



SA No. 170 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 30.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No. 170 of 2013

Ranganathan

.. Appellant

Versus

Pachaiyappa Nattar (Deceased)

1. Ammani Ammal
2. Elumalai
3. Ammakannu Ammal
4. Sankar
5. Subramanian

.. Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 15.12.2011 made in A.S. No. 8 of 2007 on the file of the learned District Judge, Tiruvannamalai, confirming the judgment and decree dated 04.08.2006 made in O.S. No. 174 of 2000 on the file of the learned Sub Judge, Arani.

For Appellant	:	Mr. R. Thiagarajan
For Respondents	:	No appearance

JUDGMENT



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This Second Appeal had been filed against judgment and decree dated 15.12.2011 made in A.S. No. 8 of 2007 on the file of the learned District Judge, Tiruvannamalai, confirming the judgment and decree dated 04.08.2006 made in O.S. No. 174 of 2000 on the file of the learned Sub Judge, Arani.

2. The unsuccessful Plaintiff in O.S.No.174 of 2000 on the file of the learned Sub Judge, Arani, Thiruvannamalai District, is the Appellant in this Second Appeal. The Appellant, as Plaintiff, had filed the suit in O.S.No.174 of 2000 on the file of the learned Sub Judge, Arani, seeking relief of partition and separate possession.

3. The brief averments in the plaint are as follows:-

3.1. The Plaintiff is the eldest son of first Defendant through the fourth Defendant. The fourth Defendant is the mother of the Plaintiff. The first Defendant married the fourth Defendant in the year 1947 according to Hindu rites and caste customs. The first Defendant married one Miana as his first wife. After the death of Miana, the first Defendant married the second Defendant as his second wife. As the first Defendant through the second Defendant had no issues for 12 years, the first Defendant married the fourth Defendant as his third wife and through that relationship, the Plaintiff was



born. Thereafter, the third Defendant Elumalai was born to the first and second Defendant. There are 31 items of land and house site shown as ancestral properties. The lands in plaint schedule properties are fertile lands having three bogam of nanja crops and dry crops also raised in some lands where wet crops cannot be raised. The family in question is a small family consisting of two wives and two sons. The Plaintiff and the fourth Defendant were hiring persons for cultivation in the lands which they are in possession. The first Defendant is the Kartha of the family and out of the surplus income derived from “A” schedule property, “B” schedule property was purchased on 20.08.1985 in the name of the first Defendant. “C” schedule property was purchased in the name of the second Defendant on 21.02.1987. The second Defendant had no independent source of income and the purchase was made by the first Defendant in the name of the second Defendant. “D” schedule property was purchased in the name of the third Defendant through the registered sale deed dated 01.11.1989. The third Defendant is the junior member of the family and he had no independent resources to invest such a huge sum. The claim made by the third Defendant that he purchased the property from the resources made available by his father-in-law is not true. “D” schedule property had been purchased in the name of the third Defendant only out of the income derived from “A” schedule properties. The Plaintiff sought partition of his share. The first Defendant refused. Therefore, there



were exchange of notices between the Plaintiff and the Defendants. The Defendants sent a reply notice stating that the Plaintiff is not entitled to partition. All the properties are in joint possession of the family consisting of Plaintiff and the Defendants 1 to 4. The first Defendant at the instigation of the Defendants 2 and 3 attempted to defeat the rights of the Plaintiff and had come forward with false averments in the reply notice. The fourth Defendant, mother of the Plaintiff is entitled to maintenance. She is only impleaded as a party. In view of the hostile attitude of the Defendants 1 to 3, the Plaintiff had been forced to file the present suit.

4. The brief averments in the written statement filed by the first Defendant are as follows:-

4.1. The father of the Plaintiff as Defendant-1 had disputed the claim of the Plaintiff. The first Defendant admits that his first wife died and after her death, the first Defendant married the second Defendant Ammani Ammal in the year 1947. The second Defendant begot four daughters and all of them died. Then, the third Defendant was born to the first and second Defendant. The claim made by the Plaintiff that the mother of the Plaintiff was married by the first Defendant in the year 1947 is denied. The claim made by the Plaintiff that after 12 years of the marriage of the fourth Defendant, the Plaintiff was born is denied. The first Defendant claims that the fourth Defendant was



married after 1955 and not before. The marriage of the first Defendant with fourth Defendant is not valid. Therefore, the Plaintiff is not the legitimate son of the first Defendant as per law. Therefore, the Plaintiff did not derive any rights from the first Defendant. The Plaintiff has no *locus standi* to file the suit. The Plaintiff had left the family after his marriage and thereafter, he did not return the family and there had been total separation from the family. All the suit properties are not ancestral properties. The lands are not fertile lands and three bogums cannot be raised. Items 14 and 24 belongs to the first Defendant's mother Solai Ammal. She had purchased the same under Registered Sale deed dated 07.03.1946 and 05.12.1958. On her death, the legal heirs of Solai Ammal are entitled to the properties and they are not the ancestral properties and they are the self-acquired and separate properties. Items 9, 10, 11 and 21 absolutely belongs to Ammani Ammal. She had been purchased the same out of her own funds under Registered sale deed dated 21.02.1987. These properties were purchased by second Defendant out of her own funds, which she got by sale of her mother's house. Item 33 of the suit property shown as “D” schedule is a separate and self-acquired property of the third Defendant. He had purchased the same out of his own funds under registered sale deed dated 01.11.1989. It is not the joint property. “D” schedule property was not purchased out of the ancestral nucleus. The first Defendant had not provided any funds for the purchase of the “D” schedule



properties. The in-laws of the first Defendant had helped him to acquire the “D” schedule properties. Hence the Plaintiff has no more right or title or interest over the “D” schedule properties. The third Defendant is separately enjoying the “D” schedule properties. The Plaintiff cannot claim partition in the suit properties as he cannot file a suit for partition as per law. The Plaintiff was not in possession of the properties. Therefore, the Court fee paid by him is not correct. The suit itself is not maintainable.

