



A.S.No.32 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:30.07.2025

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.32 of 2023

and

C.M.P.No.1214 of 2023

Sivasundaram Pillai,
S/o Tharma Pillai,
Door No.7/5, Sakthi Vinayagar Kovil Street,
Velankanni Village,
Kilvelur Taluk,
Nagapattinam Munsifi.

..1st Defendant/Appellant

/versus/

1.Amudha,
W/o Rathinasabapathy

2.Vigneswaran,
S/o Rathinasabapathy

3.Vasanth
S/o Rathinasabapathy
1 to 3 were formerly residing at
Door No.7/5,
Sakthi Vinayagar Kovil Street,
Velankanni Village,
Kilvelur Taluk,
Nagapattinam Munsifi.



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Now residing at
Door No.1/153, North Street,
North Poigainallur Village.

..Plaintiffs/Respondents 1 to 3

4.Parvathi,
W/o Karthikesan,
Railway Street East,
Vedaraniyam,
Vedaraniyam Taluk and Munsif.

5.Dhanalakshmi,
W/o Dakshinamoorthy,
North Street,
North Poigainallur Village,
Nagapattinam Taluk and Munsifi.

6.Sreemani,
W/o Arumugam,
Door No.1/165, North Street,
North Poigainallur Village,
Nagapattinam Taluk and Munsifi.

..Defendants 2 to 4/
Respondents 2 to 4

Appeal Suit has been filed under 96 of the Code of Civil Procedure read with Order XLI Rule 1 of C.P.C., to modify the judgment and decree dated 27.09.2022 made in O.S.No.29 of 2016 on the file of the learned Principal District Judge, Nagapattinam and allow this appeal and grant such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Appellant :Mr.T.A.Shagul Hameed
For Respondents :Mr.M.S.Palanichamy for R1 to R3
Exparte for R4 toR6

JUDGMENT



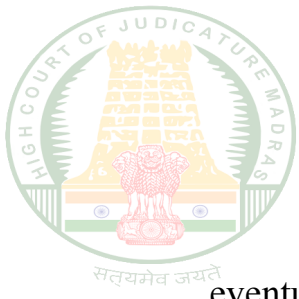
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Suit for partition filed by the widow of Rathinasabapathy and her two minor children, partly allowed the suit holding that out of 3 items of suit properties shown in the suit schedule property, the first and second items of the property are inherited by the children, the sons of Tharma Pillai and the third item of the suit property is the self acquired property of the first defendant, which as purchased on 13.07.2009 from one Sivanesan much after the demise of his brother Rathasabapathy.

2.The trial Court decree passed partially allowing the suit for partition, is challenged by the first defendant through the present Appeal Suit.

3.The case of the plaintiffs is that the suit items 1 to 3 are the ancestral properties that devolved on the sons of Dharmapillai. In the first item of the suit property, the members of the first plaintiff's family and the first defendant's family were jointly residing and caring on business and agriculture activity. During the life time of Rathanasabapathy, he along with his elder brother, the first defendant was running a Soda company by name 'Rathna Soda Company', but the business later incurred losses and



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eventually, Rathnasabapathy died in the year 1996. Till then, the plaintiffs were residing in the first item of the suit schedule property. After demise of the first plaintiff's husband, she went to her maternal home. Claiming that the suit properties are the joint family property held and enjoyed jointly by the plaintiffs and the defendants, the partition suit is filed seeking $\frac{1}{2}$ share in the property mentioned in schedule 1, 2 and 3.

4. The first defendant filed a written statement with averments that the suit properties are his exclusive property. Though in the first item property being the residential building, he and his brother were jointly enjoyed, after the demise of his brother Rathnasabapathy in the year 1996, the first plaintiff left the home along with her minor children and residing near her brother's house for more than 20 years. Thereby she is ousted from claiming any share in the property. The specific contention of the first defendant is that the items 2 and 3 were purchased by him and the revenue records stands in his name and he is in exclusive possession as the owner of the property.

5. The female heirs of Dharmapillai, who were arrayed as defendants

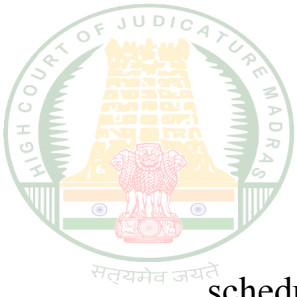


2 to 4 did not participate in the proceedings and they were set exparte.

