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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :09.10.2025

Pronounced on :24.10.2025

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

and

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

Appeal Suit No.345 of 2018

1.Jagathambal(Died)

W/o late M.P.Mariappan

2.Selvamani

S/o late M.P.Mariappan

Both are residing at

No.42,6th Cross,

Narayana Nagar,

Kitchipalayam,

Salem 636 015.

..Appellants/Defendants 1 and 2

/versus/

1.S.Jamuna

W/o late Sundaram

2.S.Praveen

S/o late Sundaram

3.S.Sujithra

1/24



D/o late Sundram

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4.S.Divya,D/o late Sundaram
Respondents 1 to 4 residing at
56/100 Muniappan Koil 2nd Street
Kithipalayam
Salem 636 015.

(A1 died. As per memo (23.07.2025) and
Court order dated 25.09.2025, A2 and
Respondents 5 to 7 are LR's of deceased
A1 namely Jagathambal. Memo recorded
(GJJ & MSKJ) .. Respondents/Plaintiffs

5.Santhi
W/o Ramesh
D/o late M.P.Mariappan
No.11 Venkat Bungalow Street
Karur 639 001.

6.Tamilselvi,W/o Sridhar
D/o M.P.Mariappan
Roshni Apartments
Top Floor,No.18 Officer's Colony
Puthur,Trichy 620 017.



7.Kalaivani, W/o Balan,
D/o late M.P.Mariappan,
No.94, Nehruji Nagar,
Dindigul 624 007.

8.Ragul Prasad
S/o late Baby Rani @ Vijayalakshmi and
late Krishnaprasad
19/6-B 4th Cross
Narayana Nagar
Kitchipalayam
Salem 636 015.

..Respondents/Defendants 3 to 6

Prayer: Appeal Suit has been filed under Section 96 read with Order 41, Rule 1 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 27.07.2017 made in O.S.No.132 of 2014 on the file of the III Additional District Court, Salem in so far as it is against the appellants.

For Appellants :Mr.T.Murugamanickam
Senior Counsel for
M/s Zeenath Begum

For Respondents :Mr.Mukund, Senior Counsel for
Mr. P.Raja for R1 to R4
R5 to R8-No appearance



JUDGMENT

(Order of the Court was made by Dr.G.Jayachandran, J.)

Suit for partition between the legal heirs of one Mariappan, who was married twice and had seven children. Through his first wife, Maragathammal, he had two sons. One of his son, by name, Bhaskar, died unmarried without any issues. The other son, by name, Sundaram, married Jamuna, later, died leaving behind his widow and 3 children, as his legal heirs. Through his second wife, Jagathambal, he was blessed with one son and four daughters.

2. The plaintiffs in the suit are the legal heirs of Sundaram, S/o Mariappan: Namely Jamuna (daughter-in-law of Mariappan), Praveen (grand-son of Mariappan), Suchitra and Divya (grand daughters of Mariappan).

3. The defendants in the suit are: the second wife of Mariappan and her children and grand son, namely, Selvamani (son), Santhi, Tamilselvi and

4/24



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Kalivani (daughters) and Rahul Prasad (son of the deceased daughter by name Baby Rani)

4. Three items of properties more fully described in the plaint schedule is the subject matter of the suit. The first item property is a residential house, which came into the hands of Mariappan under the family partition dated 30.08.1965. The second and third items of properties were purchased by Mariappan on 01.05.1974 and on 28.09.1979 respectively.

5. According to the plaintiffs, Mariappan married Maragthammal and during the subsistence of the marriage, he developed intimacy with Jagathambal, the first defendant and begot defendants 2 to 5 and the deceased mother of the sixth defendant. Therefore, the plaintiffs alone are entitled to inherit the properties of Mariappan, being the heirs of Sundaram, the sole legitimate son of Mariappan. The first item property is an ancestral property of Mariappan, which he got under partition. The family was also carrying on



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business in coconut, which was later devolved on Mariappan. From the surplus income derived from the joint family business and from the contribution made by his son, Sundaram, the second and third item properties were purchased in the name of Mariappan. The properties were all put in the joint family hotchpotch and always treated as joint family properties. Mariappan sold a portion of the first item property, during his life time and the superstructure over the remaining portion was put up using the sale proceeds and surplus income derived from the joint family property and business. Thus, Mariappan and his son Sundaram, are entitled for $\frac{1}{2}$ each in the suit property.