5. Based on the plaint averments and the averments in the written statement, the learned Sub Judge, Arani, had framed the following issues:

(i) Whether the Plaintiff is entitled for partition and separate possession of 1/5th share in the suit properties and for mesne profits?

(ii) Whether the suit is maintainable?

(iii) Whether the Plaintiff is not a member of the Defendant's joint family?

(iv) To what other reliefs, the Plaintiff is entitled to?

6. During trial, the Plaintiff had examined himself as P.W-1. One Aarimuthu was examined as P.W-2. The Plaintiff had marked documents as Ex.A-1 to Ex.A-17. The first Defendant had examined himself as D.W-1 and documents were marked as Ex.B-1 to Ex.B-4. Ex.B-1 is the sale deed in the name of the first Defendant dated 20.08.1985. Ex.B-2 is the sale deed in the



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name of the second Defendant Ammani Ammal dated 21.02.1987. Ex.B-3 is the sale deed in the name of the mother of the first Defendant Solai Ammal dated 07.03.1946. Ex.B-4 is the sale deed in the name of the third Defendant Elumalai dated 01.11.1989.

7. On appreciation of evidence and based on the rulings cited by the learned Counsel for the Defendants before the trial Court in *AIR 2002 Mad. 402 & 403 [P.M. Mani vs. Mohan Kumar]* and *2003 3 MLJ 299 [Rangasami vs. Kasiappa Gounder and others]* wherein it is held as “Hindu Marriage Act XXV of 1955 – Children born of void marriages – status of – No right of inheritance in the joint family property”, the learned Sub Judge, Arani, by judgment dated 04.08.2006 in O.S.No.174 of 2000 misdirected himself and rejected the claim of the Plaintiff and dismissed the suit.

8. Aggrieved, the Plaintiff had filed appeal in A.S.No.8 of 2007 before the learned District Judge, Tiruvannamalai raising the following grounds:

(i) The Court below failed to note that it is the specific case of the Appellant that 4th Defendant was married to first Defendant in the year 1947. It is pertinent to note that there was no prohibition for a second marriage in the year 1947.

(ii) The Court below in spite of the said pleading has not



framed any issue regarding the date of marriage of 4th Defendant with first Defendant. In the absence of such issue, the whole judgment is not sustainable in the eye of law.

(iii) The Court below in spite of absence of such an issue has not given care to discuss the same in the course of its judgment.

(iv) The Court below failed to note that such a finding is vital and necessary for the purpose of determining the rights of the Appellant in the suit properties.

(v) The Court below has relied upon certain authorities which have no bearing on the issue before the lower Court.

(vi) The Court below failed to note that Ex.A-8 clearly proves the fact that the properties belong to first Defendant.

(vii) The Court below failed to note that Exhibit A-9, the respondents have mortgaged the properties to the Land Mortgaged Bank.

(viii) The Court below has ignored Exhibits A-10 to 13 which are all Government records, showing the title of the first Respondent to the suit property.

(ix) The Court below failed to note that Exhibit A-7, Birth Extract of the Plaintiff would clearly prove marriage between Defendants 4 and 1.

(x) The Court below failed to note that under Exhibit A-1, the first Defendant has in marriage invitation dated 22-01-1986, has clearly admitted that the Appellant is his own son.

(xi) The Court below failed to note that the 'A' Register clearly shows the vast extent of property owned by first Defendant and it is the source for the purchase of various other properties in the names



of other Defendants.

(xii) The finding of the Court below that the suit under Section 37 (2) of the Court Fees Act is not maintainable is also not legally correct.

(xiii) The Court below failed to note that except the solitariness evidence of D.W-1 (first Defendant) there is no other evidence to prove the date of marriage.

9. The learned District Judge, Tiruvannamalai, on hearing both the Appellant and well as the Defendants, framed the following points for determination:

- 1. Whether the Plaintiff/Appellant is co-parcener in the undivided Hindu family?*
- 2. Whether the marriage between the 4th Defendant Ammakannu Ammal and the first Defendant is valid ?*
- 3. Whether the Plaintiff is entitled to 1/7th share in the suit properties?*
- 4. Whether the Plaintiff/Appellant is entitled to share in the separate properties of the first Defendant/father as per Section 16 of Hindu Marriages Act?*
- 5. Whether the order of the trial Court is sustainable in law?*
- 6. Whether the "C" Schedule property is available for partition ?*
- 7. Whether the "D" Schedule property is available for partition ?*
- 8. To what other relief, the Appellant is entitled ?*



10. After hearing the arguments of the learned Counsel for the Appellant and the learned Counsel for the Respondents, the learned District Judge, Tiruvannamalai, had answered the points for determination 1 and 2 against the Plaintiff/Appellant. Also on re-appraisal of evidence, the learned District Judge had answered the point for determination 3 to 7 against the Plaintiff holding that the finding of the learned Sub Judge is a well reasoned judgment that does not warrant interference by this Court.

11. Aggrieved by the dismissal of the suit and confirmation of the judgment of dismissal by the learned Sub Judge by the first Appellate Judge, this Second Appeal had been preferred by the Plaintiff in O.S.No.174 of 2004 on the file of the learned Sub Judge, Arani as Appellant in A.S.No.8 of 2007 on the file of the learned District Judge, Tiruvannamalai.

