



O.S.A.No.205 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03.09.2025
Pronounced on	10.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

O.S.A.No.205 of 2022
and
C.M.P.Nos.16219, 16220 and 12433 of 2022

R.Manikandan,
S/o. Late M.Ramalingam

... Appellant/2nd Defendant

Vs.

1.S.Sridevi,
W/o.L.Senthilkumar

2.R.Maheswari,
W/o.K.Raja

... 1st & 2nd Respondents/
1st & 2nd Plaintiffs

3.R.Savithri,
W/o. Late M.Ramalingam

... 3rd Respondent/1st Defendant

Prayer: Appeal under Order 36 Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent Act, to set aside the Judgment and Decree dated 08.04.2022 in C.S.No.112 of 2021 and consequentially direct the disposal of the same upon full-fledged trial.



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For Appellant : Mr.S.Senthilnathan

For Respondents :

For R1 and R2 : Mr.T.Mohan
Senior Counsel
for Mr.K.Surendar

For R3 : No Appearance

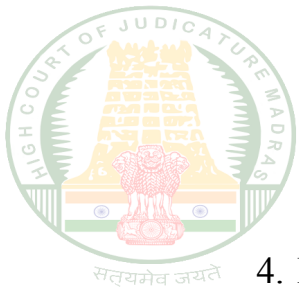
JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This Original Side Appeal has been filed by the 2nd Defendant in C.S.No.112 of 2021.

2. The 1st and 2nd Respondents are the 1st and 2nd Plaintiffs in C.S.No.112 of 2021. The 3rd Respondent is the 1st Defendant in the civil suit. The 1st and 2nd Respondents herein (1st and 2nd Plaintiffs) are the sisters of the Appellant herein (2nd Defendant). The 3rd Respondent is the mother of the Appellant herein (2nd Defendant) and the 1st and 2nd respondents herein (1st and 2nd Plaintiffs).

3. The above civil suit was filed for partitioning 17 properties in the schedule to the plaint in C.S.No.112 of 2021. In the plaint, the 1st and 2nd Respondents have not brought all the properties for partition.

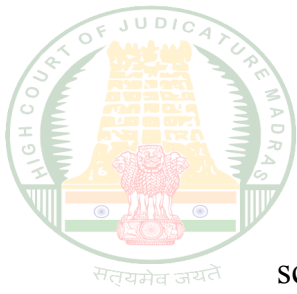


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4. It is the case of the Appellant (2nd Defendant) that the 1st Respondent herein (1st Plaintiff) was examined as P.W.1 and was partly cross-examined. The case was thereafter listed before the Court on 08.04.2022 on which date, the Impugned Preliminary Decree has been passed without allowing the Appellant (2nd Defendant) to cross-examine the 1st Respondent herein (1st Plaintiff).

5. Learned counsel for the Appellant would submit that in Paragraph No.4 of the plaint itself, the 1st and 2nd Respondents herein (1st and 2nd Plaintiffs) have clearly stated they have brought only the schedule mentioned properties that were held by their father in his own name within the ambit of the suit and in case they learn about any other property held by their father, they reserved their right to include such properties also by seeking amendment of the plaint. Paragraph No.4 of the plaint is reproduced below:-

“4. The plaintiffs state that their father, Mr.M.Ramalingam expired on 16th January, 2017, leaving behind the plaintiffs and the defendants as his legal heirs. The plaintiffs' father, Late Mr.M.Ramalingam had acquired several immovable properties at various places throughout the State of Tamil Nadu, out of his self earnings, which are described in the schedule mentioned hereunder. It is pertinent to note that some properties were purchased by the plaintiffs' deceased father in the name of the defendants, either independently or jointly with his own funds. However, the plaintiffs' have brought only the



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schedule mentioned properties that were held by their father in his own name within the ambit of this suit and in case the plaintiffs' learn about any other property held by their father, they reserve their right to include such properties also by seeking amendment of the plaint.”

6. It is the case of the Appellant (2nd Defendant) that apart from the above 17 properties in the schedule to the plaint, there was a dispute with respect to another property which also ought to have been subject matter of the above partition suit, in respect of which there were collateral proceedings.

7. It is the case of the Appellant (2nd Defendant) that a suit in O.S.No.197 of 1997 was filed by one third party Ramaniammal against one K.Raja the 2nd Respondent's (2nd Plaintiff) husband and the elder brother of K.Raja for specific performance and that the case was contested by the father of the Appellant (2nd Defendant), 1st and 2nd Respondents (1st and 2nd Plaintiffs) as Power of Attorney of the Defendants.

