



A.S.No.77 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 08.07.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit. No.77 of 2015

Shanthi

... Appellant

Versus

1. Varudhappa Gounder (Died)

2. Sureshkumar

3. Samboornam

(R2 & R3 brought on record as LR's of the deceased
first Respondent (Varudhappa Gounder) vide Court
Order dated 26.11.2021 made in CMP.No.18396 of 2021
in A.S.No.77 of 2015)

... Respondents

First Appeal filed under Section 96 of Civil Procedure Code to set
aside the Judgment and Decree dated 31.10.2014 made in O.S.No.172 of
2012 on the file of the learned Additional District Judge, Namakkal.

For Appellant : Mr.T.Dhanyakumar

For Respondents : Mr.S.Saravanakumar for R2 & R3
R1- Died (steps taken)



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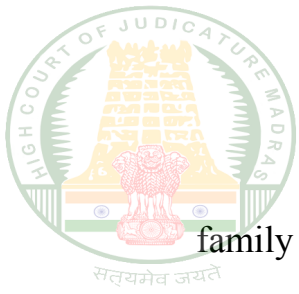
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This Appeal Suit has been filed to set aside the Judgment and Decree dated 31.10.2014 made in O.S.No.172 of 2012 on the file of the learned Additional District Judge, Namakkal.

2. The Plaintiff in O.S.No.172 of 2012 on the file of the learned Additional District Judge, Namakkal is the Appellant in this Appeal. The Plaintiff is the daughter of the first Defendant. The Plaintiff had filed the Suit for partition and separate possession of her 1/3rd share in the Suit Items 1 to 4 of the schedule mentioned properties.

3. The brief facts, which are necessary for considering the Appeal Suit, are as follows:-

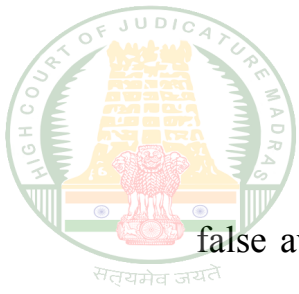
3.1. The Plaintiff is the daughter of the first Defendant through the first wife. The first wife of the first Defendant had died 26 years prior to the filing of the Suit. The first Defendant through his wife also had a son who died six months prior to the death of the first wife. Subsequently, the first Defendant married Sampooranam, the third Respondent herein, as second wife. The second Defendant was born through second wife. In the



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family partition, in the family of the first Defendant, first item of the Suit property shown as 'D' schedule was allotted to the first Defendant through a registered partition deed dated 22.03.1965. From the income derived from the first item of the suit property, the first Defendant had acquired the Items 2 to 4 of the suit properties. The second item of the Suit property was purchased by the first Defendant through a registered sale deed dated 13.11.1970 from one Paramasiva Gounder. The third Item of the suit property was purchased by the first Defendant through a registered sale deed dated 08.03.2002 from one Santha Devi. The fourth item of the Suit property was purchased by the first Defendant through a registered sale deed dated 11.03.1975 from R. Marappa Gounder. The Plaintiff's younger brother, Balaji, died 26 years prior to the filing of the Suit. The said Balaji had share in Items 1 to 4 of the Suit properties. The share of the Balaji devolved on mother of the Plaintiff. Therefore, subsequent to the death of the mother of the Plaintiff, the Plaintiff is entitled to 1/3rd share in the Suit property. The Plaintiff had sought 1/3rd share in the Suit property from the Defendants 1 and 2. Despite repeated requests, the Defendants 1 and 2 evaded. Therefore, the Plaintiff was forced to issue legal notice dated 16.08.2012 to the Defendants 1 and 2. On receipt of notice dated 16.08.2012 from the Plaintiff, the Defendants 1 and 2 had sent reply with



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4. The contents of the written statement filed by the Defendants 1 and 2 are as follows:-

