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S.A.No.864 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.12.2025

CORAM:

THE HON'BLE Mr.JUSTICE **P.DHANABAL**

S.A.No.864 of 2015

Venkatesan

... Appellant

Vs.

1. Shanthi

2. Priya

3. Ram Prabhu

(R2 & R3 are declared as Major and
their mother is discharged from the
guardianship vide court order
dated 24.08.2023 made in

S.A.No.864 of 2015 (TVTSJ)

... Respondents

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code to
set aside the Judgment and Decree dated 08.12.2014 made in A.S.No.8
of 2013 and confirm the Judgment and Decree dated 11.01.2012 made
in O.S.No.102 of 2008 on the file of the learned Subordinate Judge,
Harur.

For Appellant : Mr.G.Karthikeyan
Senior Counsel

For Respondents : Mr.R.Anburaj

JUDGMENT

This Second Appeal has been preferred as against the Decree
and Judgment passed by the learned Principal District Judge,
Dharmapuri in A.S.No.8 of 2013 dated 08.12.2014 wherein the
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respondents herein have preferred the said Appeal as against the Decree and Judgment passed by the Subordinate Court in O.S.No.102 of 2008 on the file of the Sub Court, Harur dated 11.01.2012.

2. For the sake of convenience and brevity, the parties in this Second Appeal are referred as plaintiff and defendants as referred before the trial court.

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

(i) The suit properties originally belonged to one Kuppugounder through partition in the year 1978. The said Kuppugounder had three sons, namely, Venkatesan (plaintiff), Ramu and Sivaji and one daughter, Ambuja. The said Ambuja got married in the year 1987. While so, the properties of the said Kuppugounder were partitioned between the sons of Kuppugounder through Partition Deed dated 06.06.1994. In the said partition deed, some properties were jointly allotted to Kuppugounder and Ramu through 'A' Schedule properties. The 'B' schedule properties were allotted to the another son of Kuppugounder, namely, Sivaji. Pursuant to the partition deed dated 06.06.1994, the respective parties were in possession and enjoyment of their respective shares. The said Ramu died intestate leaving behind the defendants as his legal heirs. Thereafter, the plaintiff, defendants and father of the plaintiff, namely,



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Kuppugounder jointly enjoyed the properties. In the properties which were allotted through partition deed dated 06.06.1994 as 'A' Schedule properties, the plaintiff is entitled to 1/3rd share, Kuppugounder is entitled to 1/3 share, the defendants 1 to 3, being legal heirs of Ramu jointly are entitled to 1/3 share.

(ii) The said Kuppugounder executed a settlement deed dated 25.02.2005 in favour of the plaintiff in respect of his 1/3rd share, therefore, the plaintiff is entitled to 2/3 share and the defendants are jointly entitled to 1/3rd share. When the plaintiff demanded to partition over the properties, the defendants refused for partition, therefore, filed this suit.

4. The brief averments of the Written Statement filed by the defendants are as follows:-

(i) The suit is false and not maintainable either in law or on facts. The averments that the properties are the joint family properties and the defendants are jointly entitled to 1/3rd share and plaintiff is entitled to 2/3rd share are false. There are two electrical service connection in the schedule of the properties and ninety Coconut trees and two Tamarind trees are also available. The plaintiff's mother, namely, Rajammal had property in Survey No.39/1 to an extent of 0.85.0 hectares, the said land



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was omitted to mention in the suit, already the plaintiff issued notice dated 21.02.2008 to the defendants and the same was suppressed. As per partition deed dated 06.06.1994, some properties were allotted to the share of Shivaji and the remaining properties were enjoyed by the plaintiff, his father, Kuppugounder, husband of the 1st defendant and mother of the plaintiff, namely, Rajammal.

(ii) During the lifetime of Ramu, ten years back, there was an oral partition between the family members and the properties of Kuppugounder and Rajammal were divided into two parts and one part was allotted to Ramu and the another part was allotted to the plaintiff. The property allotted to Ramu was enjoyed by him along with the defendants and they are paying taxes to the Government. The said Kuppugounder never executed any settlement deed as alleged by the plaintiff and Kuppugounder had no right to execute the said sale deed and the settlement deed dated 25.02.2005 is forged one and the same is not valid in the eye of law. The said Kuppugounder is also necessary party to this case and thereby the suit is bad for non-joinder of necessary party. There is no cause of action to the suit, therefore, the suit is liable to be dismissed.



