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*A.S.Nos.501 of 2019
and 157 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2025

CORAM:

THE HON'BLE MR. JUSTICE M.JOTHIRAMAN

**A.S.Nos.501 of 2019
and 157 of 2024**

A.S.No.501 of 2019

Mrs.Pugazhenth

... Appellant / 1st Plaintiff

vs.

1.Mrs. Vanitha

2.Mr.Karthikeyan

3.Mr.Megarajan

... Respondents / Defendants 1 to 3

4.Mr.Manivel

5.Mr.Selvam

6.Mr.Raja

7.Mr.Chandrasekar
(R4 to R7 given up)

8.Mr.Dileeban

... Respondent / 2nd Plaintiff



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A.S.No.157 of 2024

1.Mrs.Vanitha

2.Karthikeyan

3.Megarajan

... Appellants / Defendants 1 to 3
vs.

1.Mrs.Pugazhenth

2.Dhileepan

... Respondents / Plaintiff's 1 and 2

3.Manivel

4.Selvam

5.Raja

6.Santhirasekar

... Respondents 3 to 6 / Defendants 4 to 6

Prayer in A.S.No.501 of 2019: Appeal Suit filed under Section 96 of the Code of Civil Procedure, 1908, against the Decree and Judgment of the Mahila Court, Perambalur dated 29.03.2019 made in O.S.No.22 of 2015 and to set aside the same.

Prayer in A.S.No.157 of 2024: Appeal Suit filed under Section 96 of the Code of Civil Procedure, 1908, against the Decree and Judgment of the Mahila Court, Perambalur dated 29.03.2019 made in O.S.No.22 of 2015 and to set aside the same.

For Appellants : M/s.A.Arulmozhi
in A.S.No.501 of 2019
Mr.R.Gokulakrishnan
in A.S.No.157 of 2024

For Respondents : M/s.A.Arulmozhi
for R1 and R2 in A.S.No.157 of 2024



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Mr.R.Gokulakrishnan
For R1 to R3 in A.S.No.501 of 2019

COMMON JUDGMENT

M.JOTHIRAMAN, J.

The unsuccessful first plaintiff has preferred the appeal in A.S.No.501 of 2019 and the unsuccessful defendants 1 to 3 have preferred the appeal in A.S.No.157 of 2024. The Suit is filed for a partition, declaring that the plaintiffs are entitled to 2/5th share in the Suit Schedule Property. The Trial Court has decreed the Suit in part. The relief sought by the first plaintiff is dismissed. The second plaintiff is entitled for 1/4th share in the suit schedule properties. The parties are referred to as per their rankings before the Trial Court.

2. The brief case of the plaintiffs are as follows:

2.1. The suit schedule properties are self acquired properties of late A.Selvaraj. The first wife of the deceased Selvaraj was one Manimekalai. The defendants 1 to 3 are the daughter and sons of the deceased Selvaraj born through the said Manimekalai. The defendants 3 to 7 are the tenants of the "A" Schedule



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Property. After the death of the said Manimekalai, the said Selvaraj married the first plaintiff. The second plaintiff is the son of Selvaraj, born through the first plaintiff. The marriage of the first plaintiff with the said Selvaraj was performed on 04.07.1988 at the residence of Selvaraj according to Suyamariyathai / Seerthirththa form of marriage as per Section 7A of the Hindu Marriage Act, 1955. One Advocate Mahadevan had participated in the marriage celebration held on 04.07.1988. During the subsistence of the marriage, second plaintiff was born on 30.03.1989, but recorded as 10.03.1989.

2.2. The said late A.Selvaraj was the native of Kurumbapalayam. The first plaintiff is the native of Andhur Village of Varahur Majra Kunnam Taluk, a nearby village. The deceased Selvaraj was a PWD contractor and he purchased the suit schedule properties. The said Selvaraj died on 03.12.2011. In view of usual hatred between the 1st wife's children and 2nd wife's child, the plaintiff settled at Tiruvanaikoil, Trichy. The defendants did not allow the second plaintiff, especially the first defendant's husband, to lit the funeral pyre and ultimately, relatives and police intervened and the second plaintiff lit the funeral pyre of



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moral remains of his father.

2.3. The plaintiffs demanded partition of the suit schedule properties through several panchayats and mediations, but did not fructify. According to the plaintiffs, the plaintiffs and the defendants 1 to 3, each entitled to 1/5th share in the suit schedule properties and the plaintiffs together entitled to 2/5th share in the suit schedule properties. The plaintiffs also sent a notice dated 11.07.2012 to the defendants demanding partition, but the defendants 1 to 3 sent a reply dated 21.07.2012, denying the status of the plaintiffs.

