that the court fee paid by the plaintiff was sufficient. However, regarding the rendering of accounts, the court directed the plaintiff to file separate proceedings. Thus, the suit was partly decreed in respect of the B-Schedule property only.

9. Challenging the said findings the appellant /defendant preferred this appeal on following grounds:

(i) The Court has erred in concluding that the valuation of suit falls under Section 37(2) of the Tamil Nadu Court Fees and stamp valuation Act.

(ii) The reasoning of the trial Court in holding that the parties are co-parceners and therefore they are deemed to be in a joint possession of the suit properties and the prayer of possession is not mandatory is untenable.

(iii) The trial Court has erred in decreeing the suit in respect of the B Schedule property after concluding that the suit is bad for non joinder of necessary parties in respect of A Schedule property.



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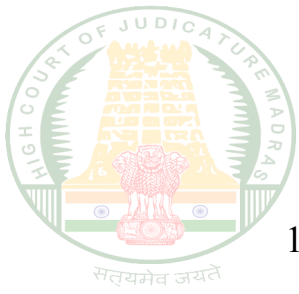
(iv) The trial Court has erred in decreeing the suit for partial partition, contrary to the settled provisions of law.

(v) The trial Court erred in decreeing the suit in respect of B-Schedule property. The trial Court has confirmed the share declared under the partition deed dated 06.06.1989, while the plaintiff seeks to overlook by seeking fresh partition.

(vi) The trial Court erred in decreeing the suit in respect of B-Schedule property for which the plaintiff has failed to pay the Court fee. On this ground alone the suit should have been rejected.

10. By submitting the above grounds, learned counsel for the appellant argued that the trial court ought not to have granted a share in the B-Schedule property to the plaintiff, especially when the suit was barred due to non-joinder of necessary parties and affected by partial partition. Therefore, it was contended that the findings of the trial court were liable to be set aside.

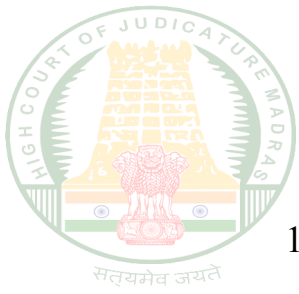
11. During the pendency of the appeal, the plaintiff Alagesan passed away, and his legal heirs were impleaded as respondents 2 to 5. They contested the appeal.



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12. In response, the learned counsel for the respondents/plaintiff submitted that, as per the family partition, the B-Schedule property was jointly allotted to the plaintiff and the defendant. The suit property contains a marriage hall, and the defendant bound to pay Rs. 5,000/- per month as the plaintiff's share of income, which he failed to do. Subsequently, an agreement was entered into between the parties on 18.09.2002, but the defendant failed to comply with the terms. Therefore, the plaintiff filed a suit for partition. Since the B-Schedule property was exclusively allotted to the plaintiff and the defendant, other parties had no share in it. Hence, the trial court rightly granted a half share to the plaintiff, and no interference was warranted. The appeal should therefore be dismissed as devoid of merit.

13. The facts of the case reveal that the plaintiff, defendant, another brother Murugesan, and sister Patchayammal are the children of Rathinam and Srirangammal. The A-Schedule property was purchased by their father through a sale deed dated 31.01.1951. The B-Schedule property was purchased by the plaintiff, defendant, their brother Murugesan, and their mother Srirangammal through a sale deed dated 21.10.1974 those facts are undisputed.



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14. Patchayammal was married in 1966 and was given sufficient seervarisai (customary gifts), and she had not claimed any share in the properties over the years. The father died on 13.05.1969, leaving behind his wife, the plaintiff, defendant, and another son Murugesan. A partition was effected on 06.07.1989 among the plaintiff, defendant, Murugesan, and their mother, which was marked as Ex.P5 and admitted by both parties. As per the partition, the A-Schedule property was allotted to their mother and Murugesan, and the B-Schedule property was allotted equally to the plaintiff and the defendant.