6. Before the trial Court, the first plaintiff examined as PW-1. The first defendant was examined as DW-1. On behalf of the plaintiffs, 9 documents were marked and on the side of the defendants, two documents were marked.

7. The trial Court, after examining the revenue documents and the oral evidence, held that items 1 and 2 of the suit schedule property are the joint family property in which the plaintiffs 1 to 3 are entitled for $\frac{1}{2}$ share. In so far as the third item of the property, it is proved to be purchased by the first defendant on 13.07.2009 under Ex.B1 and therefore, it is the exclusive property of the first defendant.

8. In the appeal, it is contended by the defendants that except item No.1, which is dwelling unit and the revenue records stands jointly, the other two properties (items 2 and 3) are not the ancestral property. The trial Court, while excluding item No.3, failed to exclude item No.2 of the suit



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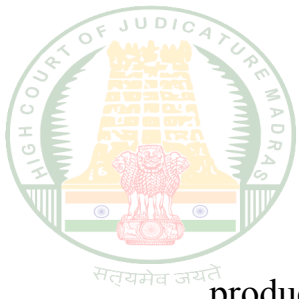
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schedule property. Item 2 of the suit schedule property was purchased by the first defendant and the revenue records are mutated and stands in the name of the first defendant alone, unlike the first item property.

9. Point for determination:-

Whether the trial Court was right in holding the items 1 and 2 of the suit properties are the property of Dharma Pillai and whether right in allotting $\frac{1}{2}$ share to the plaintiffs.

10. The oral evidence of the plaintiffs and the nine exhibits marked in their support, reveals that the gramanatham patta for the first item of the property stands jointly in the name of the first defendant and his deceased brother Rathnasabapathy. In respect of the second item and the third item of the property, chitta and patta stands exclusively in the name of the first defendant. However, the source for the property shown as items 2 and 3, the 1st defendant is able to show Ex.B1 sale deed dated 18.11.2021 in respect of the third item property, but no evidence to show that the second item property was purchased by him. It is the agriculture land. No title deed

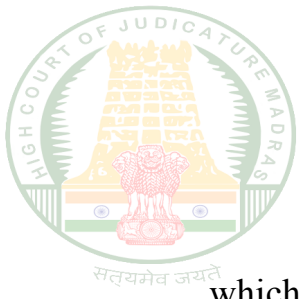


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produced. Except the patta and chitta in his name, the source of title has not been established by the first defendant. Hence, it is presumed to have been devolved from Dharma Pillai. Hence, it is to be held that the items 1 and 2 of the suit schedule properties are the properties of Dharma Pillai and it should devolve on his legal heirs by inheritance. The muchiliga (agreement) marked as Ex.A1, cannot be looked into for any purpose since the first defendant is not a signatory. Two of the female heirs of Dharma Pillai have also not signed.

11. As rightly pointed out by the trial Court, the first page of Muchaliga-Ex.A1, there is no signature of the parties. Therefore, the trial Court has rightly ignored the Muchiliga for any consideration. Having ignored the said muchiliga marked as Ex.A1, the trial Court ought to have divided the property left by Darma Pillai among all his legal heirs equally. Presuming that the daughters of Dharma Pillai had left from the family and after the marriage they have no interest in the property, the property been divided equally among the male members excluding the female heirs. Thus, non application of mind of the trial Court is manifestly seen in the manner in



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which the division of the property was effected. Unmindful of the fact that the inheritance is by intestate succession and not by co-parcenary property is shared with male descendants alone. In any case, after the amendment to the Hindu Succession Act, the devolution ought to have been in terms of the Amended Act provision giving equal right to the female heirs.

12. In view of the above, this Appeal Suit is partly allowed by modifying the share in items 1 and 2 of the suit schedule property as $\frac{1}{5}^{\text{th}}$ share each, instead of $\frac{1}{2}$ share each. The five children of Dharma Pillai are entitled for $\frac{1}{5}$ share each in the items 1 and 2 of the suit schedule property. Insofar as the items 3 of the suit property is concerned, it being the exclusive property of the first defendant, the dismissal of the suit in respect of the third item property is confirmed.

13. As a result, **this Appeal Suit is partly allowed with the above modification.** No order as to costs. Consequently, connected Miscellaneous Petition is closed.



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Index:yes/no
Internet:yes
Speaking order/non speaking order
Neutral citation:yes/no
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To

- 1.The Principal District Judge, Nagapattinam.
- 2.The Section Officer, V.R.Section, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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