



A.S.NO.117 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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JUDGMENT RESERVED ON : 26 / 06 / 2025

JUDGMENT PRONOUNCED ON : 26 / 09 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.117 OF 2019

1.Chandra
D/o. Late Madhaiyan

2.Rani
D/o. Late Madhaiyan

3.Jayanthi
D/o. Late Madhaiyan

... Appellants /
Plaintiffs

Vs.

1.Rajendran
S/o. Late Rajalingam

2.Murugan
S/o. Late Rajalingam

3.Somu
S/o. Late Rajalingam

4.Govindaraj
S/o. Late Rajalingam

5.Kundhiammal
W/o. Duraisamy



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6.Kamala
W/o. Rajendran

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7.Vijaya
W/o. Subburu

8.Manickammal
W/o. Ramasamy

9.Mani
S/o. Ayyandurai

... Respondents /
Defendants

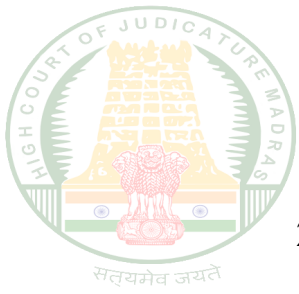
PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated October 24, 2018 passed in O.S.No.221 of 2015 by the III Additional District Court, Salem.

For Appellants	:	Ms.Zeenath Begum
For Respondents 1 to 8	:	Mr.T.S.Vijayaraghavan
For Respondent-9	:	Mr.K.V.Shanmuganathan

JUDGMENT

Feeling aggrieved by the Judgment and Decree dated October 24, 2018 passed in O.S.No.221 of 2015 by the 'III Additional District Court, Salem' ['Trial Court' for brevity], the plaintiffs therein have filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

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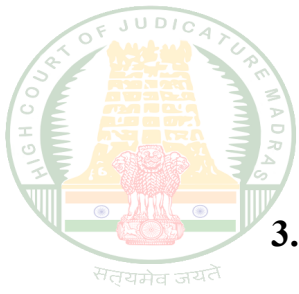
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2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFFS' CASE

3. Summa Iruppa Gounder had three children namely Rajalingam, Madhaiyan and Manickammal. The plaintiffs are the daughters of Madhaiyan. The defendants 1 to 7 are the sons and daughters of Rajalingam. The 8th defendant is the said Manickammal. The plaintiffs and the defendants 1 to 8 constitute a Hindu undivided joint family. The 9th defendant is the illegal purchaser of a portion of the Suit Properties.

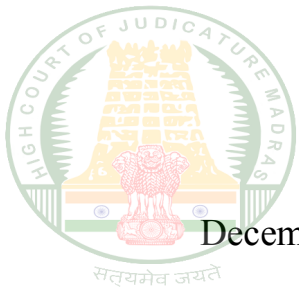
3.1. The Suit Properties are the undivided joint family properties of the plaintiffs and the defendants 1 to 8. A portion of the Suit Properties were originally purchased out of the joint family nucleus and income, in the name of the Summa Iruppa Gounder through two registered Sale Deeds, one dated January 20, 1947 and another November 30, 1959. From and out of the income derived from the said properties, another portion of the Suit Properties were purchased in the name of said Summa Iruppa Gounder vide Sale Deed dated March 6, 1995.



3.2. Rajalingam passed away 15 years ago leaving behind the defendants 1 to 7 as his legal heirs to succeed his estate. Madhaiyan passed away 33 years ago leaving behind his wife - Lakshmi and the plaintiffs, as his legal heirs to succeed his estate. After the demise of Madhiayan, his wife - Lakshmi re-married and settled down with her husband in Bombay.

3.3. Summa Iruppa Gounder possessed and enjoyed the Suit Properties along with the plaintiffs and defendants 1 to 8, and passed away intestate in 2000. After the demise of Summa Iruppa Gounder, the plaintiffs have been demanding the defendants 1 to 8 to effect partition of the Suit Properties and to allot their lawful share. However, the defendants 1 to 4 denied the plaintiffs' share in the Suit Properties and informed them that the Suit Properties were already alienated during 1995 in their favour and in favour of the 9th defendant.