4.1. The partition deed dated 22.03.1965, according to which schedule 'D' was allotted in favour of the first Defendant, given as Item No.1 of the suit property, is admitted. The claim made by the Plaintiff that from the income derived from the Item 1 of the suit property, the first Defendant acquired Items 2 to 4 are not true. The claim of the Plaintiff that the Plaintiff had a brother by name Balaji who died, is denied. The first Defendant did not have any son by name Balaji. The first Defendant was unable to meet family expenses from the income derived from Item 1. Therefore, the claim that Items 2 to 4 were purchased out of the income derived from item 1 of the suit property is not true and is denied. The first Defendant had purchased properties in Items 2 to 4 out of the income earned from the agricultural lands taken on lease which are: an extent of 4 acres of land leased from one Sanjeevi and an extent of 2 acres of land leased from one Kuppusamy. Therefore, Item 2 to 4 are self acquired properties. Item 1 of the property does not have good soil and the first

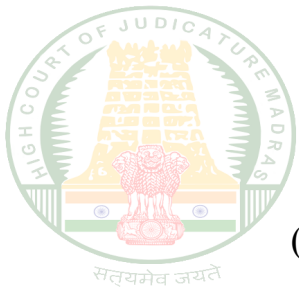


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Defendant did not cultivate it for three bogam. The Plaintiff is not entitled to claim partition as she was married of in the year 1985. The issue of notice by the Plaintiff is admitted. The claim of the Plaintiff for partition is without any legal basis. Only to harass the Defendants, the Plaintiff had filed the Suit. Therefore, the suit is to be dismissed and it is not maintainable.

5. Based on the pleadings and written statement, the learned Additional District Judge, Namakkal, had framed the following issues:-

- (i) Whether the suit properties are joint family properties?
- (ii) Whether the Plaintiff is entitled to 1/3rd share of partition in the suit properties?
- (iii) Whether the Plaintiff is entitled to preliminary decree for partition?
- (iv) Whether the Plaintiff is entitled to final decree of separate possession of suit properties?
- (v) Whether the Items 2 to 4 of the suit schedule properties are the self-acquired properties of the first Defendant?
- (vi) Whether the first Item of the suit property was allotted to the first Defendant as per partition deed dated 22.03.1965?



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(vii) To what other relief?

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6. During trial, the Plaintiff examined herself as P.W-1 and marked documents as Ex.A-1 to Ex.A-9.

7. The first Defendant examined himself as D.W-1. In support of the claim of the first Defendant, Ramasamy Gounder was examined as D.W-2. No document was marked on the side of the Defendant. After completion of recording of evidence, after hearing the arguments of the learned Counsel for the Plaintiff and the learned Counsel for the Defendants, the learned Additional District Judge, Namakkal on assessment of evidence by Judgment dated 30.10.2014 dismissed the Suit in O.S.No.172 of 2012.

8. Aggrieved by the dismissal of the suit of the Plaintiff by the learned Additional District Judge, Namakkal, the Plaintiff had preferred this Appeal before this Court.

9. The learned Counsel for the Appellant submitted that the Appellant is the Plaintiff in O.S.No.172 of 2012 on the file of the learned



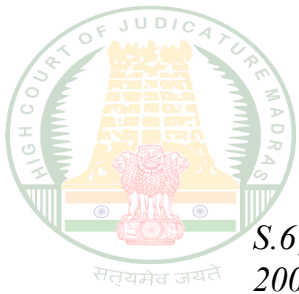
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Additional District Judge, Namakkal. The Appellant as Plaintiff had filed the Suit in O.S.No.172 of 2012 against her father and her brother viz., D-1 and D-2 seeking the relief of partition. The father as Defendant-1 filed written statement contesting the claim of the Plaintiff in the Suit. Based on the pleadings, issues were framed. Trial proceeded. After full trial, the learned Additional District Judge, Namakkal dismissed the Suit as per the Judgment dated 31.10.2014. Aggrieved by the Judgment of dismissal of the Suit, the Plaintiff had preferred this Appeal. During the pendency of this Appeal, the first Defendant/father of the Plaintiff died.