8. In this connection, the Appellant (2nd Defendant) has also filed C.M.P.Nos.16219 and 16220 of 2025 for the following reliefs:-

Prayer in C.M.P.No.16219 of 2025	Prayer in C.M.P.No.16220 of 2025
To direct the Respondent No.2 to amend the plaint schedule of property by including the schedule mentioned	To grant interim injunction restraining the Respondent No.2 from alienating the schedule mentioned property



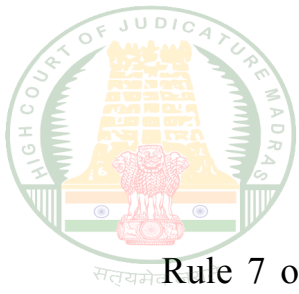
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Prayer in C.M.P.No.16219 of 2025	Prayer in C.M.P.No.16220 of 2025
property herein as Item No.18 in the plaint schedule of property, pending disposal of the suit in C.S.No.112 of 2021.	pending disposal of the Original Side Appeal.

9. It is submitted that the said property is also liable to be partitioned although the property was registered in the name of the 2nd Respondent's (2nd Plaintiff) husband namely K.Raja and his elder brother. It is further submitted that attempts have been made to alienate the property during the pendency of C.S.No.112 of 2021.

10. That apart, it is submitted that without giving an opportunity to further cross-examining the 1st Respondent (1st Plaintiff) and the 2nd Respondent (2nd Plaintiff), the civil suit has been decreed.

11. On the other hand, the present Original Side Appeal is defended on behalf of the 1st and 2nd Respondents. They are represented by the learned Senior Counsel Mr.T.Mohan. It is submitted that there was no dispute regarding the *inter se* rights between the parties in respect of the 17 properties in the schedule to the plaint and therefore the Court has passed the Impugned Preliminary Decree strictly in accordance with law under Order VI Rule 6 and

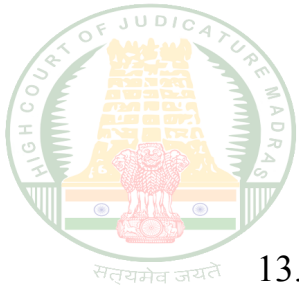


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Rule 7 of the Original Side Rules as per which, when no question of fact is raised either in the plaint or in the written statement or when any question of law is raised by one party, which can be decided upon the facts as admitted by that party or as alleged by the other party, or is such as in the opinion of the Judge may conveniently be tried at the first hearing, the Judge may at once proceed to try and determine the suit or the question of law so raised, or may adjourn the settlement of issues until such question of law has been tried and determined and if, in the opinion of the Judge, the decision of such question of law substantially disposes of the suit, or of any distinct cause of action, ground of defence or set-off, the Judge may dismiss the suit or give judgment, or make such other order therein as he thinks fit.

12. That apart, it is submitted that in the written statement filed by the Appellant (2nd Defendant) and the 3rd Respondent herein (1st Defendant), there is no reference to the property standing in the name of K.Raja the 2nd Respondent's (2nd Plaintiff's husband) and his elder brother and therefore on this Count also, the present Original Side Appeal is liable to be dismissed.



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13. It is further submitted that in the present Original Side Appeal, the Appellant (2nd Defendant) cannot expand the scope of suit as the plaint was confined 17 properties in the schedule to the plaint in C.S.No.112 of 2021 and therefore on this count also the present Original Side Appeal is liable to be dismissed.

14. We have considered the arguments advanced by the learned counsel for the Appellant and the learned Senior Counsel for the 1st and 2nd Respondents.

15. A reading of the plaint indicates that there are 17 properties which have been listed in the schedule to the plaint. Some of the properties are within the jurisdiction of this Court and some outside the jurisdiction of this Court.

16. Before proceeding to pass a Preliminary Decree, the Court should have taken note of the averments in Paragraph No.4 of the plaint, content of which has been extracted above.



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17. The 1st and 2nd Respondents (1st and 2nd Plaintiffs) ought to have obtained a leave under Clause 12 of the Letters Patent as has been held by this Court in **“A.Giridhar and another Vs. A.Suresh and others”**, (1988) 2 LW 308.

18. In the said decision, the Division Bench of this Court held as under:-

“It thus appears to us that while there can be no controversy that as regards suits for land or immovable property where the whole of land or immovable property is situated within the ordinary original jurisdiction of the High Court, the High Court can take cognizance of such suits, it is also well established that even though a part of the land or immovable property is situated within such limits and part outside the limits, if leave has been first obtained, a suit for such land or immovable property can be entertained by the High Court in its ordinary original civil jurisdiction. The construcion placed before the Division Bench of this Court in the Bank of Madurai's case, is clearly in consonance with the construction placed on Clause 12 of the Letters Patent in the decisions of the two other Chartered High Courts, which have been followed now for more than fifty years. We respectfully agree with the view taken in the Bank of Madurai's case. It does not therefore appear to us necessary that the scope of Clause 12 of the Letters Patent needs to be reconsidered afresh. We are inclined to observe that if the decision in the Bank of Madurai's case, had been placed before the learned Judge, probably the occasion for making a reference to the Division Bench would not have arisen. Having regard to the scope of Clause 12 as construed by the Division Bench in Bank of Madurai Limited Vs. Balaramadas and Brothers, the plaintiffs are



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clearly entitled to leave to file the present suit. We may also make it clear that the plaintiffs are also entitled to leave notwithstanding the fact that some of the defendants reside outside the jurisdiction of this Court as the suit expressly falls within the first part of Clause 12 as analysed by the Division Bench. Accordingly, this petition for leave is allowed.”

