



A.S.No.483 of 2018

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 04.03.2025**

**CORAM:**

**THE HONOURABLE MR.JUSTICE V.SIVAGNANAM**

**A.S.No.483 of 2018**

1.Karpagam

2.Devika

... Appellants

Vs.

1.P.Mohan

2.P.Vadivelu

3.Deivanayagi

4.P.Praveenraj

5.R.Rani

6.Rajeshwari

7.Mariammal

... Respondents

**PRAYER:** First Appeal has been filed under Section 96 of the Civil Procedure Code r/w Order 41 Rule 1 CPC to allow the above appeal and set aside the judgment and decree dated 07.04.2017 made in O.S.No.4018 of 2013, on the file of the XIX Additional Judge, City Civil Court, Chennai and decree the suit O.S.No.4018 of 2013 as prayed for with costs throughout.

For Appellants : Mr.T.Paranthaman

For R1, R2, R6 & : Mr.T.Mohan Ram  
R7

For R3 to R5 : No appearance

**J U D G M E N T**



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Aggrieved over the Judgment and Decree dated 07.04.2017, passed in O.S.No.4018 of 2013, on the file of the XIX Additional Judge, City Civil Court, Chennai, the plaintiffs have preferred the appeal suit.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The plaintiffs' case is that the suit property belonged to Poongavanam S/o.Thandava Naicker. He enjoyed the property as absolute owner till his death. Poongavanam had two wives, namely, Kupppamma (1<sup>st</sup> wife) and Varadammal (2<sup>nd</sup> wife). Rajeswari, Mariammal, Mohan, Karpagam and Rani are born through the first wife. Devika, Deivanayagi, Vadivelu and Praveenraj are born through the second wife. The wives of Poongavanam predeceased him. Poongavanam died intestate on 06.01.2005. Since he died intestate, his legal representatives are entitled to the properties owned by him and the plaintiffs and the defendants became the co-owners and co-sharers. They were living jointly and enjoying the property. Recently, the plaintiffs came to know that the defendants have fraudulently obtained the legal heirship



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certificate of the deceased father Poongavanam suppressing the name of the first plaintiff. The first defendant, with an intention to take away the property for himself, had obtained the release deed from the fifth, sixth and seventh defendants. The first defendant cannot claim the benefit of the release deed and other legal heirs are also the beneficiaries along with the first defendant. Therefore, except the three releasors, namely, Rani, Rajeswari and Mariammal/defendants 5, 6 & 7 all other legal heirs are entitled to 1/6 share each in the undivided property. Though the defendants 5 to 7 are not entitled to claim any share in the suit property in view of the execution of the release deed, they have been added as party defendants in the above suit for a proper and complete adjudication of the case. In spite of the repeated requests and demands, the defendants did not come forward for an amicable partition of the suit schedule property. Hence, the plaintiffs had sent notice to the defendants calling upon them for an amicable partition by metes and bounds. The defendants have neither complied with the demand nor sent any reply. Hence the suit.

4.The defendants contested the suit and the first defendant filed a



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written statement and the defendants 2, 6 & 7 adopted the same. The third defendant filed a separate written statement. The defendants specifically denied the allegations averred in the plaint and contended that Rajeswari, Mariammal, Mohan and Rani/ defendants 6, 7, 1 & 5 are the children of Poongavanam through his first wife Kupppamma. Poongavanam married Varadammal as his second wife. Devika/second plaintiff, Deivanayaki, Vadivelu and Praveenraj/defendants 3, 2 & 4 are the children of Poongavanam through his second wife Varadammal. The first plaintiff is not the daughter of Poongavanam. She is the daughter of one Sivabalan, who belongs to Devar Community. The first defendant's father and the third defendant belong to Hindu Vanniar Community. Poongavanam died on 06.01.2005. The legal heirship certificate was issued by the Tahsildar Egmore, Nungambakkam on due enquiry. The plaintiffs have no right to question the release deed executed by the other co-sharers. The defendants 5, 6 & 7 released their shares in favour of the first defendant. The suit property is to be divided into eight shares between the sons and daughters of Poongavanam since Poongavanam had only eight legal heirs. The first defendant is entitled to four shares out of the eight shares of the suit schedule property and thus, pleaded to grant  $\frac{1}{2}$



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share to him.  
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5.In the reply statement, the plaintiffs denied the allegations raised in the written statement filed by the first defendant.

6.The third defendant filed a written statement and she pleaded to grant 1/9 share in the suit property to her and further pleaded that the plaintiffs are entitled to 1/9 share each in the suit property.

7.In response, the first defendant filed an additional written statement stating that the reply statement filed by the plaintiffs is in the nature of amending the plaint illegally in violation of the provisions of under Order VI Rule 17 CPC. Further, it is stated that the pleas in the plaint are to be proved by means of evidence and not by allegations or any other thing made in the reply statement and thus, pleaded to dismiss the suit.

8.The trial Court, upon the above pleadings, framed the following issues for consideration;



***1. Whether the plaintiffs are entitled for a preliminary decree of 2/6<sup>th</sup> share in the suit schedule property?***

***2. Whether the plaintiffs are entitled for permanent injunction to restrain the defendants from alienating or encumbering the 2/6<sup>th</sup> share in the suit property?***

***3. To what relief the plaintiffs are entitled?***

**Additional Issues:**

***1. Whether the release deed dated 08.10.2007 is unlawful?***

9. In support of the plaintiffs' case, Pws 1 & 2 were examined and Exs.A1 to A12 were marked and on the side of the defendants, Dws 1 & 2 were examined and Exs.B1 to B4 were marked.

10. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court dismissed the suit without costs. Aggrieved over the judgment and decree of the trial Court, the plaintiffs have preferred the first appeal.



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11.The following points arise for determination in the first appeal.

***1.Whether the plaintiffs are entitled for 2/6 share in the plaint schedule property as claimed?***

***2.Whether the first plaintiff is not a legal heir of the deceased Poongavanam?***

***3.Whether the second plaintiff is entitled to 1/8<sup>th</sup> share?***

***4.Whether the first defendant is entitled to 1/2 share on the ground that he got release deed from the other three legal heirs of Poongavanam?***

***5.To what other relief?***

12.The learned counsel for the appellants/plaintiffs submitted that since the first plaintiff is not the daughter of Poongavanam and not the legal heir of Poongavanam, the trial Court dismissed the suit for partition. The trial Court overlooked the fact that the second plaintiff is the legal heir of Poongavanam and she is entitled to 1/8 share in the plaint schedule property and dismissed the suit in entirety. Therefore, the



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plaintiffs filed the appeal suit and seek to grant 1/8 share in favour of the second plaintiff and reiterated the other grounds raised in the grounds of appeal and pleaded to set aside the judgment and decree of the trial Court and to allow the appeal suit.

13.The learned counsel for the respondents/defendants supported the judgment of the trial Court and contended that the second plaintiff is entitled for 1/8<sup>th</sup> share and further contended that the first defendant, by virtue of the release deed obtained by him from the defendants 5, 6 & 7 which is evidenced as Ex.A5 & A6, is entitled for 1/2 share in the plaint schedule property. The second, third and fourth defendants are each entitled for 1/8 share in the suit property. Since the defendants 5, 6 & 7 released their shares in favour of the first defendant, they are not entitled for any share in the suit property. A preliminary decree may be passed in this regard and they have no objection for granting 1/8 share to the second plaintiff in plaint schedule property and to dismiss the appeal suit.

14.I have considered the matter in the light of the submissions made on either side and perused the materials available on record.

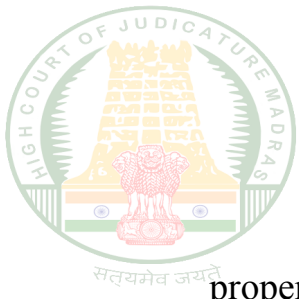


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15. On perusal of the records, the facts reveal that the first plaintiff filed a suit on the ground that she is the legal heir of Poongavanam which is denied by the defendants and contended that she is daughter of one Sivabalan. During trial before the trial Court, the first plaintiff admitted in her cross examination that though she claimed her date of birth as 04.07.1991 but the official records reveal her date of birth as 05.06.1962. Further she admitted in the cross examination that in the office records, her father name is mentioned as Sivabalan. Relying upon this evidence, the trial Court dismissed the claim that she is not the legal heir of Poongavanam and disentitled her over any share of the property and dismissed the suit. In this regard, I find no illegality in the findings of the Trial Court in respect of the first plaintiff.

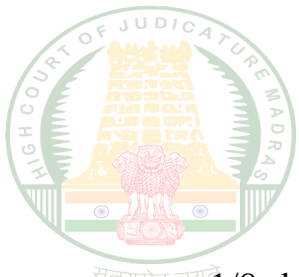
16. Further, on perusal of the records, it is noticed that the second plaintiff is Devika, daughter of the deceased Poongavanam and her legal heirship is not disputed by any of the defendants and she is having a share over the plaint scheduled property, since the suit property is owned by her father Poongavanam. He died intestate. After his death on 06.01.2005, his legal heirs equally entitled for share in the property. The



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property owned by Poongavanam is evidenced by Ex.A3 sale deed dated 24.01.2001. The date of death of Poongavanam is evidenced by Ex.A4 death certificate. In these circumstances, the legal heirs of Poongavanam are entitled to equal share in the property left by Poongavanam. Further, the claim of the first defendant is evidenced by release deed executed by the three legal heirs of Poongavanam as Ex.A5 dated 08.10.2007 and Ex.A6 dated 17.06.2011. In pursuance of the release deed, 1/8 share of the each defendants 5, 6 & 7 goes to the first defendant. In such circumstances, the first defendant is entitled for  $\frac{1}{2}$  share i.e.(4/8) shares and the second, third and fourth defendants are each entitled for 1/8 share and the second plaintiff is entitled for 1/8 share. This fact is overlooked by the Trial Court. Therefore, the judgment and decree of the Trial Court is hereby set aside and a preliminary decree is passed. The claim of the first plaintiff is dismissed by confirming the judgment and decree of the Trial Court. The second plaintiff is entitled for 1/8 share, the first defendant is entitled for 4/8 shares and as the defendants 5, 6 & 7 have released their share over the plaint scheduled property to the first defendant, they are not entitled for any share in the suit scheduled property and the second, third and fourth defendants are each entitled for



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1/8 share.  
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17.In the result, the judgment and decree of the Trial Court is hereby set aside. A preliminary decree is passed declaring the shares of the parties as aforesaid. Accordingly, the appeal suit is allowed. Consequently, connected miscellaneous petitions, if any, are also closed. Considering the relationship between the parties, there shall be no order as to costs.

**04.03.2025**

sli  
Internet: Yes  
Index: Yes/No  
Speaking/Non speaking order  
NCC: Yes/No

**To:**

- 1.The XIX Additional Judge, City Civil Court, Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.

**V.SIVAGNANAM, J.**

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