3.4. The plaintiffs then obtained certified copies of the documents created in respect of the Suit Properties and came to know that without any legal sanction or right, Summa Iruppa Gounder had created Sale Deed dated March 6, 1995 in respect of a portion of the Suit Properties in favour of the 9th defendant as well as registered Gift Settlement Deed dated



December 29, 1995 in favour of the defendants 1 to 4 and their yet another

brother Annadurai in respect of a portion of the Suit Properties. The said Annathurai passed away six years ago. At the time of execution of Gift Settlement Deed, the defendants 3, 4 and the said Annathurai were minors and their father - Rajalingam represented them as their guardian. According to the plaintiffs, Summa Iruppa Gounder had no individual right or title over the Suit Properties to execute those documents as the Suit Properties were purchased in his name as *Kartha* of the joint family and out of the joint family income. Therefore, the Suit Properties are absolutely undivided joint family properties and the plaintiffs who are the children of deceased - Madhaiyan, are entitled for share in the Suit Properties. Hence, the plaintiffs have come forward with the present Suit for declaration that the documents executed by Summa Iruppa Gounder are null and void, and for partition and separate possession and also for permanent injunction.

DEFENDANTS' CASE

4. The third defendant filed written statement denying the allegations made by the plaintiff in the plaint. The same was adopted by the Defendant Nos.2 and 4 to 8. The 9th defendant remained *ex-parte*



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before the Trial Court. The relationship between the parties is admitted. It is denied that the plaintiffs and defendants 1 to 8 constituted a Hindu undivided joint family.

4.1. According to the defendants, the Suit Properties are the self-acquired property of Summa Iruppa Gounder, who was engaged in Cattle Feed Business. During his lifetime, he sold a portion of the Suit Properties to the 9th defendant and executed a registered Gift Settlement Deed attested by the 8th defendant in favour of Defendant Nos.1 to 4 and their late brother – Annathurai. Possession was handed over and the Gift was acted upon. Neither the plaintiffs nor their father – Madhaiyan was in joint possession of Suit Properties at any of time. Stating so, they sought to dismiss the Suit.

REPLY STATEMENT

5. During trial, the defendants marked Certified copy of Will dated November 30, 1982 (Ex-B.2) allegedly executed by Summa Iruppa Gounder in favour of Defendant Nos.1 to 4 and any other male heirs. In response, the second plaintiff filed reply statement questioning the genuineness and validity of the Will, on December 6, 2017 after obtaining

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leave from Trial Court under Order VIII Rule 9 of CPC vide Order dated

January 17, 2018 passed in I.A.No.671 of 2017. The first and third

plaintiffs adopted the reply statement.

TRIAL COURT

6. Based on the pleadings made before trial, the Trial Court framed the following issues:

- '1. Whether the plaintiff is entitled for the relief of declaration as the Sale Deed dated March 6, 1995 as null and void?*
- 2. Whether the plaintiff is entitled for the relief of declaration as the Gift Settlement Deed dated December 29, 1995 as null and void?*
- 3. Whether the plaintiff is entitled for partition as prayed for?*
- 4. Whether the plaintiff is entitled for permanent injunction as prayed for?*
- 5. Whether the Suit Properties are self acquired properties of Summa Iruppa Gounder?*
- 6. To what other relief?'*

7. At trial, on the side of the plaintiffs, second plaintiff was examined as P.W.1, first plaintiff was examined as P.W.2 and two



independent witnesses were examined as P.W.3 and P.W.4, and Ex-A.1 to Ex-A.10 were marked. On the side of the defendants, third defendant was examined as D.W.1, one Ganesan was examined as D.W.2 and Ex-B.1 and Ex-B.2 were marked. To be noted, the evidence of P.W.3 was 'scrapped', as P.W.3 did not appear for cross-examination after merely filing chief-affidavit, vide Order dated July 20, 2017 made in I.A.No.434 of 2017.

8. After full-fledged trial, the Trial Court concluded that the Suit Properties are self-acquired properties of Summa Iruppa Gounder and the Sale Deed *qua* Suit Item No.1 and Gift Settlement Deed *qua* Suit Item No.2 executed by him are valid and binding on the plaintiffs. As regards Suit Item No.3, though Ex-A.3 – Patta stands in the name of Summa Iruppa Gounder, the plaintiffs failed to trace his title by adducing Title Deed. Resultantly, the Trial Court dismissed the Suit in its entirety.