10. It is the contention of the learned Counsel for the Appellant that the learned Judge had conceded that the Plaintiff was entitled to a share in the property but dismissed the Suit on the ground that the Plaintiff cannot claim partition when the father of the Plaintiff is alive. It is the submission of the learned Counsel for the Appellant that the reasoning of the learned Judge dismissing the Suit is against the settled law as decided by the Hon'ble Supreme Court reported in **(2020) 9 SCC 1** in the case of **Vineeta Sharma Vs. Rakesh Sharma** wherein it is held as follows:

“Family and Personal Laws- Hindu Succession Act, 1956 – S.6 (as substituted by the Hindu Succession (Amendment) Act, 2005 w.e.f 09.09.2005) -Daughter's right in coparcenary property under substituted



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S.6 of the HS Act, 1956 – Daughter born before date of enforcement of the 2005 Amendment Act – Held, has same rights as daughter born on or after the amendment – Non-requirement of coparcener father to be alive on date of coming into force of the said amendment, explained.”

11. As per the latest Judgment of the Hon'ble Supreme Court, it was held that as per the amendment to Hindu Succession Act, 2005, the date of death of the father is not relevant. Even if the father is alive, the daughter is entitled to partition. During the pendency of the Appeal, the father died. The learned Counsel for the Respondents made a submission before this Court that the father during his lifetime had executed a Will in favour of the second Defendant.

12. It is the submission of the learned Counsel for the Appellant that the first Item of the property was allotted to the first Defendant in the family partition dated 22.03.1965. Based on the income derived from the first Item of the Suit property, the first Defendant had purchased the properties viz., Item Nos.2 to 4. The father as first Defendant disputed the claim of the Plaintiff claiming that the first Item of the property allotted to him was dry land, based on which, he could not maintain his family. Therefore, he had taken out on lease the properties belonging to Sanjeev Naidu and Kuppusamy Naidu. Based on the income derived from the



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agricultural products from the property that he had taken on lease, he had purchased the properties in Item Nos.2 to 4. Therefore, Item Nos.2 to 4 are not the joint family properties. It is the self-acquired property of first Defendant. On that ground, Defendant-1 sought to dismiss the Suit for partition filed by the daughter. It is the claim of the Plaintiff in the Suit that she was born to the first wife of Defendant-1. The mother of the Plaintiff had given birth to a son, the son died. After the death of the son, the mother also died. Therefore, the father of the Plaintiff married second time. Through the second wife, second Defendant was born. Therefore, she sought partition of the property seeking 1/3rd share in the property. The father resisted the same. Based on the written statement of the father of the Plaintiff as Defendant-1 alone, the learned Judge had dismissed the Suit stating that when the father is alive, the Plaintiff is not entitled to partition. Aggrieved by the same, the Plaintiff in O.S.No.172 of 2012 had preferred this Appeal. During the pendency of the Appeal, Defendant-1 father died. The Legal Representatives of the deceased Defendant-1 are already on record. While so, the learned Counsel for the Respondents made a submission that the father of the Plaintiff/Defendant-1 during his lifetime had executed a Will in favour of Defendant-2. Therefore, this Court had remanded the matter to the learned Additional District Judge, Namakkal



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with a direction to record evidence regarding the claim made by Defendant-2 that his father/Defendant-1 during his lifetime had executed a

Will in favour of Defendant-2. However, it is the submission of the learned Counsel for the Appellant that even if the father had executed a Will in favour of Defendant-2, it will not bind the Plaintiff. The Plaintiff is entitled to seek partition. The father is not entitled to execute a Will in favour of Defendant-2 for the ancestral properties. Further, the learned Counsel for the Appellant submitted that the claim of the first Defendant that he had acquired Item Nos.2 to 4 from his own independent income and not from the income derived from Item 1 of the Suit property had not been proved. Sanjeev Naidu and Kuppusamy Naidu were not examined as well. Therefore, it is to be considered that Defendant-1 had not proved the claim in the written statement. Under those circumstances, the properties are to be treated as ancestral properties. Therefore, the Plaintiff is to be granted the relief of partition of her share in the Suit properties as per the latest ruling of the Hon'ble Supreme Court in **(2020) 9 SCC 1** in the case of ***Vineetha Sharma Vs. Rakesh Sharma and others.***

13. The learned Counsel for the Respondents submitted that the second Respondent is the second Defendant in the Suit in O.S.No.172 of



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2012 on the file of the learned Additional District Judge, Namakkal. The Suit in O.S.No.172 of 2012 filed by the Appellant as Plaintiff was dismissed as per Judgment dated 31.10.2014. After that, appeal was preferred by the Plaintiff before this Hon'ble Court.