12. On 11.02.2019, while admitting this Second Appeal, this Court had framed the following substantial questions of law:-

“1. Whether the Courts below have failed to appreciate the documentary. and oral evidence placed before the Court?

2. Whether the appellant can claim the benefit under Section 2(1) (a) read with Section 6 of the Hindu Succession Act?



3. Whether the appellant is entitled to share in the ancestral property even if the date of marriage of his parents is not specifically mentioned?

4. Whether the Courts below are right in concluding that a Will has been executed in favour of the third defendant and therefore properties are not available for partition in the absence of the Will being proved in a manner known to law under Section 63(c) of Indian Succession Act and Section 68 of Indian Evidence Act?”

13. The learned Counsel for the Appellant invited the attention of this Court to the amended plaint filed before the trial Court. Also, he invited the attention of this Court to the schedule of properties in the plaint to the discussion of evidence by the learned Sub Judge, Tiruvannamalai and answering issues framed by the learned Sub Judge, Tiruvannamalai. The learned Sub Judge, Tiruvannamalai had dismissed the suit on the ground that the Plaintiff is not entitled to claim partition when the father is alive and also on the ground that he is not a co-parcenary in the joint family. One other ground considered by the learned Sub Judge, Tiruvannamalai was that the properties are the separate properties of the Defendant-1 before the death of his father and the items B, C and D were the properties acquired by Defendant-2,



wife of Defendant-1 as a separate property.

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14. It is the specific contention of the learned Counsel for the Appellant that Defendant-2 and Defendant-3 have no independent source of income to acquire properties. Those properties were acquired by Defendant-1 from and out of the income derived from the properties that he succeeded after the death of his mother, Solaiyammal. Therefore the finding of the learned Sub Judge, Tiruvannamalai is erroneous regarding the status of the properties in the name of Defendant-1 to Defendant-3.

15. Also, it is the submission of the learned Counsel for the Appellant that the Appellant was in Government service. He was recruited as Police Constable in the year 1984. Therefore, due to his avocation he was transferred on Government duty and he was not supposed to be in the native village, that cannot be considered as he is not a member of co-parcenary. One other ground raised by the learned Sub Judge was that the Plaintiff's father and mother married in the year 1954. Even if it is so, there is no restriction on a Hindu male to contract second marriage prior to 1956. Ex.A-7 is the Birth Certificate of the Plaintiff in which the name of the parents only were found and the name of the Plaintiff was not found. The names of Defendant-1 and Defendant-4 were found that can be considered as proof of parentage of Plaintiff and that



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cannot be considered as date of marriage of the parents of the Plaintiff.

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16. The learned Judge had relied on ExA-7 to arrive at a conclusion that the parents of Plaintiff got married after coming into force of the Hindu Marriage Act, 1956, thereby negated the claim of the Plaintiff. Therefore on those grounds, the learned Counsel for the Appellant submitted that the judgment of the learned Sub Judge, Tiruvannamalai is erroneous and is to be set aside and suit for partition is to be decreed granting preliminary decree for partition.

17. The learned Counsel for the Appellant fairly conceded the fact that the finding of the learned Sub Judge, that on the date of institution of the suit, the father was alive. Therefore he cannot open up the suit for partition. The same was not considered by the learned Appellate Court Judge. The learned District Judge also given a finding that even though the Defendant-1 died during the pendency of the Appeal, the Court ought to have considered that the suit for partition is agitated in the Appeal by the Plaintiff as Appellant. Therefore the Appellate Court ought to have moulded the relief sought for by the Plaintiff since the father had died. Plaintiff is entitled to partition, at the stage of trial when the Defendant-1 was alive. Therefore the learned Sub Judge, Tiruvannamalai had denied the relief to the Plaintiff on the ground that the



father was alive but when the Appeal was taken for disposal, Defendant-1 was not alive and the legal heirs of the Defendant-3 were impleaded. Still the learned Appellate Judge failed to consider the issue in the light of the subsequent developments and rejected the claim of the Plaintiff on the ground that the father of Plaintiff, Defendant-1 in the suit had executed the WILL in the name of Defendant-3, Elumalai. The execution of the WILL was not proved or the WILL was not marked during the course of the hearing in the Appeal in A.S.No.8 of 2007.

18. The WILL ought to have marked in continuation of the trial proceedings in the Appellate Court under Section 63 of the Indian Evidence Act, particularly the Section 63(c) of the Indian Succession Act. Section 68 of the Indian Evidence Act and Section 69 of the Indian Evidence Act was not proved before the Appellate Court. Still the learned Appellate Judge, District Judge had arrived at a conclusion that the WILL having been executed in favour of the Defendant-3 by Defendant-1, the properties were not available for partition on that ground Appeal by the Plaintiff was dismissed. Therefore, the learned Counsel for the Appellant seeks to set aside the finding by the learned first Appellate Judge, the District Judge, Tiruvannamalai in A.S.No.8 of 2007 dated 15.12.2011.



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19. The learned Counsel for the Appellant in the Second Appeal (Plaintiff in O.S.No.174 of 2000) submitted that Plaintiff himself had filed Appeal in A.S.No.08 of 2007. The Appeal was dismissed by the learned District Judge, Tiruvannamalai by judgment dated 15.12.2011.

20. The learned Counsel for the Appellant invited the attention of this Court to the averments in the written statement wherein the father as Defendant-1 claims that the Plaintiff is an illegitimate son born through Defendant-4 and seeks dismissal of the suit for partition. The learned Sub Judge in the judgment dated 04.08.2006 dismissed the suit for partition on the ground that on the date of filing of the suit, the father of the Plaintiff was alive. Therefore there is no cause of action on the suit for partition.