3. The brief case of the defendants are as follows:

The defendants denied the status of the first plaintiff as the legally wedded wife and questioned the legitimacy of the second plaintiff, by relying upon the Death Certificate dated 08.01.2014 showing that their mother Manimekalai died on 23.08.1997 and the marriage of the first plaintiff with the Selvaraj is invalid under Hindu Law.

4. Based on the above pleadings, the Trial Court framed the following



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issues:

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- (i) Whether the plaintiffs have the right to enjoy and for a preliminary decree for 2/5th share in the suit schedule properties ?
- (ii) Whether the suit schedule properties are joint family properties ?
- (iii) Whether the suit schedule properties were undervalued and deficit court fee has been paid?
- (iv) To what other reliefs the plaintiff's are entitled?

5. During trial, on the side of the plaintiffs, the first plaintiff examined herself as PW1 and her son / second plaintiff was examined as PW2 and Exs.A1 to A10 were marked. On the side of the defendants, the first defendant examined herself as DW1, the second defendant examined himself as DW2 and one Kumaraguru was examined as DW3 and Exs.B1 to B25 were marked.

6. Findings of the Trial Court:

- (i) The marriage of the first plaintiff is invalid and held that the first plaintiff is not the legally wedded wife of A.Selvaraj and therefore, not entitled for



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any share in the suit schedule properties.

(ii) The second plaintiff is the illegitimate son of late A.Selvaraj and he is entitled to 1/4th share in the self acquired properties of late A.Selvaraj, in view of the judgment of the Hon'ble Supreme Court in ***Revanasiddappa and another v. Mallikarjun and Others [(2011) 11 SCC 1]***.

(iii) The suit schedule properties are self acquired properties of the deceased Selvaraj and there is no proof to show that they are joint family properties.

7. The learned counsel appearing for the appellant/first plaintiff in A.S.No.501 of 2019 would submit that the Trial Court erred in denying legal recognition to the marriage solemnized under Section 7A of the Hindu Marriage Act, based on self serving Death Certificate produced by the defendants during the pendency of the Suit. The Trial Court has accepted that the first plaintiff and the deceased A.Selvaraj entered into a valid marriage on 04.07.1988, conducted under Suyamariyathai / Seerthiruththa form of marriage at Selvaraj's own house in Bharathidasan Nagar, Perambalur. A senior-most Advocate, namely Mr.Mahadevan (PW2) had conducted the said marriage ceremony. The Trial



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Court, while accepting the factum of marriage, invalidated it solely on the ground that the first wife Manimekalai was alive at that time and this finding was arrived by accepting Ex.B21 - Death Certificate dated 08.01.2014, without examining its truthfulness. The Death Certificate - Ex.B21 relied upon by the Trial Court was applied for and issued in the year 2014, after the legal notice dated 11.07.2012 was sent by the plaintiff's and the said document was not supported by any contemporaneous evidence such as burial records, hospital discharge summaries or eye witnesses.

8. The learned counsel for the appellant would further submit that in the reply notice -Ex.A1 sent by the defendants dated 21.07.2012, the defendants themselves admitted that their mother died 25 years ago, which would place her death around the year 1987 i.e., before the marriage of the first plaintiff in 1988. This clearly establish that the death certificate was obtained by afterthought, manufactured to dispute the marriage and disinherit the first plaintiff. To strengthen her contention, the learned counsel for the appellant / first plaintiff has relied upon the judgments of the Hon'ble Supreme Court in *State of Bihar v.*



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Radha Krishna Singh [(1983) 3 SCC 118], to show that "a document may be admissible and yet may not carry any conviction and weight of its probative value may be nil. The probative value of documents, which however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little". An another judgment of the Hon'ble Supreme Court in ***Madan Mohan Singh v. Rajni Kant [(2010) 5 CTC 503]*** to show that "even if the entry was made in an official record by the official concerned in the discharge of his official duty, it may have weight but still may required corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases".

9. The learned counsel for the appellant would further argue that even assuming that the first wife was alive at the time of 2nd marriage and died thereafter, 'Long Term Cohabitation' raises the presumption in favour of marriage. To strengthen her contention, the learned counsel for the appellant has relied on the judgment of this Court in ***Sivasamy v. Poomalai dated 23.07.2008 made in***



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S.A.(MD)Nos.1618 & 1619 of 1992, as confirmed by the ***Hon'ble Supreme Court, vide order dated 09.05.2017 in SLP Nos.10315 & 10316 of 2009***. The first plaintiff lived with late Selvaraj continuously as his wife from 1988 until his demise in 2011, a period of over 23 years. Throughout this period, the first plaintiff was treated in society, family and public records as the wife of the deceased Selvaraj.