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5. Based on the above said pleadings and hearing both sides and perusing the records, the trial court framed the following issues for trial:-

- “(i) Whether the suit property is undivided family property?
- (ii) Whether the partition deed dated 06.06.1994 is genuine?
- (iii) What is the share entitled by the plaintiff?
- (iv) Whether the suit is maintainable?
- (v) To what other reliefs?”

6. In order to prove the case before the trial court, on the side of the plaintiff, P.W.1 to P.W.3 were examined and marked Exhibits Ex.A.1 to A.5. On the side of the defendants, D.W.1 and D.W.2 were examined and marked Exhibits EX.B1 to B.6. After considering the evidences adduced on both sides, the trial court has decreed the suit and passed preliminary decree for partition by allotting 2/3rd share to the plaintiff over the suit properties. Aggrieved by the said Decree and Judgment, the defendants have preferred the appeal before the First Appellate Court in A.S.No.8 of 2013 on the file of the learned Principal District Judge, Dharmapuri. The learned Principal District Judge, Dharmapuri had framed the following points for determination:-

‘1. Whether Kuppugounder executed settlement deed in favour of the plaintiff through settlement deed dated 25.02.2005?



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2. Whether the properties were partitioned orally by dividing into two parts?

3. Whether the suit is bad for non-joinder of necessary parties?

4. Whether the suit is bad for partial partition due to non-including of the properties, which are in the name of the mother of the plaintiff, namely, Rajammal?

5. Whether the appeal has to be allowed or not?

The First Appellate Court after considering the evidences adduced on both sides, allowed the appeal and set aside the decree and judgment passed by the trial court on the ground that the settlement deed was not proved and all the legal heirs of Kuppu Gounder are proper and necessary parties to decide suit. Aggrieved by the said decree and judgment, the present Second Appeal has been filed by the plaintiff.

7. This Court, at the time of admitting this Second Appeal on 23.09.2015, framed the following substantial questions of law:-

‘a. Whether the Lower Appellate Court was correct in dismissing the suit for partition, when admittedly the property where partition between the plaintiff / appellant, 1st defendant / respondent and their father on one side and Sivaji, the other brother on the other side had already taken place?



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b. Whether Lower Appellate Court was correct allowing the appeal when the first respondent failed to prove her case of oral partition which she claims to have taken place?

c. Whether the lower appellate court is correct in dismissing the suit for partition filed by appellant, when the appellant has proved his case of earlier partition on 06.06.1994?"

8. The learned counsel for the appellant would submit as follows:-

(i) Originally the suit property belong to the father of the plaintiff, namely, Kuppugounder and the said Kuppugounder along with brothers had partitioned their properties through partition deed in the year 1978. The said Kuppugounder had three sons and one daughter. The daughter of Kuppugounder, namely, Ambuja got married in the year 1987 and thereafter, the said Kuppugounder along with his sons partitioned their properties through partition deed dated 06.06.1994. In the said partition, 'B' schedule properties were allotted to Shivaji and 'A' Schedule properties were allotted to the Plaintiff, Kuppugounder and Ramu.

(ii) The said Ramu died intestate leaving behind the defendants as his legal heirs. After partition, 'A' Schedule properties were jointly enjoyed by Kuppugounder, Venkatesan and Ramu. After the demise of



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Ramu, the plaintiff, Kuppugounder and defendants are in joint possession and enjoyment of properties. Thereafter, the said Kuppugounder, father of the plaintiff had executed a settlement deed in respect of his 1/3 share in favour of the plaintiff on 25.02.2005. When the plaintiff demanded for partition, the defendants refused, therefore, the plaintiff is entitled to 2/3rd share and the defendants are jointly entitled to 2/3rd share.