21. The learned Sub Judge, Tiruvannamalai, while answering Issue No. (1), misdirected himself in law by holding that the son born to the second wife cannot claim partition in the joint family properties, and consequently dismissed the suit, thereby negating the claim of the plaintiff. Aggrieved, the Plaintiff had preferred Appeal in A.S.No.8 of 2007. The learned District Judge, Thiruvannamalai, in the judgment in A.S.No.8 of 2007 dated 15.12.2011 also dismissed the Appeal in A.S.No.8 of 2007 on the ground that on the date of institution of the suit, cause of action does not arise as the father of the



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Plaintiff was alive.

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22. It is the contention of the learned Counsel for the Appellant that during the pendency of the Appeal, the father of the Plaintiff Defendant-1 died and legal heirs were impleaded in the course of the Appeal. It was claimed that the father had executed the WILL in favour of Defendant-3. The Son born to Defendant-1 and Defendant-2. Defendant-2 is the second wife of Defendant-1. The first wife of Defendant-1 died without leaving any issues. After the marriage of Defendant-1 and Defendant-2, Defendant-3 was born. Defendant-4 is the mother of the Plaintiff. The learned first Appellate Judge also observed that father of the Plaintiff and Defendant-1 having executed a WILL in favour of the Defendant-3, there are no properties available for partition Therefore dismissed the Appeal in A.S.NO.8 of 2007. Such finding is erroneous.

23. The learned Counsel for the Appellant in the Second Appeal (Plaintiff before the learned Sub Judge, Thiruvannamalai) invited the attention of this Court to the Section 3 of the Transfer of Property Act, Section 63 of the Indian Succession Act, Section 68 and 69 of the Indian Evidence Act, 1872 which are extracted as under:

“3. Interpretation clause.—

In this Act, unless there is something repugnant in the subject or context,

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“immoveable property” does not include standing timber, growing crops or grass;

“instrument” means a non-testamentary instrument;

“attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;

“registered” means registered in any part of the territories to which this Act extends under the law⁴ for the time being in force regulating the registration of documents;

“attached to the earth” means—

(a)rooted in the earth, as in the case of trees and shrubs;

(b)imbedded in the earth, as in the case of walls or buildings; or

(c)attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

“a person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under subsection (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that—

(1)the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and



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the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material: Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.”

“63. Execution of unprivileged Wills.—

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

“68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :



[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.] *[Inserted by Act 31 of 1926, Section 2.]*

69. Proof where no attesting witness found.

If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.”

24. Also, he invited the attention of this Court to Sections 2 and 6 of the Indian Succession Act, 1925 which are extracted as under:

“2. Definitions.—

In this Act, unless there is anything repugnant in the subject or context,—

(a)“administrator” means a person appointed by competent authority to administer the estate of a deceased person when there is no executor;

(b)“codicil” means an instrument made in relation to a Will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the Will;

(bb)“District Judge” means the Judge of a Principal Civil Court of original jurisdiction;

(c)“executor” means a person to whom the execution of the last Will of a deceased person is, by the testator’s appointment, confided;

(cc)“India” means the territory of India excluding the State of Jammu and Kashmir;

(d)“Indian Christian” means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion;

(e)“minor” means any person subject to the Indian Majority Act, 1875 (9 of 1875) who has not attained his majority within the meaning of that Act, and any other person who has not completed the age of eighteen years; and “minority” means the status of any such person;

(f)“probate” means the copy of a Will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator;

(g)“State” includes any division of India having a Court of the last resort;



and

(h)“Will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

6. One domicile only affects succession to movables.—

A person can have only one domicile for the purpose of the succession to his movable property.”

25. In support of his contention, the learned Counsel for the Appellant relied on the following decisions:

(i) In the case of ***P.M.Mani and others -vs- P.S.Mohankumar and***

Others reported in ***MANU/TN/2023/2002*** this Court had held as under:

“Family - probate - Hindu Law, Sections 8, 222 and 276 of Hindu Succession Act, 1925 and Order 25 Rule 9 of Original Side Rules and Limitation Act - suit for issue of probate in respect of will executed in view of Apex Court decision Court must be satisfied that will not only executed and attested in manner required under Act of 1925 but also is product of free volition of executant - whenever there is any suspicious circumstances obligation cast on propounder of will to dispel suspicious circumstances - Court unable to see any suspicious circumstance on testament no material available to indicate that testament suffers from any invalidating factor - clearly plaintiff discharged onus of proving will by proving testamentary capacity and signature of testator as expected by law plaintiff proved will executed in good state of mind held, plaintiff entitled to relief of probate.”

(ii) In the case of ***Subramania Reddi (Dead) Vs. Venkatasubba***

Reddi (Dead) and Ors reported in ***MANU/SC/0082/1999***,

“Family - partition - there is no point to re-appreciate evidences if members in joint family have treated some of properties as separate properties of other members and on that basis partition had been effected which has been found to be reasonable and proper there is no reason for defendant to bring in properties inherited by him from his relations on maternal side to blend with properties of joint family.”

(iii) In the case of ***Rangasami Vs. Kasiappa Gounder and Others***



reported in **MANU/TN/1067/2003** *this Court had held as follows:*

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“Property - partition - Section 100 of Code of Civil Procedure, 1908 - suit for partition - suit properties belonged to first defendant as his joint family properties - plaintiff son of first defendant through second wife whose marriage null and void - right conferred upon illegitimate children is only as regards property left by their parents and nothing more - plaintiff could not claim share in joint family properties that too when first defendant (his father) is alive - held, plaintiff not entitled to any share in suit properties.”