9. Feeling aggrieved, the plaintiffs have preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.



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ARGUMENTS:

10. Ms.Zeenath Begum, learned Counsel for the appellants / plaintiffs would argue that it is the defendants who contended that the Suit Properties are self-acquired properties of Summa Iruppa Gounder and hence, the burden of proof to prove the same lies upon the defendants. The Trial Court wrongly imposed the burden of proof on the plaintiffs.

10.1. She would further argue that Ex-A.4 – Sale Deed in favour of 9th defendant was falsely created by the defendants with a view to defeat and defraud by the plaintiffs' legitimate rights. That is the reason why the 9th defendant did not appear before the Trial Court to contest the case and why the defendants did not produce the original Sale Deed. The Trial Court failed to consider the said aspect. Further, Ex-B.1 – Gift Settlement Deed is not a genuine one. Summa Iruppa Gounder is a signatory but only a thumb impression is found in Ex-B.1. Further, at the time of alleged execution of Ex-B.1, Summa Iruppa Gounder was age old. Hence, Ex-B.1 is surrounded by suspicious circumstances. The defendants failed to remove the clouds and prove Ex-B.1. Even while assuming that Ex-A.4 -



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Sale Deed and Ex-B.1 – Gift Settlement Deed are true, genuine and valid, Summa Iruppa Gounder did not have any right to execute the aforesaid documents in respect of Suit Properties.

10.2. As regards Suit Item No.3, she would submit that the case of the plaintiffs is that the Suit Properties are joint family properties. Ex-A.3 – Patta stands in the name of Summa Iruppa Gounder, which *prima facie* proves that Suit Item No.3 stands in the name of Summa Iruppa Gounder. The defendants did not deny the same. In these circumstances, the Trial Court ought not to have dismissed the Suit *qua* Suit Item No.3 for lack of Title Deed. The Trial Court failed to consider the above facts in the right perspective and erroneously dismissed the Suit. Accordingly, she would pray to allow the appeal and set aside the Judgment and Decree of the Trial Court.

11. On the other hand, Mr.T.S.Vijayaraghavan, learned Counsel for the respondents 1 to 8 / defendants 1 to 8 would argue that Suit Item No.1 was purchased by Summa Iruppa Gounder vide Ex-A.1 – Sale Deed in the year 1947. The house site comprised in Item No.2 of Suit Properties was



purchased by him vide Ex-A.2 – Sale Deed in 1959. The other property in

Suit Item No.2 was purchased by him vide Sale Deed dated March 6, 1995 under Document No.397 of 1995. The said fact was admitted by the plaintiffs in their plaint pleadings. Admission made in the pleadings is a judicial admission. The plaintiffs failed to prove the existence of joint family, any joint family property or surplus income therefrom prior to the aforementioned Sale Deeds. On the other hand, the defendants established that the Suit Properties are self-acquired properties of Summa Iruppa Gounder with the support of Ex-A.1 to Ex-A.3 and the aforesaid admission made by the plaintiffs.

11.1. Further, he would contend that the plaintiffs did not deny the execution of Ex-A.5 – Gift Settlement Deed. However, the defendants proved Ex-A.5 by examining one of its attestor namely Ganesan, as D.W.2. Further, Ex-A.4 – Sale Deed executed in favour of 9th defendant and Ex-A.5 – Gift Settlement Deed, both were executed in 1995 and the Suit has been filed on March 30, 2015. Hence, the relief of declaration that Ex-A.4 and Ex-A.5 are null and void, is barred by limitation. The Trial Court after considering the evidence available on record, rightly dismissed the Suit. There is no need to interfere with the Judgment and Decree of the



Trial Court. Accordingly, he would pray to dismiss the Appeal Suit and confirm the Judgment and Decree of the Trial Court.

