

A.S.NO.36 OF 2021**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED : 09.07.2025**

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CORAM:
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.36 OF 2021**AND****CMP NO. 2412 OF 2021**

S.Mani

... Appellant /
 3rd Defendant

Vs.

1.Kaliammal (Died)

2.Kannammal

3.Saradhamani

... Respondents 1 to 3 /
 Plaintiffs

4.Suseela

5.Ponni

... Respondents 4 & 5 /
 Defendants 1 & 2

6.Sankaran. P

7.Periyammal

(First respondent died. Respondents 6 & 7 are brought on record as legal representatives of deceased – first respondent vide Order of this Court dated March 19, 2025 made in CMP Nos.22860, 22882 & 22886/2024 in A.S.No.36/2021)

... Respondents 6 & 7

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated November 27, 2020 passed in O.S.No.167 of 2014 by the learned Additional District Judge, Namakkal.



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For Appellant : Mr.N.Manokaran

For Respondents : Mr.C.Jagadish
1 to 3 and 6 & 7

For Respondents : No appearance
4 and 5

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated November 27, 2020 passed in O.S.No.167 of 2014 by the 'Additional District Court, Namakkal' ['Trial Court' for brevity], the third defendant therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. During pendency of the appeal, the first respondent / first plaintiff passed away leaving behind the respondents 6 and 7 as her legal heirs / legal representatives. They were brought on record as legal representatives of deceased – first respondent vide Order of this Court dated March 19, 2025 made in CMP Nos.22860, 22882 & 22886/2024 in the Appeal Suit.

3. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.



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PLAINTIFFS' CASE

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4. The plaintiffs and the defendants are daughters of Kalianna Gounder and Athayiammal. Athayiammal passed away on September 14, 2001 and Kalianna Gounder passed away on May 9, 2014. The Suit Properties are ancestral properties in the hands of plaintiffs and defendants' father - Kalianna Gounder. No partition took place between the plaintiffs and the defendants before commencement of Act No.39 of 2005. The plaintiffs and the defendants and their father - Kalianna Gounder are co-parceners each entitled to 1/7 interest and share in the Suit Properties. The Suit Properties are in joint possession and enjoyment of the plaintiffs and defendants. Kalianna Gounder has no power or authority to execute a Settlement Deed in respect of entirety of the Suit properties. The third defendant claims that Kalianna Gounder executed a registered Settlement Deed in favour of her on July 15, 2013. The said Settlement Deed is invalid and not binding the plaintiff. Hence, the plaintiffs sent a legal notice on June 19, 2014 seeking partition. Even after receipt of the notice, the defendants did not come forward to divide the Suit Properties. Hence, the plaintiffs filed a Suit for declaration that the Settlement Deed dated July 15, 2013 executed by father - Kalianna Gounder in favour of the third defendant is invalid as well as for partition



seeking to divide the Suit Properties into six equal shares and allot three such shares to the plaintiffs and consequently, put the plaintiffs into separate possession of the Suit Properties.

DEFENDANTS' CASE

5. The first defendant filed written statement and the same was adopted by the second defendant. The third defendant filed a separate written statement.

5.1. The sum and substance of the defendants' case is that the Suit Properties are absolute properties of Kalianna Gounder and not ancestral properties as alleged by the plaintiffs. The Suit Properties were in exclusive possession and enjoyment of Kalianna Gounder and never was in joint possession and enjoyment as alleged by the plaintiffs. It is true that Athayiammal passed away on September 14, 2001, and Kalianna Gounder passed away on May 9, 2014 intestate.

5.2. One male child was born to Kalianna Gounder and Athayiammal, but unfortunately passed away at the age of one year. Father - Kalianna Gounder and the male child were each entitled to $\frac{1}{2}$

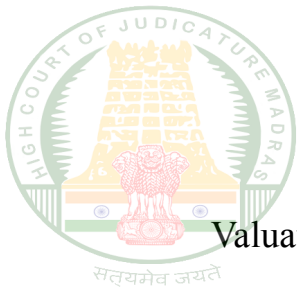


share and after the demise of male child, his $\frac{1}{2}$ share devolved upon

Athayiammal. Hence, the plaintiffs are not entitled to any share in the Suit Properties.