6. According to the plaintiffs, Sundaram died on 14.09.2010 leaving behind the plaintiffs as his legal heirs. His father Mariappan died subsequently on 02.02.2014. Hence, on the demise of Sundaram, being his legal heirs, applying the principle of notional partition, they are entitled for $\frac{1}{2}$ share of Sundaram absolutely. Later, on the demise of Mariappan, in the



remaining $\frac{1}{2}$ share of Mariappan, who died intestate, they are entitled for $\frac{1}{7}$ th share. Only the remaining $\frac{6}{7}$ share has to go to defendants, who are the second wife of Mariappan and her children.

7. Alleging that the defendants claiming larger right over the suit properties, based on a Will dated 30.12.2013 purported to have executed by Mariappan, often create disturbance to the peaceful joint enjoyment of the suit properties. Mariappan cannot alienate the ancestral properties through Will. At the most, he can alienate only to the extent of his undivided $\frac{1}{2}$ share and not the entire properties inclusive of the share of the other co-parcener namely Sundaram. The Will executed under undue influence is not a valid Will. Hence, declaration that the Will of Mariappan is dated 30.12.2013 as null and void. A suit has been filed to pass a decree of Preliminary and Final decree for partition of the suit properties, by metes and bound and allot $\frac{8}{14}$ share to the plaintiffs.



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8. Denying the claim of the plaintiffs, the defendants had filed written statement stating that the suit properties are not joint family properties, but self acquired properties of Mariappan. He married the first defendant Jagathambal on 22.01.1963 only after the demise of his first wife Maragathammal. The first plaintiff married Sundaram in the year 1997. She has no knowledge about the affairs of the family happened prior to her entry into the family. The first item property is a residential house and it is true that Mariappan got it through a registered partition deed dated 30.08.1965. It was not an ancestral property as claimed by the plaintiffs. There was no joint family business in coconut or any other produce. At no point of time, Mariappan and Sundaram were jointly carrying on coconut business. Mariappan was carrying on wholesale coconut business in his individual capacity. The second and third items of properties were acquired by him from his individual income, even before the husband of the first plaintiff completed his studies. During his life time, Mariappan sold a portion of the first item property and put up new residential building in which the plaintiffs are



presently residing. After purchase of the second item property, Mariappan along with the defendants shifted the residence to the second item property.

In the third item property, which is a godown, the second defendant was carrying on the coconut business, which his father Mariappan stopped it in the year 1994.

9. The specific case of the defendants is that, Mariappan is legally entitled to bequeath the suit properties, being his absolute properties, even assuming that the first item property was devolved on him under the family partition, the plaintiffs are entitled for 1/7th share only in respect of first item property and not in respect of other two properties. Since Mariappan had executed a Will in which the first item property is given to the plaintiffs, there is no cause of action for the plaintiffs to seek partition. The plaintiffs are in occupation of the first item property and enjoying it. The suit properties items 2 and 3 were never in joint possession and enjoyment of the plaintiffs. Hence, the Court fees paid under Section 37 (2) of the Court fees Act is also



incorrect.

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10. Based on the pleadings, the following Issues were framed by the Court and the parties went for trial.:-

1. Whether the Will dated 30.12.2013 executed by Mariappan is binding on the plaintiffs?

2. Whether the plaintiffs are entitled to get the relief of declaration in respect of the Will dated 30.12.2013?

3. Whether the plaintiffs are entitled to a share in the suit properties?

4. Whether the suit properties are joint family properties of the plaintiffs and the defendants?

5. Whether the plaintiffs are entitled to get permanent injunction as prayed for?

6. Whether the plaintiffs are entitled to get declaration in respect of their alleged pre-emptive right over the suit properties?

7. To what relief?



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11. On the side of the plaintiffs 3 witnesses and 16 documents (Ex.A-1 to Ex.A-16) were relied. On the side of the defendants, 3 witnesses and 2 documents (Ex.B-1 and Ex.B-2) were relied. Two documents Ex.X-1 and Ex.X-2 were marked as third party Exhibits.

12. The trial Court, on appreciation of evidence, held that the suit properties are joint family properties. Therefore, the plaintiffs have entitled for 1/7 share and the defendants 1 to 6 are entitled for 1/7 share each. The Will propounded by the defendants is null and void. The pre-emptive right to purchase has been given to the plaintiffs. The defendants 1 and 2, being aggrieved by the judgment and decree passed by the Court below, had preferred the appeal, wherein the plaintiffs and the defendants 3 to 6 are arrayed as respondents.

13. Pending appeal, the first appellant, Jagathambal, died on

11/24



08.07.2024 and her legal heirs, being parties to the appeal, were recorded on a memo filed by the appellants.