(iii) In order to prove to prove the case of the plaintiff before the trial court, P.Ws.1 to 3 were examined and Exs.A.1 to A.5 were marked. On the side of the defendants, D.Ws.1 to 3 were examined and marked Exs.B1 to B.6. The trial court after analysing evidence on both sides correctly decreed the suit, however, the First Appellate Court without appreciating the evidence in a proper perspective allowed the appeal by dismissing the suit.

(iv) The First Appellate Court failed to consider that once the properties are partitioned among the members of the family, each share of the member becomes individual properties of the person to whom it was allotted. Since the appellate court failed to consider that the father of the plaintiff himself executed settlement deed and thereby the plaintiff need not examine his father, mere non mutation in the revenue records



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is not a ground to deny the settlement deed. The sister of the plaintiff, namely, Ambuja got married in the year 1987 and she has not claimed right over the property. But the First Appellate Court erroneously held that the daughter of Kuppugounder ought to have made as party to decide a settlement deed, therefore, the decree and Judgment passed by the First Appellate Court is liable to be set aside and the decree and judgment passed by the trial court are liable to be restored.

9. Per contra, the learned counsel appearing for respondents would submit as follows:-

(I) There is no dispute that the parties are entitled to the properties through Kuppugounder, who got properties through partition in the year 1978 and thereafter, Kuppugounder and his three sons entered into partition through partition deed dated 06.06.1994 and 'A' Schedule property was jointly allotted to the shares of Kuppugounder and his two sons, Ramu and Venkatesan. 'B' schedule property was allotted to one Shivaji. The defendants are the legal heirs of the said Ramu. The said Ramu, plaintiff and his father and mother orally partitioned the properties and all the properties of father and mother of the plaintiff and the said Ramu were divided into two parts and one part was allotted to the said Ramu and another part was allotted to the



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plaintiff. The suit property along with the house and the property belong to the mother of the plaintiff in S.F.No.39/1 were equally divided and the plaintiff and the said Ramu had been in possession and enjoyment of their respective shares. After the demise of the said Ramu, the defendants are in possession and enjoyment of the property.

(ii) The settlement deed dated 25.02.2005 is a fabricated one and it is not valid and Kuppugounder is also a proper and necessary party to the suit and thereby the suit is not maintainable. During the pendency of the suit, Kuppugounder died and after the demise of Kuppugounder, all the legal heirs of Kuppugounder have to be impleaded, therefore, the suit is not maintainable. However, the trial court without considering the defence taken by the defendants, erroneously decreed the suit. However, the First Appellate Court correctly dismissed the suit. The attesting witnesses have not deposed about the execution of the alleged settlement deed and the evidence of P.W.3 is not sufficient to prove the attestation in accordance with law and he not even deposed about the attestation, therefore, the First Appellate Court correctly applied the law and decided the case and there is no any substantial question of law involved in this case and the appeal is liable to be dismissed.



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(iii) That apart, the learned counsel for the respondents in support of their contentions relied on the following Judgments:-

(a) Reported in AIR 1964 Supreme Court 136 [A.Raghavamma and Another Vs. A.Chenchamma and Another]

(b) In Civil Appeal No.2929 of 2022 [Veena Singh (Dead) through Lr. Vs. The District Registrar /Additional Collector (F/R)]

(c) Reported in AIR ONLINE 2019 SC 1150 [State of Andhra Pradesh & Ors., Vs. B.Ranga Reddy (D) by Lrs and Ors.]

(d) Reported in AIR 1964 Supreme Court 136 [A.Raghavamma and Another Vs. A.Chenchamma and Another]

(e) Reported in 1994 SCC (5) 135 [Bhagwan Kaur Vs.Kartar Kaur

(f) Reported in AIR 2003 Supreme Court 4351 [Krishna Mohan Kul @ Nani Charan Kul and Anr.]

(g) Reported in AIR 1981 SC 1463 [Kalloomal Tapeswari Prasad (Huf) ..Vs. Commissioner of Income Tax, Kanpur]

10. Heard the learned counsel on either sides and perused the entire documents placed on records.

11. The appellant is the plaintiff, who filed the suit for partition before the trial court. According to the plaintiff, the suit property originally belonged to his father, Kuppugounder through partition deed



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in the year 1978. Thereafter, the father of the plaintiff along with brothers of the plaintiff entered into partition dated 06.06.1994 and one portion was allotted to his brother, namely, Shivaji and remaining portion of the property was jointly allotted to the plaintiff, his father, Kuppugounder and another brother Ramu.