5.3. Kalianna Gounder during his lifetime conducted the marriage of the plaintiffs as well as the defendants 1 and 2, and gave sufficient *Seervarisai* to them. Further, the third defendant alone looked after him during his old-age and hence, in the year 2013, Kalianna Gounder along with the plaintiffs and the defendants, entered into a family arrangement agreeing that the third defendant shall be given the entire Suit Properties and that the plaintiffs and the defendants 1 and 2 shall split Rs.40,00,000/- held in cash by Kalianna Gounder equally.

5.4. Accordingly, the plaintiffs and the defendants 1 and 2, each of them received Rs.8,00,000/-. In order to avoid the excess stamp duty for a Partition Deed, with the consent of all, Kalianna Gounder executed Gift Settlement Deed dated July 15, 2012 in favour of the plaintiff in respect of the Suit Properties and pursuant to the same possession was also handed over. Since then the third defendant has been in separate possession and enjoyment of the Suit Property. The Court-Fee paid under Section 37 (2) of the Tamil Nadu Court-Fee and Suits



Valuation Act, 1955 is incorrect. Accordingly, he prayed to dismiss the Suit.

PLAINTIFFS' REPLY STATEMENT

6. In response to the written statements filed by the defendants, the plaintiffs filed a reply statement denying the averments stated in the written statements.

TRIAL COURT

7. Based on the above pleadings, the Trial Court framed the following issues:

- '1. *Whether the Plaintiffs are entitled to get declaration that settlement deed, dated 15.07.2013 executed by father of the plaintiffs to and in favour of the 3rd defendant is null and void in the plaint or not?*
2. *Whether the Plaintiffs are entitled to get preliminary decree of partition for 3/6 shares over the suit schedule property by metes and bounds as prayed for in the plaint or not?*
3. *To what other relief?'*

8. At trial, second plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.11 were marked on the side of the plaintiffs. On the side of the defendants, second defendant was examined as D.W.1 and the third



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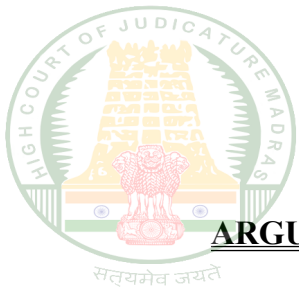
defendant was examined as D.W.2 and Ex-B.1 to Ex-B.5 were marked.

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9. After full-fledged trial, the Trial Court concluded that the Suit Item Nos.1 to 4 are ancestral properties in the hands of Kalianna Gounder. Suit Item No.5 is a *Natham* property, and Patta relating to the same was issued in favour of the plaintiffs and the defendants' father - Kalianna Gounder. Hence, Kalianna Gounder had no right to execute the Gift Settlement Deed in respect of the entire Suit Properties. The Settlement Deed is valid in respect of Kalianna Gounder's 1/7 share in Item Nos.1 to 4 and in respect of entire Suit Item No.5. Accordingly, *qua* Suit Item Nos.1 to 4, the Trial Court decreed the Suit in part and declared that the Settlement Deed dated July 15, 2013 is not valid and unenforceable as far as the plaintiffs' 3/7 share in Suit Item Nos.1 to 4 is concerned, and passed a preliminary decree for partition in favour of the plaintiffs directing division of Suit Item Nos.1 to 4 and allotment of 3/7 shares in favour of the plaintiffs. *Qua* Suit Item No.5, the Trial Court dismissed the Original Suit.

10. Feeling aggrieved, the third defendant has preferred this First Appeal under Section 96 read with Orders XLI Rule 1 of the CPC.

