



WEB COPY

AS No. 857 of 2006



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-09-2025

CORAM

THE HONOURABLE MR.JUSTICE S. SOUNTHAR

AS No. 857 of 2006

AND

CMP NO. 10638 OF 2006

1. V.R.Sivalingam
No.2, Sivakami Nagar,
Near Jaya Boys Hostel,
Thirunindravur, 602024.

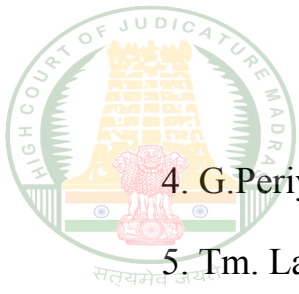
Appellant(s)

Vs

1. Tmt S. Subbulakshmi Ammal
W/o. Dm Subramaniam,
No 49, Dr Ambedkar 38th Street,
G.K.M. Colony, Jawahar Nagar
Chennai- 82.

2.P.P.Booshanam Ammal, (Died)
W/o. G Periyalwar, No 401,
11th Main First Block, Third Stage
Manjunath Nagar, West Chard Road
Bangalore- 10

3.Tmt M Vijayalakshmi
W/o. Damodaramurthy,
No 25 Moundasamy Madam Street,
Villivakkam Chennai- 49.



4. G.Periyalwar, 65 years

5. Tm. Latha, 35 years

6. P.Keerthivasan, 33 years

7. P.Murali, 28 years

(R2 died. R4 to R7 are brought on record as LR's
of the deceased R2, vide order dated 08.09.2025
made in CMP Nos.49, 50, & 51 of 2009
in A.S.No.857 of 2005)

Respondent(s)

PRAYER: Appeal Suit filed under Section 96 of CPC and Order 41 Rule 1 of CPC to set aside the judgement and decree dated 13.06.2005 passed in O.S.No.11828 of 1996 on the file of VI Additional Judge, City Civil Court, Chennai and allow the appeal.

For Appellant(s): Mr.V.K.Rajagopalan

For Respondent(s): Mr. P. Raja for R3
No appearance for R1
R2 - Died - (steps Taken)



JUDGEMENT

WEB COPY

The first appeal is filed challenging the preliminary decree for partition passed by the Trial Court in O.S.No.11828 of 1996, dated 13.06.2005.

2. The appellant herein is the second defendant in the suit for partition and the respondents 1 and 2 herein had filed the suit seeking partition of their 1/5 share each over the suit properties. The suit was decreed by the Trial Court. Aggrieved by the same, the 2nd defendant has filed the first appeal before this court.

3. According to the respondents 1 and 2/ plaintiffs, the suit properties belonged to their father Raju Naidu. The respondents herein are the siblings of the appellant. Originally, the respondents 1 and 2 herein had filed a suit against their mother Savithri Ammal, the appellant and the third respondent, who are their siblings. During the pendency of the suit, Savithri Ammal died and her children, who were already arrayed as parties, were brought on record as her legal heirs.



WEB COPY

4. It was claimed by the plaintiffs that Raju Naidu died on 30.12.1982 leaving behind his wife, first defendant, plaintiffs and the defendants 2 and 3 as his legal heirs. Since Raju Naidu died as intestate, the plaintiffs claimed 1/5th share each over the suit properties and laid a suit for partition.

5. The appellant/2nd defendant filed a written statement and contested the suit mainly on the ground that the income of the Raju Naidu was not sufficient to purchase the suit properties in his name and all the properties were purchased only out of income of the appellant. It was the specific case of the appellant that Raju Naidu was employed in Southern Railway and drawing a salary of Rs.181/- at the time of his retirement on 30.06.1970 and the said amount was not at all sufficient to meet out the family expenses. Therefore, the salary of Raju Naidu was saved for the purpose of marriage expenses of the daughters and the appellant had managed the family out of his income. It is therefore clear that the suit properties were purchased from the income of the appellant in the name of Raju Naidu and hence, the suit properties cannot be treated as the properties of Raju Naidu. Thus, the appellant prayed for dismissal of the suit on



the above said grounds.