14. The learned Counsel for the Respondents filed Civil Miscellaneous Petition seeking direction from the Appellate Court for making additional evidence on behalf of the second Defendant in O.S.No.172 of 2012 regarding the claim that the first Defendant, the father of the Plaintiff and the second Defendant, had executed a registered Will in favour of the second Defendant. The Will was executed during the life time of the first Defendant, and the Will had come into effect after the death of the first Defendant. Therefore, C.M.P.No.2105 of 2023 was filed by the Respondents which was allowed by the learned Judge of this Court as per Order dated 20.02.2023 thereby directing the learned Additional District Judge, Namakkal to record evidence, additional evidence regarding the claim of the second Defendant regarding execution of the Will by the first Defendant. Therefore, for recording additional evidence, the Appeal was remanded with a direction to the learned Additional District Judge, Namakkal. The second Defendant in O.S.No.172 of 2012



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had examined himself as D.W-3 and filed an affidavit in examination-in-chief and marked the registered Will executed by the first Defendant in which all the Suit scheduled properties in Item Nos.1 to 4 in O.S.No.172 of 2012 had been settled in favour of the second Defendant which was marked as Ex.B-1 dated 10.04.2012.

15. The attesor to the Will/Arjunan was examined as D.W-4 who is a cousin to the Plaintiff as well as the second Defendant/D.W-3. The scribe of the Will was examined as D.W-5. As per the deposition of the scribe of the Will and the attesor of the Will, the Will was executed on 10.04.2012. The scribe is an acquaintance of the first Defendant from his early childhood. As per the deposition of the Scribe, the first Defendant dictated the contents of the Will and the same was taken down on a plain sheet of paper along with details of the properties and boundaries, S.Nos., etc., After taking down the contents of the Will, he had read over the contents of the Will to the testator of the Will, Varadappa Gounder. He, on being satisfied, accepted it and then, he had directed the scribe to type it. Accordingly, he went to the computer typing center and typed it in computer and produced it wherein the first Defendant affixed his left thumb impression on the Will and Arjunan/attesor affixed his signature



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and the scribe/D.W-5 also affixed his signature. The next day, the Will

was produced before the Sub Registrar, Senthamangalam for registration.

16. In the cross-examination, D.W-3 was unable to answer the suggestion regarding the income from the Item-1. D.W-4, the cousin of the Plaintiff as well as the second Defendant had in his cross-examination admitted that the properties in the Will are the self acquired properties of his junior paternal uncle/D.W-1 from the income derived from Item-1 of the property as well as from other sources of income. The agricultural properties were partitioned in the family partition in the year 1965 which was subsequently purchased by first Defendant from his brothers and also from third parties, from the income derived by cultivating the properties that the first Defendant obtained on lease.

17. The first Defendant had examined himself as D.W-1 in which he had not mentioned about executing a Will in favour of his son/second Defendant. His daughter had sent notice seeking partition dated 16.08.2012 for which the Defendants 1 and 2 had sent reply under Ex.A-8, dated 10.09.2012. The Defendants 1 and 2 had filed written statement in the Suit in O.S.No.172 of 2012, wherein the first Defendant had disputed



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the claim of the Plaintiff regarding income from the first item of the property which was the property allotted to the first Defendant in the family partition in the year 1965 through which he had purchased properties in items 2 to 4. The first Defendant disputed it by contending that the Item-1 of the property was not cultivable and consequently he was unable to even maintain the family. Therefore, he had taken on lease the property measuring about 4 acres belonging to Sanjeevi Naidu and about 2 acres from Kuppusamy Naidu. He had cultivated the said lands, measuring a total of about 6 acres and out of the income derived therefrom, he had acquired properties in Item Nos.2 to 4 in the Complaint schedule.