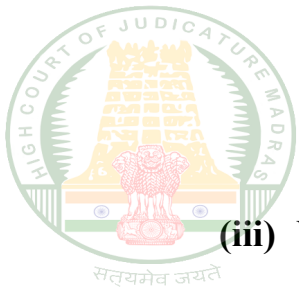
11.2. He would rely on the Judgment of Hon'ble Supreme Court in *Smt. Uma Devi -vs- Sri.Anand Kumar*, reported in **2025 (4) SCR 521 : 2025 INSC 434** in support of his contentions.

12. Mr.K.V.Shanmuganathan, learned Counsel for the Respondent No.9 / Defendant No.9 would adopt the arguments advanced by Mr.T.S.Vijayaraghavan.

DISCUSSION:

13. Heard on either side. Perused the evidence available on record. The following points arise for consideration in this Appeal Suit:

- (i) Whether the Suit Properties are joint family properties or self-acquired properties of Summa Iruppa Gounder ?
- (ii) Whether Ex-A.4 – Sale Deed and Ex-A.5 = Ex-B.1 – Gift Settlement Deed are true, valid and binding on the plaintiffs ?



(iii) Whether the relief of declaration sought for by the plaintiff is barred

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(iv) Whether the plaintiffs are entitled to the relief of partition in respect of Suit Properties ?

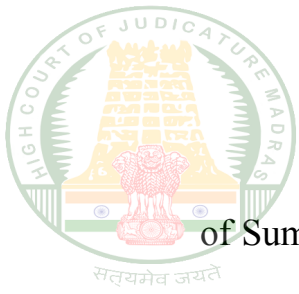
14. Summa Iruppa Gounder had three children, namely Rajalingam, Madhaiyan and Manickammal (8th defendant). Rajalingam passed away leaving behind his children, namely defendants 1 to 7 and late Annathurai. The plaintiffs are the daughters of Madhaiyan as could be seen from Ex-A.9 – Legal Heir Certificate. Madhaiyan passed away on January 13, 1980 as evident from Ex-A.8 – Death Certificate. After the demise of Madhaiyan, his wife remarried and settled down in Bombay. Summa Iruppa Gounder passed away in September 20, 2000 and his death certificate is marked as Ex-A.10. Suit Item Nos. 1 and 2 were purchased by Summa Iruppa Gounder in his name vide the Sale Deeds in Ex-A.1, Ex-A.2 and another Sale Deed dated March 6, 1995 (not marked). There is no dispute with the above facts.



WEB C **Point No.(i)**

15. Case of the plaintiffs is that Summa Iruppa Gounder purchased Suit Item Nos.1 and 2 vide Exs-A.1 & A.2 – Sale Deeds and the Sale Deed dated March 6, 1995, from and out of the joint family nucleus and properties in his capacity as Kartha of the joint family. If it is so, the burden is upon the plaintiffs to prove the existence of joint family properties, income therefrom and surplus therein. In this case, there is no evidence to show the existence of any joint family property prior to the aforesaid Sale Deeds. Even in Ex-A.1 and Ex-A.2 – Sale Deeds, there is no reference as to the existence of any joint family property. The plaintiffs have failed to discharge their initial burden. In these circumstances, Suit Item Nos.1 and 2 can only be considered as self-acquired properties of Summa Iruppa Gounder.

16. *Qua* Suit Item No.3, the plaintiffs contend that it is a joint family property. Suit Item No.3 is an extent of 27 Cents. Even while assuming that Suit Item No.3 is joint family property, there is no evidence of income much less surplus income therefrom. While so, as Ex-A.3 – Patta in respect of Suit Item No.3 is a Separate Patta standing in the name

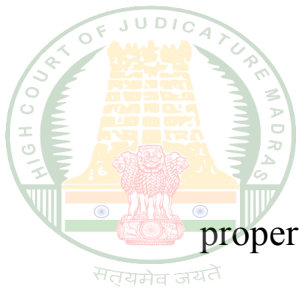


of Summa Iruppa Gounder, this Court is of the view that Suit Item No.3 as well is a self-acquired property of Summa Iruppa Gounder.