Similary, a leave under Order II Rule 2 of CPC ought to have been obtained by the respondents.

19. The averments in the plaint indicate that apart from the 17 properites in the schedule to the plaint in C.S.No.112 of 2021, there are several properties one of which is subject matter of C.M.P.No.16219 of 2025. It also ought to have been included in the above suit for partition. Only under limited circumstances, partial partition of the property is recognized.

20. Courts have recognized only the suits praying for partial partition of properties under the following circumstances:-

- i. where different portions of family property are situated in different districts, separate suits for partition for lands of each district may be brought;
- ii. it may be allowed when portion of joint property at the time of the suit for partition is incapable of partition;
- iii. where the property left out from its very nature impartible;
- iv. where the property is held jointly with strangers who cannot be joined as parties to a general suit for partition the

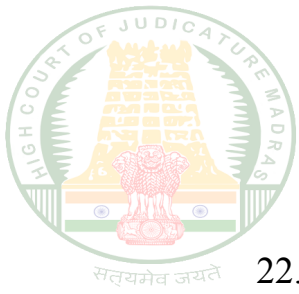


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- same may be left out; or
- v. where the co-owners by mutual agreement decide to make partition of the joint family property leaving some portion in common. (Refer: Harey Harey Singha Chowdhury Vs. Hari Chaitanya Singha Chowdhury 40 CWN 1237; Mansharam Vs. Ganesh 17 CWN 521; Panchanan Mallick Vs. Shiv Chandra ILR 14 Cal 805; Balaram Vs. Ramchandra ILR 22 Bom 922; Abdul Karim Vs. Badruddin ILR 28 Mad 216.
- (Pradeep Chand Sharma and others Vs. Budhi Devi and others, 2017 SCC OnLine HP 1911 : AIR 2017 HP 73.)”**

However, this aspect has not been considered by the Court.

21. Since the suit is for partial partition of the properties among the Legal Heirs of the deceased Late M.Ramalingam, the Impugned Judgment and Decree which has been passed in a hurried manner presumably in terms of Order VI Rule 6 and Rule 7 of the Original Side Rules of this Court is liable to be interfered with. It was incumbent on the part of the 1st and 2nd Respondents/the 1st and 2nd Plaintiffs in the suit to have brought all the properties for partition, even if the properties were situated outside the jurisdiction. If there were other properties, leave should have been obtained under Order II Rule 2 of CPC.



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22. In the course of cross-examination of P.W.1, details of other properties which were available for partition also would have come to the light of the Court. However, the trial was incomplete.

23. Under these circumstances, we are of the view, the Impugned Preliminary Decree passed by the Trial Court is liable to be set aside and the case is remitted back to the Court for passing a Preliminary Decree after giving sufficient opportunity to the parties to let in their evidence.

24. As far as the allegations regarding the properties standing in the name of the 2nd Respondent's (2nd Plaintiff) husband namely K.Raja and his elder brother which was subject matter of O.S.No.197 of 1997 where, the father of the Appellant (2nd Defendant), the 1st and 2nd Respondents herein (1st and 2nd Plaintiffs)/the husband of the 3rd Respondent (1st Defendant), had apparently deposed evidence, its relevance has to be decided after the plaint or written statements are suitably amended.

25. Since the apprehension is expressed that the properties which are subject matter in O.S.No.197 of 1997 may be sold, it is open for the Appellant



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(2nd Defendant) to move an application for appropriate relief before the Court in C.S.No.112 of 2021 after amending the written statement.

26. Therefore, the Impugned Order dated 08.04.2022 in C.S.No.112 of 2021 stands set aside with the above observations. Thus, the case is remitted back to the Court for referring the case back to the Master for recording of evidence and to thereafter pass a Preliminary Decree.

27. This Original Side Appeal, is thus, allowed. No costs. Connected Miscellaneous Petitions are closed.

[S.M.S., J.]

[C.S.N., J.]

10.09.2025

Neutral Citation : Yes / No

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S.M.SUBRAMANIAM, J.
and
C.SARAVANAN, J.

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Pre-Delivery Judgment in O.S.A.No.205 of 2022

10.09.2025