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ARGUMENTS

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11. Mr.N.Manokaran, learned Counsel for the appellant / third defendant argues that the Trial Court failed to consider the fact that the plaintiffs and defendants 1 and 2 are already married and have been given abundant *Seervarisai* by their father, and the third defendant alone looked after his father during his old age. Further, the Suit Properties are separate properties of Kalianna Gounder. Kalianna Gounder possessed a sum of Rs.40,00,000/- in cash. During his lifetime, in a family arrangement in 2013, Kalianna Gounder divided the said amount equally among the plaintiffs and the defendants 1 and 2, and executed Ex-A.1 = Ex-B.3 - Gift Settlement Deed in favour of the third defendant with the consent of the plaintiffs and the defendants 1 and 2. Now, the plaintiffs have turned around and filed a Suit against the oral family arrangement. The Trial Court failed to consider the circumstances in which Ex-A.1 = Ex-B.3 - Gift Settlement Deed was executed. Further, the Trial Court failed to consider that the plaintiffs are estopped from contending otherwise from Ex-A.1 = Ex-B.3. Accordingly, he prays to allow the appeal and set aside the Trial Court's Judgment and Decree and dismiss the Suit.

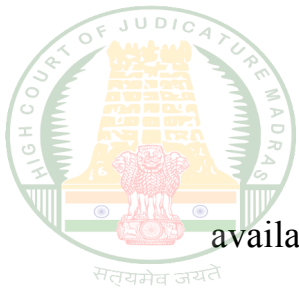


12. Per contra, Mr.C.Jagadish, learned Counsel appearing for

the respondents 1,2,3,6 and 7 contends that the Suit Properties are ancestral properties. Ex-A.10 and Ex-A.11 - Sale Deeds would prove that Kalianna Gounder had ancestral properties apart from the Suit Properties. Further he contends that in Ex-A.1 = Ex-B.3 – Gift Settlement Deed, it has been described that the properties covered under the Deed are ancestral properties. Hence, the defendants cannot now turn around and say that the properties are absolute properties of Kalianna Gounder. Merely because Patta stands in the name of Kalianna Gounder, one cannot infer that the properties are his separate properties. The plaintiffs *prima facie* established that the Suit Properties are ancestral properties. Hence, the onus shifts to the defendants to prove that the Suit Properties are separate properties and no evidence have been adduced to substantiate their claim. The Trial Court after considering both sides evidence, decreed the Suit in part. There is no warrant to interfere in it. Accordingly, he prays to dismiss the appeal.

DISCUSSION

13. Heard on either side. Perused the entire evidence

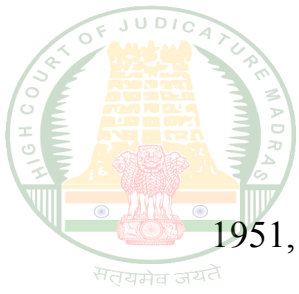


available on record. The points that arise for consideration in this Appeal

Suit are as follows:

- (i) *Whether the Suit Properties are ancestral properties as alleged by the plaintiffs or separate properties as alleged by the defendants ?*
- (ii) *Whether the alleged oral family arrangement is proved?*
- (iii) *Whether Ex-A.1 = Ex-B.3 - Settlement Deed dated July 15, 2013 is valid and binding on the plaintiffs ?*

14. The Suit Properties consists of 5 items, among which Suit Item No.1 to 4 are agricultural lands and Suit Item No.5 is a house property situate in *Grama Natham* Land. The plaintiffs and the defendants are daughters of Kalianna Gounder and Athayiammal. Athayiammal passed away on September 14, 2001 and Kalianna Gounder passed away on May 9, 2014. Kalianna Gounder executed Ex-A.1 = Ex-B.3 – Gift Settlement Deed dated July 15, 2013. During Kalianna Gounder's lifetime, Kalianna Gounder, the plaintiffs, the defendants and Athayiammal, sold some properties through Ex-A.10 - Sale Deed dated May 20, 1978 and Ex-A.11- Sale Deed dated June 22, 1989. Further, a male child was born to Kalianna Gounder and Athayiammal on May 2,