(iv) In the case of **Minor Gopi Vs. Rathinam** reported in **2001 (4) CTC**

131 this Court had held as follows:

“Hindu Marriage Act, 1955, Section 16-Suit for partition against defendant claiming that defendant had married plaintiff's mother and plaintiff was born in Wedlock - Alleged marriage between defendant and plaintiff's mother even if had taken place was void as plaintiff's first marriage was in force and subsisting - Illegitimate son born to parents who had undergone some form of marriage can stake claim only in property of father Plaintiff even as an illegitimate son could not stake such claim as defendant father is alive and right to claim share in father's property can arise only on death of father - Decree of first appellate court dismissing suit upheld.”

Therefore, he seeks to allow this Second Appeal and set aside the judgment of both the trial Court as well as the first Appellate Court in the light of the Indian Succession Act as amended.

26. Heard the learned Counsel for the Appellant Mr. R. Thiagarajan. After hearing the learned Counsel for the Appellant, the case was adjourned several times. However, there was no representation for the Respondents.



27. On perusal of the records, it is seen that in the earlier roster, the learned Judge of this Court had on request of both parties referred the subject matter for amicable settlement through Mediation before the learned District Judge, Thiruvannamalai and a report was obtained that there is no likelihood of settlement. Therefore, this Court had insisted the Appellant to argue the case, failing which the Second Appeal will be dismissed. Since the learned Counsel for the Appellant argued the case, the case was adjourned awaiting reply arguments from the Respondents. In spite of repeated adjournments, the learned Counsel for the Respondents did not appear. Only in the end of the roster, it was stated by the learned Counsel for the Respondents that they had returned the case records to the Respondents/Defendants.

28. Perused the records in O.S.No.174 of 2004. Perused the judgment dated 04.08.2006 made in O.S. No. 174 of 2000 on the file of the learned Sub Judge, Arani and the judgment dated 15.12.2011 made in A.S. No. 8 of 2007 on the file of the learned District Judge, Tiruvannamalai.

29. Pending Appeal in A.S.No.8 of 2007, the first Defendant/father of the Plaintiff died. Therefore, the legal heirs of the first Defendants/Respondents 5 and 6 were impleaded.



30. During trial, the father of the Plaintiff as Defendant-1 was alive and he had deposed evidence as D.W-1. He had marked documents as Ex.B-1 to Ex.B-4 which are sale deeds in the name of the first Defendant, father of the Plaintiff. The Defendant-2 step mother of the Plaintiff. Defendant-3 is the step brother of the Plaintiff and the paternal grandmother of the Plaintiff. While discussing the evidence, the learned Sub Judge, Tiruvannamalai, considering the fact that the Plaintiff is the son born to the third wife of the first Defendant, between the first Defendant and fourth Defendant, dismissed the suit as he is not the legitimate son of the first Defendant.

31. It is apposite to extract Section 2 of the Hindu Succession Act, 1956 which reads as follows:

“2. Application of Act.- (1) This Act applies-

(a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.-The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:-

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a



member of the tribe, community, group or family to which such parent belongs or belonged;

(c) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.”

32. The learned Trial Judge failed to consider the legal position as was available in the statute. Also, the learned Judge failed to take notice of the Act of Parliament to Section 57 of the Indian Evidence Act which is extracted as follows:

“57. Facts of which Court must take judicial notice:- The Court shall take judicial notice of the following facts :

(1) All laws in force in the territory of India;] *[Substituted by A.O. 1950, for the former para.]*

(2) All public Acts passed or hereafter to be passed by Parliament [of the United Kingdom] *[Inserted by A.O. 1950.]*, and all local and personal Acts directed by Parliament [of the United Kingdom] *[Inserted by A.O. 1950.]* to be judicially noticed;

(3) Articles of War for [the Indian] *[Substituted by A.O. 1950, for "Her Majesty's".]* Army, [Navy or Air Force] *[Substituted by Act 10 of 1927, Section 2 and Sch.I, for "or Navy".]*;

(4) [The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the Legislature established under any laws for the time being in force in a Province or in the State] *[Substituted by A.O. 1950, for the former para (4).]*;

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) All seals of which English Courts take judicial notice; the seals of all the Courts in India and of all Courts out of [India] *[Substituted by Act 3 of 1951, Section 3 and Sch., for "the States".]* established by the authority of the [Central Government or the Crown



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Representative] *[Substituted by A.O. 1937, for "the G.G. or any L.G. in Council".]*; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by [the Constitution or an Act of Parliament of the United Kingdom or an] *[Substituted by A.O. 1950, for "any Act of Parliament or other".]* Act or Regulation having the force of law in [India] *[Substituted by Act 3 of 1951, Section 3 and Sch., for "the states".]*;

(7) The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in [any Official Gazette] *[Substituted by A.O. 1937, for "the Gazette of India or in the Official Gazette of any L.G.."]*;

(8) The existence of title, and National Flag of every State of Sovereign recognized by [the Government of India] *[Substituted by A.O. 1950, for the [the British Crown].]*;

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;

(10) The territories under the dominion of [the Government of India] *[Substituted by A.O. 1950, for "the British Crown".]*;

(11) The commencement, continuance and termination of hostilities between [the Government of India] *[Substituted by A.O. 1950, for "the British Crown".]* and any other State or body of persons;

(12) The names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorised by law to appear or act before it;

(13) The rule of the road [on land or at sea] *[Inserted by Act 18 of 1872, Section 5.]*.

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so."