17. Thus, all the Suit Properties are self-acquired and separate properties of Summa Iruppa Gounder. Hence, the findings of the Trial Court *qua* the nature of Suit Properties (in Paragraph No.12 of its Judgment) are right and warrants no interference by this Court. **Point No.(i) is answered accordingly in favour of defendants and against the plaintiffs.**

Point No.(ii)

18. Summa Iruppa Gounder executed Ex-A.4 – registered Sale Deed in favour of 9th defendant as well as Ex-A.5 – Gift Settlement Deed in favour of the defendants 1 to 4 and their late brother – Annathurai. Though the learned Counsel for the appellants / plaintiffs would contend that Ex-A.4 and Ex-A.5 are fabricated and surrounded by suspicious circumstances, there are no pleadings for the same. Any contention without pleadings is not of much use. The plaintiffs did not specifically deny the execution of Ex-A.4 and Ex-A.5 by Summa Iruppa Gounder in their pleadings; their case is that the Suit Properties being joint family



properties, Summa Iruppa Gounder does not have any right to alienate them. In view of the findings of this Court under Point No.(i), Summa Iruppa Gounder can dispose of the Suit Properties as per his own wish and will. In other words, the Suit Properties being his separate and self-acquired properties, he can alienate them as he desires and the plaintiffs cannot question the same.

19. The further case of the plaintiffs is that Ex-A.4 and Ex-A.5 are *sham and nominal* documents. If it is so, they have to prove the same besides proving their joint possession. But the plaintiffs have failed to prove that Ex-A.4 is *sham and nominal* document and were not acted upon. There is no evidence available on record to show that the plaintiffs are in joint possession and enjoyment of the Suit Item No.1 with the defendants. Further, whether the 9th defendant is contesting the Suit or not is not of much significance. Regardless of the same, the plaintiffs must *prima facie* prove their case (that Ex-A.4 is sham and nominal).

20. As regards Ex-A.5 = Ex-B.1 – Gift Settlement Deed, though the plaintiffs have not denied the execution of the same, the defendants have examined one of the attester of Ex-A.5 - Ganesan as D.W.2. The 8th

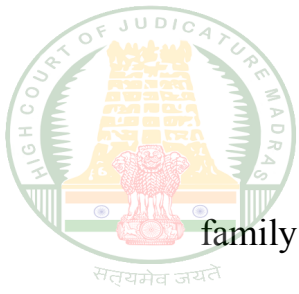


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defendant is also an witness to Ex-A.5. Further, the defendants let in the original of the Gift Settlement Deed on April 9, 2018 when the plaintiffs sought to send the Gift Settlement Deed for expert opinion, and the plaintiffs as well perused the same by filing a memo. So the defendants have let in the original Gift Settlement Deed as well. Hence, Ex-A.5 – Gift Settlement Deed is proved as per Section 123 of the Transfer of Property Act, 1882 read with Section 68 of Indian Evidence Act, 1872. Thus, Ex-A.4 and Ex-A.5 = Ex-B.1 are true, valid and binding on the plaintiffs. **Point No.(ii) is answered accordingly in favour of defendants and against the plaintiffs.**

Point No.(iii)

21. The defendants contend that the relief of declaration is barred by limitation. Reliance was made on *Uma Devi's Case* (cited *supra*), wherein original owner passed away leaving behind four sons. In that case, it was proved that an oral partition was effected in 1968 among the said four sons of the original owner, and revenue records were mutated pursuant to oral partition. One of the son had sold the property allotted to him in 1978 itself. Decades later, in the year 2023, one of the grandson of the original owner filed a Suit alleging that the family owned ancestral and joint



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family properties, that their legitimate shares therein are denied and accordingly, sought for partition. In this factual matrix, the Hon'ble Supreme Court held that the Suit is barred by limitation. Partition among the sons after the demise of the father and the huge time lapse between the sale and the filing of the Suit appears to be the crucial factors for the finding of the Hon'ble Supreme Court. The facts of the present case is deviant from *Uma Devi's Case*. In this case, the father of the plaintiffs namely Madhaiyan passed away on January 13, 1980 and the mother of the plaintiffs re-married and settled in Bombay. The sale and the gift were made thereafter in the year 1995. In these circumstances, it is highly probable and also natural that the plaintiffs were less connected with the Suit Properties, especially given the restricted position of women in property-related matters in the past. Hence, it is only just and proper that limitation is reckoned from the date of their knowledge about the transactions.