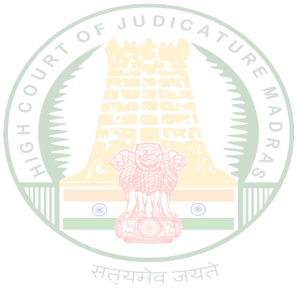


1951, and passed away at the age of one year on May 15, 1952. His birth certificate and death certificate has been marked as Ex-B.1 and Ex-B.2.

There is no dispute with the above facts.

POINT NO.(I)

15. The case of the plaintiffs is that the Suit Properties are ancestral properties. On the other hand, the case of the defendants is that the Suit Properties are separate properties. Needless to mention that the initial burden is upon the plaintiffs to prove their case. In this case, the plaintiffs side marked Ex-A.10 and Ex-A.11 - Sale Deeds. Ex-A.10 - Sale Deed was executed by Kalianna Gounder, his wife Athayiammal, the plaintiffs and the defendants. In this document, there is no reference about the character of property. A close reading of the document would reveal that the Sale Deed was executed to meet out the marriage expenses of first plaintiff. Ex-A.11 was executed on June 22, 1989 in favour of one Thiagarajan. In the said document, it has been specifically recited that the Suit Properties covered under the Sale Deed were ancestral and joint family properties. For ease of reference, the relevant portion is extracted hereunder:



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! . . 1 லக்கமிட்டவருக்கு பாகப்பிரிவினைப் பத்திரம் மூலமாயும் பூர்வீகமாயும் எங்களில் 2 லக்கமிட்டவருக்கு புருஷாத்தமாயும் எங்களில் 3, 4, 5, 6, 7, 8 லக்கமிட்டவர்களுக்கு பூர்வீகமாகவும் இந்து வாரிசு உரிமைச் சட்டப்படி பாத்தியமும் எங்களில் 1 நபரின் அனுபவத்தில் உள்ளதுமான கீழ்க்கண்ட புன்செய் உழவுடை நிலத்தினை . . . '

16. The factum of execution of Ex-A.1 = Ex-B.3 – Gift Settlement Deed is admitted by the plaintiffs. The plaintiffs case is that Kalianna Gounder had no right to execute Ex-A.1 = Ex-B.3 – Gift Settlement Deed, since the properties covered thereunder are ancestral properties. In Ex-A.1 = Ex-B.3, it has been described that the properties covered under the Deed are all ancestral properties in hands of Kalianna Gounder. In view of the recitals found in Ex-A.1 = Ex-B.3 – Gift Settlement Deed and Ex-A.11 – Sale Deed, the plaintiffs have *prima facie* established that the Suit Properties are ancestral properties in the hands of Kalianna Gounder.

17. Now, the onus shifts to the defendants to prove their defence. According to the defendants, Ex-B.4 – Patta Transfer Order

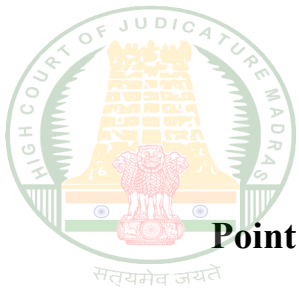


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shows that Patta in respect of Suit Item Nos.1 to 4 initially stood in the name of Kalianna Gounder and was later mutated in name of the third defendant. It is natural for the revenue records to have been in the name of the head of the family / father – Kalianna Gounder. Merely because the revenue records initially stood in the name of the Kalianna Gounder, it cannot be inferred that the Suit Properties are his separate properties. The defendants have not discharged their onus to prove that Suit Item Nos.1 to 4 are separate properties and hence, the Trial Court is right in concluding that Item Nos.1 to 4 of the Suit Properties are ancestral properties.