33. The birth extract of the Plaintiff was marked as Ex.A-7 wherein the name of the first Defendant was given as father. Even though the first Defendant as father of the Plaintiff admitted parentage, he disputed the claim



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of the Plaintiff that the Plaintiff is entitled to claim partition. He denied the claim stating that the relationship between the fourth Defendant and the first Defendant is barred under law. The learned District Judge as Appellate Court had rejected the claim of the Plaintiff regarding the date of marriage of the first Defendant with the mother of the Plaintiff, 4th Defendant as 1947 was not proved before the trial Court. Therefore, the claim made by the Plaintiff was rightly rejected by the learned Sub Judge which was confirmed by the learned District Judge. The learned District Judge in paragraphs 23 to 27 of the judgment had observed as follows:

“23. It is to be stated that in respect of item No. 14, 24 are belonged to the Solai Ammal, the first defendant's mother. The other A schedule properties are purchased by Solai Ammal from various persons on 07-03-1946, 14-05-1951 and 15-12-1958 as could be seen from Ex. A 15, 16 and 17. These are all properties of Solai Ammal on her death devolved upon her son the first defendant Pachaiyappa Nattar and hence it is her separate property and the trial court relied upon the decision reported in :-

"AIR-1999 Supreme Court - Page No. 1116"

and held that it is to be treated as the separate property of the first defendant and hence the plaintiff is not entitled to any relief. Such a finding of the trial court is well considered and well merited, does not warrant any interference by this court. In view of the above documentary evidence, the trial court has held that the suit A, B, C, D are not ancestral properties and the plaintiff is not entitled to any relief of partition.

24. The trial court also held that as the marriage between the first defendant and fourth defendant is void, the plaintiff being a son born out of the said marriage, he is only entitled to partition of the suit property, after the death of his father and since this suit was filed during the life time of his father namely the first defendant has held that the suit is not maintainable and also rendered finding to that effect. On consideration of both the oral and documentary evidence as discussed above, this court has already held that the marriage solemnized between the first defendant and



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the 4th defendant is void and the plaintiff is the son born to the 4th defendant through the first defendant cannot maintain the suit for partition during the life time of the first defendant.

25. The learned counsel for the appellant submitted that the trial court is quite right in dismissing the suit as not maintainable before the trial court, since the first defendant was alive. And further submitted that pending appeal the first defendant Pachaiyappa Nattar has died and therefore the plaintiff though termed as illegitimate son however under section 16 of the Hindu Marriages Act, he is entitled for share in the separate property of the first defendant.

26. Per contra, the learned counsel for the defendant submitted that during the life time of the first defendant he had executed a Will bequeathing all his properties to and in favour of the defendants 5 and 6 along with the memo reporting the death of the first defendant, the same has been filed in this court.

27. For the sake of clarity, it is to be stated that a copy of the Will has been filed in the court and no affidavit or petition has been filed to receive that alleged Will as additional evidence in this appeal under Order 41, Rule 27 C.P.C., nor the said document was not received by this court as an exhibit neither marked as exhibit. On perusal of the Ex. A5 legal notice issued by the plaintiff/appellant and the pleadings before the trial court and the evidence of PW1, PW2 and the suggestion made to the DW1 cross examination before the trial court and in the ground of appeal, the plaintiff/appellant is claiming right of co-parcenary and classified the suit properties as that of ancestral property only. It is only during the argument in the appeal, the learned counsel for the appellant has chosen to contend that the plaintiff is entitled to the relief under section 16 of the Hindu Marriages Act. It is to be stated that the plaintiff has not chosen to file any affidavit foregoing his right of co-parcenary and claim of the suit as ancestral property in the appeal before this court. So long as the pleadings and the evidence and grounds of appeal stand on the footing that the appellant/plaintiff is claiming as a co-parcener and in the grounds of appeal same stand has been taken and in the absence of any affidavit from the party to confine and limit his claim to that of illegitimate son and his consequential claim under section 16 of the Hindu Marriage Act, this court is of the considered view that the contention of the learned counsel for the appeal cannot be considered. It is to be stated that on the date of filing of the suit the first defendant/father, kartha of the family was alive and hence the present claim and contention put forward by the plaintiff's counsel is pre-matured on the date of filing of the suit as well as on the date of filing of the appeal. At the risk of repetition and for the sake of



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clarity, it is to be stated that pending appeal, the first defendant has died. The trial court has gave a categorical finding that the suit filed by the plaintiff is not maintainable by rejecting the both grounds of co-parcenary right and character of the suit property as that of the ancestral property. In the absence of the any amendment to the pleadings or necessary affidavit from the parties, the contention of the learned counsel that by subsequent change in circumstances viz., the death of the kartha of the family, the suit which was pre-matured at the time of the filing before the trial court has become in time on the death of the party pending appeal cannot be accepted since cause of action arose only on the death of the first defendant. It is to be stated that for the new claim in the appeal stage by the appellant's counsel, the material proposition of facts should be adduced by both the parties. By way of pleading and there thereafter there should be issues based upon the said material proposition of facts as required under Order 14, Rule 3 C.P.C. Though the counsel for the appellant as sought for moulding the relief which could be exercised by this court only under Order 7. Rule 7 of C.P.C. which mandates same cause of action. As stated supra on the date of filing of the suit, the first defendant was alive and there is no cause of action for the claim of partition under section 16 of Hindu Marriage Act.