18. On perusal of the Complaint schedule, it is found that the properties in Item Nos.1 to 4 are in Thuthikulam Village. If what had been claimed by the first Defendant in the written statement had been true, he ought to have examined Kuppusamy and Sanjeevi Naidu, the land owners with whom he had entered into lease and could have marked documents regarding yield. Chitta and Adangal for the 4 Acres belonging to Sanjeevi Naidu and 2 Acres belonging to Kuppusamy, but he had not done so. The burden is upon the first Defendant/father of the Plaintiff to prove that Item Nos.2 to 4 which were acquired by him were his self-acquired properties



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from the income derived from cultivation in the lease property belonging to Sanjeevi Naidu and Kuppusamy Naidu. The Plaintiff is duty bound to prove the Plaint averments as per Section 101 of Indian Evidence Act. Similarly, the first Defendant has to prove his case as per Sections 102 and 103 of Indian Evidence Act regarding his claim that it is a self-acquired property.

19. D.W-1 as first Defendant was cross-examined regarding his claim, he had claimed that apart from farming, he had no other avocation. He had admitted in his cross-examination that he had acquired the properties by purchasing it from his brothers. He had admitted that the property in Item-1 is similar to the properties that he had purchased from his brothers in the year 1970-1975. When the properties are in Thuthikulam Village, any normal prudent man would not purchase the property that does not provide income. When he claims that he purchased properties from his brothers, it shows that the properties are cultivable lands, having good soil and having remunerative income. Therefore, what had been stated in the written statement is found false. Apart from that, nowhere in the written statement, he had claimed that since the properties are self-acquired properties, he had executed the Will or the settlement



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deed in favour of the second Defendant. D.W-3 in his evidence had admitted that he had knowledge of the Will in the year 2012. As per his evidence, D.W-3 is educated and serving as a Manager in L & T, Bangalore, and on visiting his native place Namakkal, he came to know about the execution of Will in the year 2012. The Judgment was delivered by the learned Additional District Judge on 31.12.2014. Therefore, there was a suppression of execution of Will. The claim made by the Respondents in Appeal that the Will had been executed by their father during the pendency of the Appeal cannot be accepted. It was prior to the Judgment. When the first Defendant was alive, he had suppressed the fact of execution of Will. Therefore, when the Suit for partition is pending, the first Defendant executing a Will in favour of the second Defendant before the date of Judgment is found to be unacceptable. Therefore, the Will need not be given weightage by this Court as Appellate Court. The deposition of the first Defendant as D.W-1 is found unacceptable. The properties are in the same survey field where Item-1 is. Thus stating that Item No. 1 does not generate income to meet the family expenses, is found unacceptable. If what had been claimed by the first Defendant as D.W-1 were true, he ought to have examined Sanjeevi Naidu and Kuppusamy Naidu.



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WEB COPY 20. The contents of the written statement filed by first Defendant denies that there was a son named Balaji born to the first Defendant and the mother of the Plaintiff, who died 26 years prior to the evidence by the Plaintiff. However, the Plaintiff had marked the School certificate of Balaji wherein the name of the mother and father is furnished. When first Defendant as D.W-1 was confronted that there was no animosity between him and Teachers and Headmasters of the School from where Ex.A-9 was produced which is the certificate issued by the Head Master that a boy by name Balaji studied in 6th Standard during the relevant period. Therefore, the contents of the written statement is found objectionable as there has been wanton suppression and wanton denial of the claim made by the Plaintiff. Also, in the written statement, the Defendant-1 claims that the Plaintiff having been married in the year 1985, she cannot claim partition in the Suit properties.

21. In the cross-examination of first Defendant as D.W-1, he admits that till she was married, she was living in the same house along with the first Defendant. Also, he had admitted in cross-examination that the mother of the Plaintiff was living along with the first Defendant in the



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same house and had contributed to the income of the family by working in the Suit property till her death. Therefore, there is contribution from the mother of the Plaintiff to the first Defendant. The contention of the first Defendant in the written statement that the Suit is not maintainable as the Plaintiff had been married in the year 1985 prior to Tamil Nadu Act, 1989 which grants rights to the Hindu unmarried daughters to claim partition from the year 1989. Therefore, she cannot claim partition. Therefore, seeking dismissal of the Suit.