12. The said Ramu died intestate leaving behind the defendants as his legal heirs. The said Kuppugounder executed a settlement deed in favour of the plaintiff on 25.02.2005 in respect of his 1/3 share, therefore, the plaintiff is entitled to 2/3 rd share and the defendants jointly are entitled to 1/3rd share and therefore, the plaintiff filed the suit for partition. The defendants also admitted the partition between the brothers of Kuppugounder in the year 1978 and also admitted partition between Kuppugounder and his three sons on 06.06.1994 and through that partition deed, the suit property was allotted jointly to Kuppugounder and his two sons, viz., Ramu and the Plaintiff. According to the plaintiff after partition between the plaintiff, his brother and father Kuppugounder, a settlement deed was executed by his father in respect of his 1/3 share in favour of the plaintiff. The defendants denied the execution of settlement deed dated 25.02.2005 and according to the defendants during the life time of the plaintiff's father, namely Kuppugounder and mother, Rajammal an oral partition was entered in



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respect of the family properties and the property of Rajammal in Survey No.39/1 and their house along with suit properties were equally divided between two sons of Kuppugounder and one portion was allotted to Ramu and another portion was allotted to the plaintiff. The property allotted to Ramu has been under the possession and enjoyment of the defendants and Kuppugounder was not impleaded as one of the party, therefore, the suit is not maintainable.

13. After analysing the entire evidence, the trial court came to the conclusion that the father of the plaintiff, Kuppugounder executed settlement deed in respect of his share in favour of the plaintiff and the plaintiff examined attestation witness and thereby proved the case and the plaintiff is entitled to 2/3 rd share and the defendants, who are legal heirs of the deceased Ramu are jointly entitled to 1/3rd share over the properties. The said Decree and Judgment were challenged before the First Appellate Court and the First Appellate Court set aside the Judgment and Decree passed by the trial court and allowed the appeal on the ground that the plaintiff failed to prove the settlement deed and the attesting witnesses of the settlement deed has not been deposed about the attestation. In the chief examination, P.W.3, Kumaresan has not deposed anything about the alleged attestation and the settlement deed.



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14. Further, to decide the settlement deed, all the legal heirs of the said Kuppugounder are necessary parties and therefore, the First Appellate court came to the conclusion that the oral partition also has not been proved through sufficient evidence. Therefore, without including all the legal heirs of Kuppugounder, partition cannot be granted. The First Appellate Court has analysed the evidences adduced on both sides and based on the evidence adduced by the plaintiff came to the conclusion that the settlement deed has not been proved in accordance with law.

15. Further, when the settlement deed is denied by the defendants, it is the duty of the plaintiff to prove the settlement deed in accordance with law and he examined P.W.3, viz., Kumaresan and he has not even deposed about the execution of settlement deed and the attestation, only in the cross examination, stated about the attestation. When Kuppugounder had three sons and one daughter, there is no reasons stated by the plaintiff as to why the said Kuppugounder executed the settlement deed only in favour of the plaintiff. The witnesses have not stated about the attestation and the evidence of P.Ws.1 to 3 are not sufficient to prove alleged settlement deed and thereby the First Appellate Court has correctly dismissed the suit and set aside the Jugment passed by the trial court.



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16. Further, once the settlement deed has not been proved by the plaintiff, the property of Kuppugounder have to be equally shared by all the legal heirs of Kuppugounder, but the plaintiff has not added all the legal heirs of Kuppugounder and thereby the First Appellate Court has correctly held that without impleading all the legal heirs of Kuppugounder, the partition suit cannot be decided. The trial court has not considered the evidence of attesting witness and the plaintiff failed to prove the execution of settlement deed in the manner known to law and all the legal heirs of Kuppugounder have not been added as parties and therefore, the First Appellate Court has rightly allowed the appeal.