14. The judgment of the trial Court impugned in this appeal on the following grounds:-

The Court below failed to appreciate the law and facts in respect of the nature of the suit property held by Mariappan. It erred in holding that the suit properties are joint family properties acquired by Mariappan from the income of ancestral property. Item 1 of the property was allotted to Mariappan under a partition deed dated 30.08.1965. It was not ancestral property, but it was the separate property of the family subjected to partition. On such division of the property, it retained the character of the separate property. Therefore, the finding of the Court below regarding nature of the property as joint family property is erroneous in law.



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15. The plaintiffs have not produced any evidence to prove that the coconut business of Mariappan was a family business and that it was allotted to him as a share. The trial Court miserably failed to consider the plea of the defendants that Mariappan was carrying on business in coconuts independently and acquired items 2 and 3 of the suit properties from out of his own income.

16. Insofar as the first item of the suit property, being the residential property, it had no income. The Will of Mariappan dated 30.12.2013 is a duly a registered Will and its execution has been clearly spoken by one of the attesting witnesses by name Varatharajan, a classmate of Mariappan. On a flimsy ground, the trial Court disbelieved the Will stating that there is a contradiction in the evidence. Despite proving the Will through an attesting witness as envisaged under the Indian Evidence Act, the trial Court exaggerated minor discrepancies in the evidence of the witness who had fairly deposed that he was not aware of the contents of the document, the trial



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Court, thus, disbelieved the Will which has otherwise been other duly proved in the manner known to law. While the law requires the attesting witness, to prove the factum of execution of the Will by the Executor and it ought not the content of the Will, the trial Court, contrary to the settled principles of law, had disbelieved the witness for his inability to recollect the contents of the Will.

17. The learned Senior Counsel appearing for the appellants submitted that the Will was executed in the year 2013. One of the attesting witnesses Shanmugam was examined as DW3, after four years of the execution of the Will and at that time, the said Shanmugam, was 80 years old. His daughter Bharathi was another attesting witness to the Will. The attesting witness had clearly deposed before the Court that he saw Mariappan affixing his signature on the Will and he signed as a witness after Mariappan signed the Will. The twin requirements of the Section 68 of the Indian Evidence Act, 1872, having duly satisfied, the Court below ought not to have disbelieved the Will.



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18. The learned Senior Counsel further submitted that all the three properties the suit properties were the self acquired properties of Mariappan and he has every right to bequeath the properties as per his wish. The Will marked as Ex.A4=B2 clearly and fairly distributed the properties among both the branches of the family. In respect of the first item, life interest was vested with Jagaathambal and thereafter, with grandson Praveen who is the son of Sundaram. In respect of the second item property, life interest vested with Jagathambal and thereafter, through, with her son Selvamani absolutely. The third item property, life interest vested with Jagathambal and after death her death, it devolved upon Selvamani absolutely.

19. To provide financial security to Jagathambal, Selvamani the second defendant, was directed to deposit Rs.10,00,000/- in a Nationalised Bank to enable Jagathambal to enjoy the interest till her lifetime. For his daughters, viz., Santhi(D3), Tamilselvi(D4), Kalaivani(D5) and grandson Praveen, he

15/24



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directed to pay Rs.5,00,000/- each. All the residuary estate, including the Bank deposits were given to his wife Jagathambal. Thus, the fair distribution of the properties among the family members has been made by Mariappan and the same has been acted upon. The plaintiffs are in possession of the first item property. Jagathambal, who was enjoying life interest over the three items of property, died on 08.07.2024 and the properties have devolved upon the respective persons absolutely.

20. Per contra, the learned Senior Counsel appearing for the respondents 1 to 4 submitted that Mariappan had no right to alienate the suit properties beyond his share in the property as a co-parcener. Since the suit properties were ancestral properties, his right to alienate them either by testament or otherwise, was restricted to his share alone. The trial Court has taken into account the fact that the Will Ex.A4=B2 was executed and registered hardly 32 days before the death of Mariappan and that the Will was shrouded with suspicion. While so, the attesting witness-DW3 who has



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voluntarily come to the Court without summon had not satisfactorily deposed about the due execution of the Will. The trial Court extracting the deposition of DW3, in the cross examination, had assigned the reasons as to why the execution of Will was unbelievable. The plaintiffs, who are wife and children of pre-deceased son Sundaram are entitled to have an equally share with his son Mariappan as co-parceners, being the sole male descendants born to Mariappan through his legally wedded wife Maragathammal. Jagathambal who married Mariappan during the life time of Maragathammal, had no right in the property. Therefore, judgment and decree of the trial Court has to be upheld.