22. In support of his contention, the learned Counsel for the Respondents relied on the following rulings:-

(i) **(2011) 9 SCC 451** in the case of **Marabasappa (Dead) by LRs and others Vs. Ningappa (dead) by LRs and others**

(ii) **(2018) 16 SCC 465** in the case of **Vinod Kumar Dhall Vs. Dharampal Dhall (Deceased) through his L.Rs.**

(iii) **2009 (4) CTC 440** in the case of **K.V.Ramasamy vs. K.V.Raghavan and others.**

Points for determination:-

(i) Whether the Judgment of the learned Additional



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District Judge, Namakkal in O.S.No.172 of 2012 dated 31.10.2014 is erroneous in the light of the Hindu Succession Act as amended 2005?

(ii) Whether the Plaintiff is entitled to partition?

23. Heard the learned Counsel for the Appellant

Thiru.T.Dhanyakumar and the learned Counsel for the Respondents 2 and 3 Thiru.S.Saravanakumar.

24. Perused the original records and the additional evidence recorded by the learned Additional District Judge, Namakkal, namely, D.W-3 to D.W-5 and Ex.B-1 on the direction of this Court during the pendency of this Appeal.

25. On perusal of the Judgment by the learned Additional District Judge, Namakkal, the reasoning given by the learned District Judge is found unacceptable in the light of provision of Hindu Law as amended in 2005. The observation of the learned Judge that the first Defendant had acquired Item Nos.2 to 4 of the Suit property from the income derived on cultivating the lands belonging to Sanjeevi Naidu and Karuppasamy Naidu, in the village where the suit properties are situated, gives presumption in favour of the Plaintiff. When the properties are in



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Thuthikulam Village, a particular property alone will not generate income

to meet the requirement of the family, while the cultivable lands in the

same village would generate income is not proved by the Defendant. In

Suit for partition, the burden is equal on the Defendant as that of the

Plaintiff. The Plaintiff claimed that the Suit properties 2 to 4 were acquired

by the Plaintiff from the income derived from Item-1, which measures to

an extent of one Acre and 32 cents in Thuthikulam Village. The Defendant

failed to discharge the burden on him as per Section 102 and 103 of Indian

Evidence Act. The learned Judge ought to have drawn presumption against

the first Defendant as he failed to prove his contention and should have

drawn a presumption in favour of the Plaintiff that the income derived

from Item-1 was utilized to purchase the properties in Item Nos. 2 to 4.

Also, it is to be noted that Items 2 and 3 of the properties were purchased

by D.W-1 from his siblings after partition. If the property in Item-1 did not

derive much income, there is no necessity for him to acquire the properties

from his brothers, this was lost sight of by the learned Additional District

Judge. He had acquired Item No.1 bearing S.No.283/11, Item 2 bearing

S.No.283/11B, 285/1, Item 3 bearing S. Nos.283/11A, 283/10A, 283/10C

which shows that they are in the same field. Therefore, the claim made by

the Defendant-1 in the written statement that the first item of the properties



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did not provide sufficient income for saving after family expenses is found

to be unacceptable from the point of view of the ordinary prudent man. He

had admitted that he had purchased the properties from his

siblings/brothers. That shows that the properties generated income,

otherwise a person who claims that the property that was allotted to him

did not provide sufficient income would not purchase the properties from

his own siblings which forms part of the same survey field. Therefore, the

claim made by the Defendant-1 had to be rejected in the absence of

evidence as he is duty bound to discharge the burden to prove his claim in

the written statement.

26. The Suit for partition is different from other civil suits. The burden is upon the person who claims that the properties are self-acquired properties. If he does not prove his claim made in the written statement regarding self-acquired properties, then the Court has to draw adverse inference against him. Also, it is to be noted that the Plaintiff is filing a case against her father, who is the person with more experience and would be able to demolish the case of the Plaintiff as he can very well get relevant records to prove his claim, but he had not done so. Therefore, the Defendant-1 failed to discharge the burden cast upon him under Sections



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102 and 103 of Indian Evidence Act to prove his claim by failing to file

Chitta, Adangal regarding Item Nos. 1, 2 to 4 and regarding Chitta,

Adangal in respect of the agricultural lands belonging to Sanjeevi and

Kuppusamy which he had cultivated and from which he derived income to

purchase Items 2 to 4. Nevertheless, the learned Counsel for the Plaintiff

was able to elicit information from the paternal uncle's son Arjunan who

was examined as attesor witness by second Defendant/D.W-3. Arjunan

was examined as D.W-4. During cross-examination, he had admitted that

the properties in Items 2 to 4 were purchased by junior paternal uncle from

the income derived from Item-1 and from other income derived from

cultivating lands, taken on lease. Therefore, the income derived from

cultivation of Item 1 of the property was utilized for purchasing the land.