17. As far as Substantial Questions of Law (a): Whether the Lower Appellate Court was correct in dismissing the suit for partition, when admittedly the property where partition between plaintiff / appellant, 1st defendant / respondent and their father on one side and Sivaji, the other brother on the other side had already taken place? Is concerned,

(i) It is admitted fact that already properties were partitioned between the brothers of the plaintiff and his father through partition deed dated 06.06.1994 and the First Appellate Court also considered that aspect and thereby not accepted the contention of the defendants that



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the properties are ancestral properties of Kuppugounder and the said Kuppugounder had no right to execute the settlement deed. The First Appellate Court held that the properties have been partitioned between the plaintiff's father and his brother and already the share of Shivaji was separately allotted to him and the suit was not dismissed by the First Appellate Court on the ground of earlier partition. Since the First Appellate Court rendered findings that the settlement deed was not proved by the plaintiff, after demise of settlor, Kuppugounder, his share has to be devolved on all the legal heirs, therefore, the First Appellate Court held that in order to effect partition of the share of the Kuppugounder after his demise, all the legal heirs of Kuppugounder have to be impleaded and came to a fair conclusion, therefore, dismissing the partition suit by the First appellate court is correct. Thus the substantial question of law is answered.

(ii) The learned counsel appearing for the respondents would submit that the plaintiff had failed to prove the attestation and the witness have not spoken about the attestation. To support his contention, he relied on the **Judgment of the Hon'ble Supreme Court in (i) Veena Singh (Dead) through Lr., Vs. The District Registrar/ Additional Collector (F/R) and (ii) Bhagwan Kaur Vs. Kartar Kaur reported in 1994 SCC (5) 135**



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(iii) On a careful perusal of the above judgments, it is clear that execution of document is something different from mere signing of the document. The execution of document means that the executor must have signed or put his thumb impression only after the contents of the documents have been fully stated and read by executant before he put his signature thereon. Mere admission of the initial by the executant would not tantamount to the admission of execution of document. Further, it is also clear in the matter of proof of Will, Section 68 of Indian Evidence Act, enjoins that if document is required by law to be attested it shall not be used as evidence until one attesting witnesses atleast have been called for the purpose of proving his execution, if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence. The proviso thereto states that it shall not be necessary to call an attesting witness in proof of execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, unless its execution by the person by whom he purports who have been executed is specifically denied.

(iv) In the case on hand also, the defendants denied the execution of the settlement deed, therefore, it is duty of the plaintiff to examine attesting witness, but in this case, the attesting witnesses have



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not deposed about attestation of the document and their evidence is not sufficient to prove the execution and attestation of the said settlement deed.

18. As far as Substantial Question of Law (b) 'Whether the lower appellate court was correct in allowing the appeal, when the 1st respondent failed to prove her case of oral partition, which she claims to have taken place' is concerned,

(i) The Lower Appellate Court in its Judgment categorically discussed in Issue No.2 that while the husband of the 1st defendant was alive, the properties were divided into two parts, one part was allotted to the plaintiff and another part was allotted to the husband of the 1st defendant and the plaintiff also admitted that the house was divided into two parts, in one part, plaintiff is residing and in another part, defendants are residing, further, there are chances for oral partition, however, there is no any document to prove the oral partition and also properties were not partitioned with metes and bounds, therefore, not accepted the oral partition. The defendants also failed to prove the oral partition and when the properties were orally partitioned, it is the duty of the defendants to explain which properties were allotted to the plaintiff and which properties were allotted to the husband of the 1st defendant. When the properties of the mother of the plaintiff also partitioned along



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with the properties of the plaintiff's father, how the other legal heirs of the mother of the plaintiff consented for the partition and without allotting share to the legal heirs of the mother of the plaintiff, how the plaintiff and husband of the 1st defendant alone partitioned the properties of their mother by leaving daughter and another son, has to be explained by the defendants. However, there is no any explanation with regard to that. When the suit is filed for partition by the plaintiff, the defendants took a plea that the properties were already partitioned orally, it is the duty of the defendants to plead and prove how the suit properties were divided and which specific portion of the suit properties were allotted to whom, but there are no any evidence adduced by the defendants to prove the said oral partition.