22. The case of the plaintiffs is that Ex-A.4 and Ex-A.5 came to their knowledge only in December 2012, when the plaintiffs sought for partition from the defendants 1 to 4, and the Suit has been filed in March 2015. There is no huge time lapse in this case like in the case of *Uma*



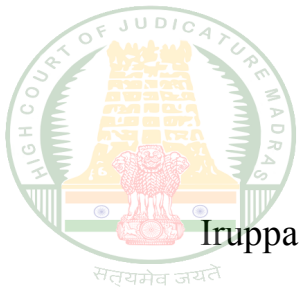
Devi's Case. The declaration Suit has been filed well within time as per

Article 58 of the Limitation Act, 1963 which says for any declaration other than relating to forgery of an instrument and validity of adoption, the limitation clock begins to tick when the right to sue first accrues. In this case, right to sue first accrued only after the demise of Summa Iruppa Gounder when the plaintiffs' demand for partition was denied *i.e.*, in December 2012. Hence, the relief of declaration is not barred by limitation. **Point No.(iii) is answered accordingly in favour of plaintiffs and against the defendants.**

Point No.(iv)

23. As regards Suit Item Nos.1 and 2, as held under Point Nos.(i) and (ii), they are the separate and self-acquired properties of Summa Iruppa Gounder and have been alienated by him. Hence, the plaintiffs are not entitled to the relief of declaration and partition in respect of Suit Item Nos.1 and 2. The Trial Court is right in denying the relief of declaration and partition *qua* Suit Item Nos.1 and 2.

24. As regards Suit Item No.3, the defendants case is that Summa



Irappa Gounder executed Ex-B.2 – registered Will in respect of Suit Item

No.3 in favour of the defendants 1 to 4. The original of Ex-B.2- Will has

been produced before the Trial Court on March 19, 2018. The plaintiffs

denied the execution of Ex-B.2 – Will in their reply statement. However,

the defendants did not examine any attesting witness. They failed to prove

Ex-B.2 – Will as per Section 63 of Indian Succession Act, 1925 read with

Section 68 of Indian Evidence Act, 1872. The Trial Court denied the relief

of partition *qua* Suit Item No.3 on the ground that the plaintiffs failed to

adduce Title Deed(s). The Trial Court is not justifiable in its aforesaid

finding. When Ex-A.3 – Separate Patta in respect of Suit Item No.3 stands

in the name of Summa Irappa Gounder and when the defendants did not

deny that Suit Item No.3 belongs to Summa Irappa Gounder, the Trial

Court ought not to have held so. Though the defendants filed Ex-B.2 –

Will, they did not prove the Will as per Section 63 of Indian Succession

Act, 1925 read with Section 68 of Indian Evidence Act, 1872 as stated

supra. Succession opened upon the demise of Summa Irappa Gounder.

Hence, the plaintiffs being the daughters of predeceased son – Madhaiyan,

are the Class-I legal heirs of Summa Irappa Gounder under Section 8 of

the Hindu Succession Act, 1956 and thus, entitled to 1/3 share in Suit Item



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No.3 upon the demise of Summa Iruppa Gounder. Therefore, the Trial

Court ought to have decreed the Suit *qua* Suit Item No.3. **Point No.(iv) is answered partly in favour of plaintiffs and partly in favour of the defendants.**

CONCLUSION:

25. In view of the foregoing narrative, the Appeal Suit is partly allowed. The Judgment and Decree of the Trial Court *qua* Suit Item Nos.1 and 2 is confirmed, and set aside *qua* Suit Item No.3. The plaintiffs are together entitled to 1/3 share in Item No.(3) of the Suit Properties. To that effect, a Preliminary Decree is passed in favour of the plaintiffs in respect of Suit Item No.3 alone. Considering the relationship between the parties and the nature of the Suit, there shall be no order as to costs.

26 / 09 / 2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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R. SAKTHIVEL, J.

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To

The III Additional District Judge
Salem.

PRE-DELIVERY JUDGMENT MADE IN
APPEAL SUIT NO.117 OF 2019

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