Therefore, Item 2 to 4 were not exclusively self-acquired properties.

Above all, during the life time of the first Defendant, he had suppressed the

facts that he had encumbered Item Nos. 1 to 4 through execution of a

registered Will in favour of the second Defendant. Therefore, the execution

of the Will by the first Defendant in favour of the second Defendant need

not be considered by this Court in Appeal even though, the attesor and

scribe of the Will were examined. Since it was executed after the notice by

the Plaintiff seeking partition and it was suppressed during the trial by first

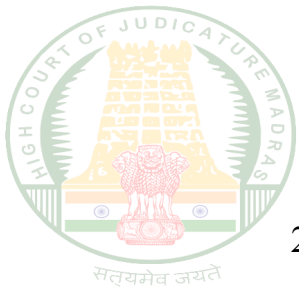


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Defendant and second Defendant. At the appellate stage, the learned

WEB COUNSEL for the Plaintiff as Appellant had relied on the amendment to the

Hindu Succession Act, 2005 in which a woman in the Hindu Family was treated on par with the male members in the family, that means that the daughters are treated on par with sons as coparcener in the Hindu family, and thus, they can succeed to immovable property. Also in the latest Judgment of the Hon'ble Supreme Court in the case of ***Vineetha Sharma Vs. Rakesh Sharma*** reported in ***(2020) 9 SCC 1***, it was held that after the death of the father, the daughter can come and claim partition even if in the said properties the father had not executed any document. Here, to overcome that latest ruling, the Will claimed by the second Defendant is stated to have been executed in his favour by the first Defendant and that the Will is found to be genuine as per the evidence of D.W-4 and D.W-5. At the same time, the Will was suppressed. The factum of Will was neither mentioned in the reply notice, written statement nor during their oral evidence. The date of the Will is prior to the Judgment in the Suit. Therefore, the Court has to draw adverse inference against the conduct of the Defendants 1 and 2 in executing a Will in favour of the second Defendant denying the rightful share to the Plaintiff.

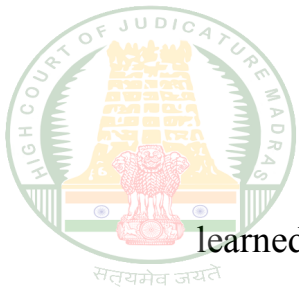


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27. The Courts cannot ignore the law enacted by the Parliament in 2005 when the Hindu Succession Act was amended whereby the daughters were granted rights to succeed to immovable properties and therefore, the claim of the Plaintiff is to be accepted in the light of Hindu Succession Act as amended in 2005, and apart from that, as per the latest ruling in the case of *Vineetha Sharma Vs. Rakesh Sharma* reported in **(2020) 9 SCC 1**. The evidence of first Defendant as D.W-1 was that the Plaintiff was married in the year 1985. Therefore, as per the Hindu Succession Act as amended in the State of Tamil Nadu in the year 1989, she having been married prior to 1989, cannot seek partition.

28. During argument, the learned Counsel for the Plaintiff had submitted arguments claiming that the State Act cannot prevail over the Central Act. The Central Act had come into force in 2004 which is applicable throughout the country. When that be the case, the first Defendant and the second Defendant cannot deny the claim of the Plaintiff. Still, the learned Additional District Judge misdirected himself and accepted the claim of the first Defendant that the properties in Item Nos. 2 to 4 were purchased out of the income derived from cultivating agricultural lands taken on lease, without any proof. Therefore, the Judgment of the



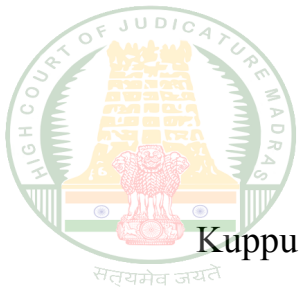
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learned Additional District Judge, Namakkal in O.S.No.172 of 2012 dated 31.10.2014 is erroneous in the light of Hindu Succession Act as amended

in 2005 and as per the Judgment of the Hon'ble Supreme Court in in the case of *Vineetha Sharma Vs. Rakesh Sharma* reported in (2020) 9 SCC 1.