Gobi Minor by mother and the next friend Shanthi
-Vs-
Rathinam

2001 (4) ??.?. - Page No. 131 - Madras

Wherein it is held that in the present case, father is the defendant so long as he is alive, the plaintiff is not entitled to claim any share in the property. Thus, this court finds that on the date of filing of the suit and on the date of judgment by the trial court and even on the date of appeal, the plaintiff/appellant has no cause of action and therefore moulding of the relief under Order 7, Rule 7 of C.P.C., cannot be granted, since in the instant case, the cause of action arose only on the death of the first defendant pending appeal. And hence this court holds that in the absence of any pleadings, amendment of pleadings by the appellant/plaintiff restricting his claim to the property of the first defendant or any affidavit to that effect, this court is of the considered view that the contention of the learned counsel cannot be considered. In the interest of justice, it is always open to the plaintiff/appellant, reserve his right and liberty to seek civil remedy in the manner he may be advised and all the points are held against the appellant/plaintiff are answered in negative.”

34. While discussing the Appeal, the learned District Judge had held



that the Defendant-1, father of the Plaintiff executed a Will in favour of the third Defendant. He had clearly observed that no petition was filed by the Respondent-3 in the appeal seeking to adduce additional evidence to mark the Will executed by the Defendant-1 in favour of the Defendant-3. Still, the learned Judge dismissed the appeal by the Plaintiff claiming that the Defendant-1 had executed a Will in favour of Defendant-3. The said finding of the learned District Judge as Appellate Authority is assailed by the learned Counsel for the Appellant in this Second Appeal.

35. Since the third Defendant in O.S.No.174 of 2000 as third Respondent in the Appeal before the first Appellate Court had not filed any petition seeking additional evidence to mark the Will alleged to have been executed by the Defendant-1 after dismissal of the suit in favour of the Defendant-3, the Will had not been proved as per Section 63(c) of the Indian Succession Act and as per Section 68 of the Indian Evidence Act, the judgment of the learned District Judge rejecting the appeal of the Plaintiff as Appellant in A.S.No.8 of 2007, is found perverse and erroneous in the light of Section 63(c) of the Indian Succession Act and Sections 68 and 69 of the Indian Evidence Act.

36. On perusal of the judgment of the learned District Judge in



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A.S.No.8 of 2007 dated 15.12.2011, the reasoning given by the learned District Judge in paragraph 27 (extracted above) is found unacceptable as per the proviso to Order VII, Rule 7 C.P.C which is extracted as under:

"7. Relief to be specifically stated.-Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement."

Therefore, the Court is exercising its discretion based on the circumstances available before the Court from the records. Here pending appeal the first Defendant before the trial Court died. The Respondents in the Appeal claims that the first Defendant executed Will in favour of the 3rd Defendant before the trial Court after the dismissal of the suit. Therefore, pending appeal, it is the duty of the third Defendant as 3rd Respondent in the appeal to file appropriate petition seeking to mark the Will by adducing additional evidence in Interlocutory Application in Appeal Suit No.8 of 2007. Since it had not been done, the learned District Judge while dismissing the appeal observed in paragraph 28 as follows:

"28. Point No. 8:- In fine the order of the trial court is just and proper, does not warrant any interference by this court as the same is well considered, well merited and the plaintiff is not entitled to any share in the suit property and the plaintiff is not entitled to any share in the suit property and it is open to the plaintiff to move appropriate application for appropriate relief before the appropriate court. These observations, this appeal is dismissed. No costs."

37. It is also found unacceptable when the suit for partition was



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dismissed by the learned trial Judge by misdirecting himself that the Plaintiff as illegitimate son is not entitled to claim partition. The learned trial Judge, learned Sub Judge, Arani, failed to take judicial notice of the amendment brought to Section 6 of the Hindu Succession Act whereby the disqualification for an illegitimate son was removed. The learned Judge failed to consider and failed to take judicial notice of the Act of Parliament under Section 57 of the Indian Evidence Act.

38. The learned Appellate Judge also failed to consider both the amendment brought by the Parliament to Section 6 of the Hindu Succession Act and during the arguments the submission of the learned Counsel for the Appellant that after the death of the father, the Plaintiff, as legal heir of Defendant-1, is entitled to claim a share in the father's property. This also based on Hindu Succession Act after amendment 2005 under Section 16 of the Hindu Succession Act. Pending appeal, the first Defendant died. Therefore, as son of the first Defendant, the Plaintiff is entitled to share in the share of the father's property even if the other properties are not considered in favour of the Plaintiff by the trial Judge. The learned first Appellate Court Judge erred in law in appreciating the facts in the light of the documents before the trial Court and in the light of the circumstances available before him at the time of hearing the Appeal. When the Will had not been proved or the Defendant-3 did not



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make any attempt to mark the Will, then the Will claimed by the Defendant-3 had to be rejected. Instead the learned Judge had appreciated the evidence as available on the date of trial and not subsequent to the date of trial. The learned first Appellate Court failed to exercise discretion vested in him as Appellate Judge as well as trial Judge. The Appellate Judge also has all the discretion of the trial Judge to mould the relief exercising the power of the Civil Court to meet the ends of justice under Section 151 of the Code of Civil Procedure also under Order VII, Rule 7 of the Code of Civil Procedure to mould the relief according to the changed circumstances. The learned Judge failed to exercise discretion vested in him and thereby dismissed the Appeal directing the Plaintiff to approach the Court for a second round of litigation when he himself has the discretion to grant the relief based on materials available before the trial Court as well as Appellate Court. Therefore, the judgment of the landed District Judge, Tiruvannamalai in A.S.No.8 of 2007 is found erroneous. **The Substantial Question of Law-4 is answered in favour of the Appellant/Plaintiff and against the Respondents/Defendants.**

39. The learned Sub Judge, Arani, failed to consider the amendment brought by the Parliament to the Hindu Succession Act particularly to Section 6 and to appreciate the documentary and oral evidence in the light of the amendment to the Hindu Succession Act. Therefore, the finding of the learned