18. Regarding Item No.5 of the Suit Properties, admittedly, the same is a house property situate in *Grama Natham* Land and *Natham* Patta [found in Ex-A.1=Ex-B.3–Gift Settlement Deed] has been issued in the name of Kalianna Gounder. As far as the *Natham* Patta is concerned, it is issued in recognition of one's occupation of the property. That means, considering the occupation of the Kalianna Gounder, *Natham* patta was issued in his name. Hence, the 5th item of Suit Properties is a separate property of Kalianna Gounder. The Trial Court rightly held so.

19. Thus, there is no need to interfere with the finding of the Trial Court with respect to the nature and character of the Suit Properties.



Point No.(i) is answered accordingly.

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POINT NO.(II)

20. The defendants pleaded that oral family arrangement took place during the lifetime of Kalianna Gounder wherein a sum of Rs.40,00,000/- held in cash by Kalianna Gounder was divided among the plaintiffs and the defendants 1 and 2 equally, and the Suit Properties were given to the third defendant. They further pleaded that in order to avoid stamp duty, the family arrangement was not reduced into writing as a Partition Deed and instead, Ex-A.1 = Ex-B.3 = Gift Settlement Deed was executed in favour of third defendant in respect of Suit Properties. It is settled law that oral family arrangement is valid. But it needs to be proved. The burden is upon the person, who pleads oral family arrangement [See Judgment of Hon'ble Supreme Court in *Kale -vs- Deputy Director of Consolidation*, reported in (1976) 3 SCC 119, as well as Judgment of this Court in *A.C.Lakshmipathy -vs- A.M.Chakrapani Reddiar*, reported in 2001 (1) CTC 112 affirmed by Hon'ble Supreme Court in *Korukonda Chalapathi Rao -vs- Korukonda Annapurna Sampath Kumar*, reported in (2022) 15 SCC 475. In this case, though the



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defendants pleaded oral family arrangement in their written statement, they miserably failed to prove the existence of a sum of Rs.40,00,000/- in the hands of Kalianna Gounder during his lifetime and the equal division of the same among to plaintiffs and defendants 1 and 2, in consideration of which, they gave consent to their father - Kalianna Gounder to execute Ex-A.1 = Ex-B.3 - Gift Settlement Deed in favour of the third defendant in respect of Suit Properties. There is no evidence available on record to prove the said facts. In short, the oral family arrangement is not proved. **Point No.(ii) is answered accordingly in favour of the plaintiffs and the defendants.**

POINT NO.(III)

21. As already stated, Suit Item Nos.1 to 4 of the Suit Properties are agricultural lands and ancestral in character in the hands of Kalianna Gounder. Kalianna Gounder belongs to Hindu religion, and the plaintiffs and the defendants are also Hindu. Hence, the Hindu Succession Act, 1956 is the applicable law in this case. In view of the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005), the plaintiffs and the defendants are co-parceners along with Kalianna Gounder. Hence,

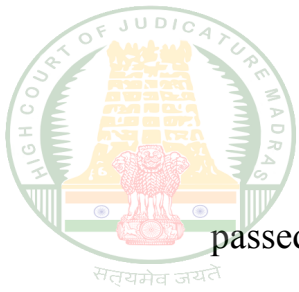


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the plaintiffs, defendants and Kalianna Gounder formed a co-parcenary and each entitled to 1/7 share and interest in the co-parcenary property. In view of sub-section 3 of Section (6) of the Hindu Succession Act, 1956, Kalianna Gounder is entitled to 1/7 share in the Suit Properties. If Kalianna Gounder wants to alienate the Suit Properties, he can alienate his 1/7 share alone. He cannot alienate or convey more than that. Hence, Ex-A.1 = Ex-B.3 - Settlement Deed is valid only in respect of his 1/7 share in Item Nos.1 to 4 and in respect of entire Item No.5 of the Suit Properties, since Suit Item No.5 is a separate property of his.