21. Point for determination:

Whether the trial Court had properly appreciated the evidence and the law in holding that the suit properties are ancestral properties and the Will of Mariappan marked as Ex.A4=B2 is not null and void?



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22. The relationship between the parties and the title over the properties are not disputed. The dispute between the parties is that Jagathambal was not legally wedded wife of Mariappan and the suit properties are ancestral properties, as contended by the plaintiffs. Whereas, the defendants claims that Jagathambal married Mariappan only after demise of Maragathammal. The suit properties are the self acquired properties of Mariappan. He, under Section 30 of the Hindu Succession Act, 1956, is entitled to dispose of the properties through testament. Having excluded the Will and got duly registered, the properties of Mariappan have to devolve as per his wishes expressed in the said Will. The specific case of the plaintiffs is that the first item property was allotted to Mariappan in the family partition held in the year 1965. However, no documentary evidence has been adduced by the plaintiffs to show that the first item of the suit property was held as coparcenary property and held by the family jointly before the partition. As contended by the learned Senior Counsel appearing for the appellants, in the absence of proof to show that the first item of the suit property is co-



parcenary property, merely because it was allotted to Mariappan in a partition will not carry the character of the co-parcenary or joint family property.

23. Similarly, though it is contended by the plaintiffs that the coconut business of Mariappan was a joint family business, no evidence is placed by the plaintiffs to prove, how the business had the trapping of a joint family business and whether the family members were jointly carrying on the said business.

24. In the said circumstances, the trial Court has miserably failed to understand the difference between the joint family/co-parcenary property and the self acquired property. In the absence of proof to show that there was joint family nucleus generating income and that the income was derived from the joint family. Further, the properties were acquired and were put into hotchpotch of the joint family property, the presumption is that the properties are the self acquired properties of the persons in whose name the property



stands. In this case, all the three properties were in the name of Mariappan.

Therefore, all the three properties are self acquired properties of Mariappan which is legally entitled to deal as per his wish.

25. Evidence before the Court proves that during his life time Mariappan executed the Will Ex.A4=B2. It has been duly registered in which, DW2 has attested. He before the Court had clearly deposed about the affixture of the signature by Mariappan in his presence and also identified his signature in the Will marked as Ex.A4=B2. Having satisfied the twin test laid under the statute, it is perverse to hold that the said Will was not proved since the attesting witness could not recollect the contents of the Will.

26. The next point remains to be answered as to whether at the time of executing the Will, Mariappan was in a good state of mind since he died 32 days after executing the Will, the plaintiffs to prove that Mariappan was not keeping in good health and was not good state of mind at the time of



executing the Will had summoned Dr.Santhosh and he was examined as PW-

3. His evidence does not lend any credence to the contention of the plaintiffs regarding the health condition of Mariappan at the time of executing the Will.

27. It is also to be noted that though the plaintiffs pleaded that Jagathambal married Mariappan, while his first wife was alive, the evidence relied by the plaintiffs does not prove the same. Contrarily in the Will Mariappan has explained about the family affairs and the death of Maragathambal, the first wife, and his marriage with Jagathambal. He has given the first item of the suit property to Praveen, who is the son of the predeceased Sundaram, the second plaintiff. The life interest in the property vested with Jagathambal is now open for devolution on Praveen since Jagathambal is no more. In respect of the other properties, they are vested with Selvamani, S/o Jagathambal with an obligation to pay specific amounts to the other sharers including Praveen, the second plaintiff.



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28. In view of the above position on law and on facts, this Court holds that the suit for partition, as prayed for by the plaintiffs, is not maintainable in view of the testamentary disposal of the suit properties by Mariappan. The succession of the suit property left by Mariappan shall be in accordance with the recital of the Will dated 30.12.2013.

29. Therefore, this Court finds that the judgment of the trial Court is an erroneous and contrary to law of evidence. Hence, the same is liable to be set aside. Accordingly, the judgment and decree passed by the III Additional District Court, Salem, in O.S.No.132 of 2014, dated 27.07.2017 is hereby set aside.

30. In the result, **A.S.No.345 of 2018 is allowed. No order as to costs.**

(Dr.G.J.J.) & (M.S.K.J.)

24.10.2025



Index:yes

Internet:yes

Speaking order/non speaking order

Neutral citation:yes/no

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To

The III Additional District Court, Salem.

Dr.G.JAYACHANDRAN, J.

and

MUMMINENI SUDHEER KUMAR,J.

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delivery Judgment made in
Appeal Suit No.345 of 2018



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24.10.2025