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Sub Judge, Arani, in O.S.No.174 of 2000 and the finding of the learned District Judge as Appellate Judge in A.S.No.8 of 2007 is found perverse while appreciating evidence in the light of the amendment to the Hindu Succession Act. **The Substantial Question of Law-1 is answered in favour of the Appellant/Plaintiff and against the Respondents/Defendants.**

40. The Plaintiff as Appellant can claim the benefit under Section 2(1)(a) read with Section 6 of the Hindu Succession Act after the death of Defendant-1, the father of the Plaintiff, the Plaintiff is entitled to claim partition since the Will claimed by the 3rd Defendant before the trial Court as third Respondent in the Appeal have not been proved as per Sections 68 and 69 of the Indian Evidence Act and as per Section 63 (c) of the Indian Succession Act, the Plaintiff is entitled to claim benefit under Section 2(1)(a) read with Section 6 of the Hindu Succession Act. **Accordingly, the Substantial Question of Law-2 is answered in favour of the Appellant/Plaintiff and against the Respondents/Defendants.**

41. The Appellant/Plaintiff is entitled to share in the ancestral property even if the date of marriage of his parent is not specifically mentioned since the father of the Plaintiff, Defendant-1 as D.W-1 disputed the date of marriage and the learned Judge had given weightage to the evidence of



Defendant-1 as D.W-1 regarding the date of marriage. Still the Plaintiff being the son of Defendant-1 and Defendant-4, the Plaintiff is entitled to claim share in the property based on the admission made by Defendant-1. The contents of the written statement has to be rejected by the Court based on the amendment brought by the Parliament to the Hindu Succession Act which was not considered by both the trial Court, the learned Sub Judge, Arani and the learned first Appellate Court, the learned District Judge, Tiruvannamalai. The disqualification of the children born through void marriage had been removed which was not considered by the trial Court as well as the Appellate Court. Therefore, the Plaintiff is entitled to share in the properties. The claim made by the Defendants that the properties in the name of Defendant-2 and Defendant-3 are self-acquired properties are found unacceptable in the light of the proof and it attracts the Benami Transaction Act. Therefore, as claimed by the Plaintiff, those are presumed to have been purchased out of the income derived by the Defendant-1 from the income available to him from the properties purchased by his mother under Ex.B-3.

42. The property left intestate by the mother of the first Defendant belongs to the first Defendant. As son of the first Defendant, the Plaintiff is entitled to claim share in the properties. The first Defendant had in the written statement claimed that the properties in Items 1 to 8 in “A” schedule belong to



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one Rathinavel Chettiar for which he had not filed any document whereas the Plaintiff had filed documents under Ex.A-1 to Ex.A-17 particularly patta book under Ex.A-8, A-9, A-10, A-11, A-12, A-13 and A-14. Therefore, the claim of the Plaintiff had been proved through documents under Ex.A-1 to Ex.A-17. The birth of the Plaintiff to the first and fourth Defendant is not denied by the first Defendant in the written statement or in his evidence. Also the birth extract of the Plaintiff had been marked as Ex.A-7 in which the name of the father and mother is found. Therefore, as Plaintiff is the son of the first Defendant, during the pendency of the Appeal, the first Defendant died, therefore, the claim made by the 3rd Defendant that the first Defendant executed Will had not been proved by adducing additional evidence as was observed by the learned first Appellate Court Judge. The third Defendant as third Respondent in the appeal cannot rely on the Will. The Court cannot accept the claim made by the 3rd Respondent in the appeal, The property is treated as Defendant-1 died died intestate. Under those circumstances, the Plaintiff as legal heir of the first Defendant is entitled to partition as per Section 16 as was argued by the learned Counsel for the Appellant before the learned District Judge. The learned District Judge failed to mould the relief accordingly and had ignored the arguments claiming that the Appellate Court considering the facts and circumstances as was available before the learned Sub Judge, when the first dependent was alive. Whereas the first Defendant



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died during the appeal and that fact is available to the learned District Judge, the learned District Judge ought to have moulded the relief according to the facts and circumstances available before him at the time of disposing of the Appeal, instead of driving the Plaintiff for a second round of litigation on the changed circumstances. When he himself can mould the relief according to the changed circumstances thereby saving the Court's time as well as the litigants time. Therefore, the finding of the learned District Judge rejecting the claim of the Appellant in the first Appeal, the Plaintiff before the learned Sub Judge, Arani, is found erroneous. Therefore, the Plaintiff is entitled to share in the suit properties on the date of disposal of the appeal by the learned District Judge even though the date of marriage of the parents is not mentioned. **The Substantial Question of Law-3 is answered in favour of the Appellant/Plaintiff and against the Respondents/Defendants.** The Appellant is entitled to share in the suit properties.

In the result, **this Second Appeal is allowed with costs throughout.** The judgment and decree dated 15.12.2011 made in A.S. No. 8 of 2007 on the file of the learned District Judge, Tiruvannamalai, confirming the judgment and decree dated 04.08.2006 made in O.S. No. 174 of 2000 on the file of the learned Sub Judge, Arani, is set aside. The suit in O.S. No. 174 of 2000 is decreed in favour of the Appellant/Plaintiff. The Plaintiff is granted



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preliminary decree for partition of 1/7 share. The Plaintiff is to proceed further with the final decree application before the learned Sub Judge, Arani.

30.06.2025

srm

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

To

1. The District Court,
Tiruvannamalai.
2. The Sub Court,
Arani.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

srm

Judgment made in
S.A.No.170 of 2013

30.06.2025