15. After the mother's demise, disputes arose when the defendant failed to pay rent from the property to the plaintiff. Hence, the plaintiff filed the suit for partition. The trial court held that the A-Schedule property required impleading of Murugesan and other legal heirs after their mother's demise, which was not done. Therefore, the suit was dismissed regarding A-Schedule due to non-joinder of necessary parties. No appeal was filed by either party with respect to the A-Schedule property. The appeal pertains solely to the B-Schedule property.



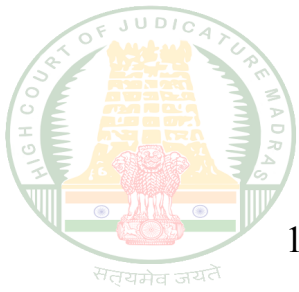
WEB COPY 16. Points for Consideration:

"A. Whether the findings given by the learned trial Judge regarding B-Schedule property are sustainable in law?

B. Whether the trial court erred in granting the share, despite the suit being affected by non-joinder of necessary parties?

C. Whether the court fee paid by the plaintiff was proper?"

17. It is an admitted fact that the B-Schedule property was allotted to the plaintiff and the defendant in the family partition dated 06.07.1989 (Ex.P5). The plaintiff contended that the B-Schedule property was exclusively allotted to himself and the defendant, and thus both are entitled to equal shares. The defendant also admitted the partition but claimed that the plaintiff left the shop located on the property 12 years ago and that part of the property is lying vacant. He further alleged that he suffered an accident and that the plaintiff took advantage of this to lock the *Kalyana Mandapam* (marriage hall) and threaten him. An agreement was entered into between them on 18.09.2002, which the plaintiff allegedly failed to comply the terms of the agreement.



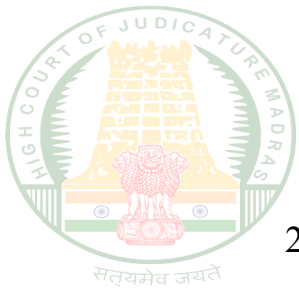
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18. There is a dispute between plaintiff and the defendant, hence there is a cause of action to file a suit. Though the plaintiff claims a share in both A & B Schedule properties, the A Schedule was allotted to their Mother and another brother Murugesan. However, Murugesan was not impleaded as a party to the proceedings. After the demise of their mother, the other legal heirs also to added as parties, but plaintiff failed. Therefore, with regard to the A-Schedule property, the trial Judge rightly held that the suit is defective due to non-joinder of a necessary party, as the other legal heirs are entitled to claim a share.

19. However, in respect of the B-Schedule property, it was exclusively allotted to the plaintiff and the defendant in the said partition. Since a dispute has now arisen between them, the plaintiff has approached the Court claiming half share in the B-schedule property. Such a claim is maintainable.

20. Since the B Schedule property exclusively belongs to the plaintiff and the defendant, the claim in respect of the B- Schedule is not affected by the non-joinder of necessary parties and does not amount to a partial partition.



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21. Furthermore, as per the evidence, including the deposition of DW1, there was an agreement regarding the running of the *Kalyana Mandapam* between the plaintiff and the defendant. Thus, the trial court rightly concluded that only the plaintiff and defendant have rights in the B-Schedule property. The plaintiff, being a co-sharer, is deemed to be in joint possession and also received rent from the *Mandapam*. Hence, the court fee paid is sufficient, as rightly held by the trial court. Accordingly, issues A, B, and C are answered.

22. The appeal is dismissed as devoid of merit. There shall be no order as to costs.

23. The plaintiff is entitled to a half share in the B-Schedule property. Thus suit in respect A-Schedule property is dismissed. The findings of the trial court are confirmed, and the suit is partly decreed. If a final decree application is filed, the trial court is directed to dispose of the same within three months, considering that the suit was filed in 2003.

10.06.2025

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
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- To
1. The VI Additional City Civil Court, Madras.
 2. The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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