(ii) Even assuming that there was an oral partition, since the properties of the mother of the plaintiff also included, all the other legal heirs of the mother of the plaintiff are also proper and necessary parties. However, the plaintiff has not raised any plea in respect of the property of his mother. Therefore, the defendants' contention that the property was already divided between plaintiff and his brother, Ramu is not acceptable. However, the First Appellate Court has decided the Issue no.2, viz., 'Whether the properties were orally partitioned or not' has been decided as against the respondents / defendants.



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(iii) The First Appellate Court has not allowed the appeal on the ground that oral partition was taken place between the parties. Per contra, the First Appellate Court decided that there are no records to prove the oral partition by metes and bounds and dismissed the suit and allowed the appeal on the ground that non-proving settlement deed by the plaintiff and after the demise of Kuppugounder, his properties have to be divided between the legal heirs of Kuppugounder. All the legal heirs are not parties to the suit and thereby declined to grant partition.

(iv) The learned counsel appearing for the respondents would submit that though the respondents have not preferred any appeal or cross objection, the trial court has decreed the suit without considering the evidences adduced on the side of the defendants and failed to appreciate that already properties were orally partitioned between the plaintiff and the husband of the 1st defendant. The First Appellate Court has dismissed the suit by allowing the appeal, however, rendered a findings as against the oral partition. Even though the 1st defendant has not preferred cross objections as against the findings, she is entitled to challenge the finding in respect of the oral partition without filing any cross objection, to support the said contention, he relied upon the Judgment rendered by the Hon'ble Supreme Court in The **State of**



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Andhra Pradesh & Ors. Vs. B.Ranga Reddy (D) rep. By L.R.s and others.

(v) On a careful perusal of the above judgment, it is clear that under the amended Civil Procedure Code read with the light of explanation, though it is still not necessary for the respondent to take any cross objections laying challenge to any finding adverse to him as a decree is entirely in his favour and he may support the decree without cross objection. The amendment made in the text of Sub Rule 1 r/w explanation newly inserted gives him a right to take cross objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross objection is spelt out by Sub Rule 4. In spite of original appeal having been withdrawn or dismissed for default, the cross objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC.

(vi) In the case on hand, the defendants have not preferred any cross objection in respect of the findings rendered against them with regard to the oral partition, therefore, the contention of the learned counsel appearing for the respondents that without challenging the said findings they can agitate in respect of oral partition and the defendants need not file cross objection is not acceptable.



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(vii) The learned counsel appearing for the respondents also would submit that as far as Hindu Law is concerned, the physical division of the property, which is the subject matter of partition is not necessary to complete the process of partition, in so far as that item of property is concerned and the parties to the partition may enjoy the property in question as tenants in common. If there be a conversion of the joint tenancy of an undivided family into a tenancy in common of the members of that undivided family, the undivided with family becomes a divided family with reference to the property, that is the subject of that agreement and that is a separation in interest and in right, although not immediately followed by defacto actual division of the subject matter. To support his contention he relied upon the judgment of the **Hon'ble Supreme Court in Kalloomal Tapeswari Prasad (HUF) Vs. Commissioner of Income Tax, Kanpur reported in AIR 1981 SC 1463**. On a careful perusal of the above judgment it is clear that when the members of an undivided family agree among themselves with regard to a particular property that it shall thenceforth being the subject of ownership in certain defined shares, then character of undivided property and joint enjoyment is taken away from the subject matter, so agreed to be dealt with, and in the estate each member thenceforth a definite and certain share, which he may claim the right to receive and to enjoy in severalty although the property itself has not been actually



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severed and divided. A physical division of property which is the subject matter of partition is not necessary to complete the process of partition, in so far as that item of property is concerned under the Hindu law.

(viii) In the case on hand, the defendants have only pleaded that the suit property was already divided between the parties, there is no evidence to prove the alleged oral partition and no evidence as to which part of the properties were allotted to the enjoyment of the plaintiff and which part of the property was allotted to the enjoyment of the 1st defendant's husband and the properties of the mother of the plaintiff also partitioned between the plaintiff and the husband of the 1st defendant without knowledge of the other co-sharers, therefore, the said judgment is not applicable to the present facts of the case.