29. The learned Counsel for the Respondents by relying on the rulings in (i) (2011) 9 SCC 451 in the case of *Marabasappa (Dead) by LRs and others Vs. Ningappa (dead) by LRs and others* and (ii) (2018) 16 SCC 465 in the case of *Vinod Kumar Dhall Vs. Dharampal Dhall (Deceased) through his L.Rs.* submitted that there is no presumption regarding jointness. The Plaintiff was able to prove through evidence that the first Defendant, father of the Plaintiff was allotted a share from the joint family properties that was admitted by the first Defendant in his evidence. But he denied the claim of the Plaintiff that properties in Items 2-4 were purchased from the income derived out of property in Item No.1. However, this denial was not proved as per Sections 102 and 103 of the Indian Evidence Act. The claim made by the Defendant in the written statement that he acquired properties in Item Nos. 2 to 4 from the income derived from cultivating lands belonging to Sanjeevi Naidu and

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A.S.No.77 of 2015

Kuppusamy Naidu of Thuthikulam (where the suit properties are situated),

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but not from the property that was allotted to the first Defendant, is found to be contradictory. That is why, he did not attempt to mark documents regarding income from those properties. Therefore, the evidence of the first Defendant is merely evasive denial. He had not proved his claim through acceptable evidence. Therefore, in the absence of acceptable evidence, the Court has to draw adverse inference against the Defendants. Therefore, these rulings will not helpful to the case of the Defendants. Hence, the same are rejected.

30. The learned Counsel for the Respondents relied on yet another reported ruling of this Court in **2009 (4) CTC 440** in the case of ***K.V.Ramasamy vs. K.V.Raghavan and others.*** The evidence adduced through D.W-3 to D.W-5 and Ex.B-1 after remand by this Court will not help the Defendants case as there was no mention of it in the pleadings by the Defendants. Therefore, because of the suppression of those facts, the Court need not give due weightage. Hence, it can be taken that Ex.B-1 was created by the first and second Defendants to deny the Plaintiff's due claim and to defeat the Parliamentary intent of granting right to Hindu women to immovable properties on par with the male members as per the



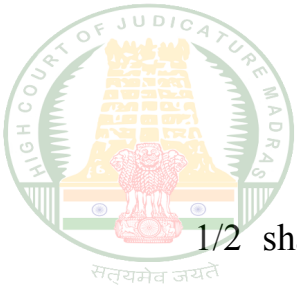
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2005 amended Act to Hindu Succession Act. Therefore, this ruling is also rejected.

31. In the light of the above discussions, **the points for determination are answered in favour of the Plaintiff/Appellant and against the Defendants/Respondents.** The Judgment and Decree dated 31.10.2014 made in O.S.No.172 of 2012 on the file of the learned Additional District Judge, Namakkal, is found perverse and the same is to be set aside. The Plaintiff is entitled to partition in the property in Items 1 to 4.

In the result, this *Appeal Suit is allowed.* The Judgment and Decree dated 31.10.2014 made in O.S.No.172 of 2012 on the file of the learned Additional District Judge, Namakkal, is set aside.

The preliminary decree for partition is declared regarding 1/2 share since the father died pending Appeal, the relief sought by the Plaintiff for 1/3rd share during trial is moulded to 1/2 share by the Trial Court. The only legal heirs are the Plaintiff and second Defendant. Therefore, the properties are divided equally (1/2 share). Preliminary decree is granted for



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1/2 share in favour of the Plaintiff. The Plaintiff is directed to file

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appropriate petition for final decree proceedings before the learned Additional District Judge. The learned Additional District Judge is directed to dispose of final decree application within a period of one year from the date of filing of Application. No costs.

08.07.2025

dh

Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order



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To

1. The Additional District Judge,
Namakkal.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

dh

Judgment made in
A.S.No.77 of 2015

08.07.2025