WEB COPY

6. The Trial Court framed the following issues.

1. Whether the plaintiffs are entitled for 1/4th share each over the suit properties?

2. Whether the plaintiffs are entitled to get compensation?

3. What are the other reliefs the plaintiffs entitled to?

7. Before the Trial Court, on the side of the plaintiffs, first plaintiff was examined as PW1 and one Periyazhwar was examined as PW2 and 14 documents were marked as Ex.A1 to Ex.A14. On the side of the defendants, the 2nd defendant (appellant herein) was examined as DW1 and 14 documents were marked as Ex.B1 to Ex.b14.

4 8. The Trial Court, upon perusing the evidence on record, came to the conclusion that the suit properties were the properties of Raju Naidu and hence, the plaintiffs were entitled to preliminary decree for partition as prayed for. Aggrieved by the same, the second defendant has filed the present first appeal.



9. The learned counsel for the appellant contended that at the time of retirement, Raju Naidu was drawing a salary of Rs.181/- and the same was not sufficient to purchase the suit properties.

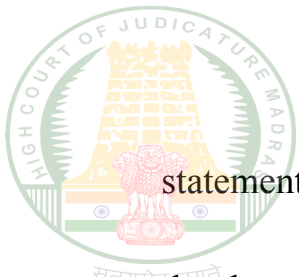
10. Based on the arguments advanced by the learned counsel for the appellant and the pleadings of the parties, this court framed the following points for determination in the first appeal.

1. Whether the suit properties are self acquired properties of the appellant?

2. Whether the Trial Court was justified in passing the decree for partition in respect of item No.1 to 9.

11. Discussion on points No.1 and 2.

The Ex.A2 to A10, sale deeds are standing in the name of Raju Naidu. A perusal of the same would establish that the suit Item No.1 and 3 to 9 are the properties purchased in the name of Raju Naidu and his wife, namely the first defendant. Though the appellant in his written statement claimed that the suit properties were purchased out of his earnings, nowhere in the written



WEB COPY

statement, the appellant mentioned the quantum of his income. It was stated that he was employed in Southern Railway. However, salary certificate of the appellant was not produced to prove the quantum of salary received by him and the same was utilized to purchase the properties, vide Ex.A2 to A9 sale deeds. Therefore, there is nothing on record to suggest that the appellant has got surplus income to purchase the properties under Ex.A2 to Ex.A10. The registered sale deeds, stand in the name of Raju Naidu also show that he was employed in Southern Railway and he was drawing salary. Hence, there is a presumption that the properties were purchased by the Raju Naidu out of his income, unless the contrary is proved.

12. It is the specific case of the appellant that the suit properties were purchased out of his earnings. However, the surplus income of the appellant or his savings have not been proved by leading any evidence. More over, when the appellant was examined as DW1, he clearly admitted that he had no objection to the passing of a decree for partition in respect of the suit properties, except Item Nos. 2 and 10, which had already been sold by him along with his



mother. In view of the admission made by the appellant, there is no difficulty in coming to the conclusion that Item No.1 and 3 to 9 are available for partition.

13. As far as Item No.10 of the suit property is concerned, Ex.B1 is the allotment order issued by the Tamil Nadu Slum Clearance Board in favour of the appellant regarding item No.10 of the suit property. Therefore, considering the same as a separate property, the Trial Court has rightly dismissed the suit in respect of Item No.10 of the suit property.

14. As far as Item No.2 of the suit properties is concerned, the same was purchased in the name of Raju Naidu and his wife, the first defendant. The appellant along with his mother (first defendant) sold the said property in favour of the third party, after the death of Raju Naidu. The right of Raju Naidu in Item No.2 of the suit property will devolve upon all the legal heirs, including the plaintiffs and the defendants. The appellant is not entitled to alienate the Item No.2 of the suit properties in favour of third party, as he is not owner of the entire property. Any sale by the appellant will be valid only in respect of his



share alone in item No.2. Therefore, the Trial Court was justified in coming to the conclusion that Item Nos. 1 to 9 of the suit properties are available for partition and the plaintiffs are entitled to 1/5th share each over the subject properties. For the forgoing reasons, the point Nos. 1 and 2 are answered against the appellant.

15. In view of the discussion made earlier, I do not find anything to interfere with the findings rendered by the Trial Court and accordingly, the appeal suit is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

08-09-2025
(2/2)

Index: Yes/No

Internet: Yes

Neutral Citation: Yes/No

MST

To

The VI Additional Judge,
City Civil Court, Chennai-104.



WEB COPY

AS No. 857 of 2



S.SOUNTHAR J.
MST

AS No. 857 of 2006

08-09-2025