(ix) The learned counsel appearing for the respondents would submit that the First Appellate Court has correctly arrived at a conclusion and there is no any perversity in the Judgment of the First Appellate Court and this Court in the Second Appeal, the scope of interference is very limited, to support his contention, he relied on the Judgment of the **Hon'ble Supreme Court Krishna Mohan Kul @ Nani Charan Kul and Another Vs. Pratima Maity and Ors. reported in AIR 2003 Supreme Court 4351.**



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(x) On a careful perusal of the above judgment it is clear that findings of fact recorded must be set aside, where the findings has no basis in any legal evidence on record or is based on a misleading of evidence or suffers from any legal infirmity, which materially prejudices the case of one of the parties, therefore, the said case Law no way helpful to the case of the respondents.

19. As far as the Substantial Question of Law (c) : Whether the lower appellate Court is correct in dismissing the suit for partition filed by the appellant when the appellant has proved his case of earlier partition on 06.06.1994, is concerned,

(i) In this case, there is no dispute that earlier, the plaintiff, his brother, Ramu another brother, Shivaji along with their father, Kuppugounder entered into registered partition deed dated 06.06.1994 and as per the said partition deed, the suit property has been mentioned as 'A' schedule property, which was allotted jointly to the shares of Kuppugounder, plaintiff and Ramu. The 'B' Schedule property in the partition deed dated 06.06.1994 was allotted to one Shivaji. Now the present suit is filed in respect of 'A' schedule property contained in partition deed dated 06.06.1994, which was jointly allotted to Kuppugounder and his two sons, namely, plaintiff and husband of the 1st



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defendant. Therefore, the plaintiff filed a suit for the property jointly allotted through the partition deed dated 06.06.1994.

(ii) Though the suit properties were allotted through partition deed dated 06.06.1994 jointly to the plaintiff, husband of the 1st defendant and Kuppugounder, the plaintiff has relied upon settlement deed dated 25.02.2005 executed by his father, Kuppugounder, but he failed to prove the settlement deed in accordance with law and thereby the First Appellate Court correctly dismissed the suit for want of all the legal heirs of the Kuppugounder. Without impleading all the legal heirs of the Kuppugounder, the suit cannot be disposed of effectively. Though the partition took place between the plaintiff, his father and other brothers, the present suit property was allotted jointly and one of the co-sharer, viz., Kuppugounder died and in the absence of proving the settlement deed, the said properties have to be divided between the legal heirs of the said Kuppugounder.

(iii) The plaintiff, defendants, one Shivaji and one Ambuja are all legal heirs of the deceased Kuppugounder and therefore, all the above said legal heirs are proper and necessary parties to decide the suit, therefore, after the demise of Kuppugounder, the plaintiff ought to have impleaded the legal heirs of Kuppugounder to decide the suit, but he failed to implead all the legal heirs. It is true that when Kuppugounder



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executed settlement deed in favour of the plaintiff he need not include the legal heirs of Kuppugounder, however, in this case, the plaintiff failed to prove the execution of settlement deed dated 25.02.2005 by Kuppugounder in favour of the plaintiff. Therefore, all the legal heirs of Kuppugounder are necessary parties to decide this case. Thus the substantial question of law (c) is answered.

20. In view of the above said discussions and answers to the substantial questions of law, there is no error in the judgment and decree passed by the First Appellate Court and the First Appellate Court correctly dismissed the suit.

21. In the result, the Second Appeal is dismissed and the Judgment and Decree passed by the learned Principal District Judge, Dharmapuri in A.S.No.8 of 2013 dated 08.12.2014 is confirmed. Since the suit is filed for partition and the same is dismissed for non-impleading of all the legal heirs of Kuppugounder and by including all the properties, the plaintiff is at liberty to file a fresh suit for partition by impleading all the legal heirs of Kuppugounder and by including all the properties in respect of share of Kuppugounder. No costs.

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Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
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1. The Principal District Judge,
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2. The Subordinate Judge,
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