22. The contention of the learned Counsel for the appellant / 3rd defendant that Ex-A.1 = Ex-B.3 Settlement Deed is void, is not accepted for the reason that Kalianna Gounder has every right to gift his 1/7 share in the Suit Properties. Therefore, the Trial Court was right in holding that Ex-A.1 = Ex-B.3 is valid in respect of Kalianna Gounder's 1/7 share in Suit Item Nos.1 to 4 and valid entirely *qua* Item No.5 and hence, there is no need to interfere with it. **Point No.(iii) is answered accordingly.**

23. As regards the male child of Kalianna Gounder who



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passed away at the age of one, as per ***Vineetha Sharma's Case*** [Judgment of the Hon'ble Supreme Court in *Vineeta Sharma -vs- Rakesh Sharma*, reported in (2020) 9 SCC 1], the plaintiffs, the defendants and Kalianna Gounder formed a coparcenary and are entitled to equal share in the coparcenary property. No actual partition took place before December 20, 2004. Notional partition is meant only to discern the share of co-parceners and cannot be considered as an actual partition. In this regard, it is apposite to refer to the following paragraphs of the Judgment in ***Vineeta Sharma's Case***:

'109. When the proviso to unamended Section 6 of the Act of 1956 came into operation and the share of the deceased coparcener was required to be ascertained, a deemed partition was assumed in the lifetime of the deceased immediately before his death. Such a concept of notional partition was employed so as to give effect to Explanation to Section 6. The fiction of notional partition was meant for an aforesaid specific purpose. It was not to bring about the real partition. Neither did it affect the severance of interest nor demarcated the interest of surviving coparceners or of the other family members, if any, entitled to a share in the event of partition but could not have claimed it. The entire partition of the coparcenary is not provided by deemed fiction; otherwise, coparcenary could not have continued which is by birth, and the death



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of one coparcener would have brought an end to it. Legal fiction is only for a purpose it serves, and it cannot be extended beyond was held in State of Travancore - Cochin v. Shanmugha Vilas Cashew Nut Factory ; Bengal Immunity Co. Ltd. v. State of Bihar, and CED v. S.Harish Chandra. A legal fiction created in law cannot be stretched beyond the purpose for which it has been created, was held in Mancheri Puthusseri Ahmed thus:

“8. . . . In the first place the section creates a legal fiction. Therefore, the express words of the section have to be given their full meaning and play in order to find out whether the legal fiction contemplated by this express provision of the statute has arisen or not in the facts of the case. Rule of construction of provisions creating legal fictions is well settled. In interpreting a provision creating a legal fiction the court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the section by which it is created. It cannot also be extended by importing another fiction.



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... ..

137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or



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male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.”

24. Further, any alienation before December 20, 2004 is saved under the proviso to amended Section 6 (1) of the Hindu Succession Act, 1956. Hence, Ex-A.10 – Sale Deed dated May 20, 1978 and Ex-A.11- Sale Deed dated June 22, 1989 are saved and the properties covered thereunder are not to be partitioned.

25. As regards Court Fee, the plaintiffs, being co-sharers of the Suit Item Nos.1 to 4, are deemed to be in joint possession and enjoyment of the same and hence, the Court Fee paid under Section 37 (2) of the Tamil Nadu Court-Fee and Suits Valuation Act, 1955 is correct.

26. In view of the foregoing narrative, there is no need to interfere with the Trial Court's Judgment and Decree. There is no merit in the Appeal Suit. Accordingly, the Appeal Suit deserves to be dismissed.



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RESULT

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27. Resultantly, the Appeal Suit is dismissed and the Judgment and Decree dated November 27, 2020 passed in O.S.No.167 of 2014 by the learned Additional District Judge, Namakkal is confirmed. In view of the facts and circumstances of this case, the parties shall bear their own costs. Consequently, connected Civil Miscellaneous Petition is closed.

09.07.2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To

The Additional District Judge
Namakkal.



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R. SAKTHIVEL, J.

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