10. The learned counsel further would submit that a combined reading of Section 50 and Section 114 of the Indian Evidence Act, establish a strong basis to presume a lawful marital relationship when there is a clear, prolonged cohabitation and public acknowledgement of such relationship. In this case, the defendants' only rebuttal is the Death Certificate - Ex.B21 issued in the year 2014, after the litigation had begun, which is self serving, lacks contemporaneous support and is contradicted by their own reply notice stating that their mother died 25 years ago. Hence, the rebuttal fails the standard of unimpeachable evidence. Denying the women legal status amounts to denying their dignity and protection under Article 15 of the Constitution of India. The denial of share to the first



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plaintiff results in grave miscarriage of justice. Therefore, equitable relief must be granted. To strengthen this argument, the learned counsel for the appellant relied upon the decision of this Court in **Kanagavalli v. Saroja [AIR 2002 Mad 73]** to show that *"law must not permit exploitation of women by allowing legal heirs to disown or undermine such relationships after the man's death. The Trial Court finding fails to reflect the spirit of the Hindu Marriage Act and the evolving jurisprudence aimed at protecting women from exploitation"*. Though the defendants have taken a plea that Manimekalai contributed jewels to purchase the suit schedule properties and the same was not accepted by the Trial Court, since there was no proof to that effect.

11. The learned counsel appearing for the appellant would further submit that the cross appeal is unsustainable in law and facts. The Trial Court had rendered a reasoned judgment, after appreciating oral and documentary evidence, particularly recognizing the long standing cohabitation between the first plaintiff and the deceased Selvaraj and the legitimacy of the second plaintiff status under Section 16 of the Hindu Marriage Act and therefore, the cross appeal is



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unsustainable in law. Further, the Court below rightly finds that the properties were self acquired and that the second plaintiff, even if considered illegitimate, was entitled to a share under the law. The burden lies on the party claiming ancestral nature to establish a common ancestral nucleus and continuity of title. No such proof was adduced. The repayment of debt to the tune of Rs.32,00,000/- has not been proved in the manner known to law. It is a self serving claim. Even if it is true, the claim cannot extinguish the rights of other legal heirs. Legal Heir Certificates issued by revenue authorities are merely administrative in nature and do not constitute proof of legal heirship in a Court of Law and they are not binding on Civil Courts. Similarly, inclusion or exclusion of names in patta or ration cards does not confer or extinguish ownership. Even assuming the marriage is void, the second plaintiff is entitled to full property rights under Section 16(1) and 16(3) of the Hindu Marriage Act. The Partition Deed dated 17.08.2012 was executed unilaterally by the defendants excluding the plaintiffs. Such a partition among some of the co-sharers, to the exclusion of others, is legally ineffective and non-binding. The plaintiffs were asserted their claim through due legal process and the Trial Court has accepted the second plaintiff's



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share. The suit for partition is legally tenable and constitutionally protected right and cannot be labelled as frivolous and prays for dismissal of the appeal suit in A.S.No.157 of 2024 and allowing of the appeal suit in A.S.No.501 of 2019.

12. *Per contra*, learned counsel appearing for the appellants / defendants 1 to 3 in A.S.No.157 of 2024 / respondents 1 to 3 in A.S.No.501 of 2019 would submit that the plaintiffs have conveniently omitted to mention the date of death of Manimegalai, who is the wife of the deceased Selvaraj. The case of the first plaintiff marrying Selvaraj after the death of Manimegalai is wholly without any basis. The first plaintiff has not produced any documentary evidence to substantiate her marriage with the deceased Selvaraj. The Court below rightly found that Manimegalai died on 23.08.1997 based on the Death Certificate, marked as Ex.B21 and thus, the first plaintiff cannot claim to be the legally wedded wife of the deceased Selvaraj. The first plaintiff admitted in her cross examination that there was a hut as well as land in Kurumbapalayam Village, which was ancestrally owned by the deceased Selvaraj. The evidence of PW2 is also not supporting the case of the first plaintiff. In fact, PW2 is unable to



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recollect the facts and the evidence of PW2 is of no assistance to the first plaintiff. Therefore, the first plaintiff has not established her marriage with the deceased Selvaraj. Even as per the case of the first plaintiff, the alleged marriage said to have taken place in the year 1988, when the 1st wife Manimegalai was alive. The second plaintiff did not enter the witness box, only his mother entered the witness box, who has admitted to the fact that there were ancestral property in Kurumbapalayam Village. The burden of proof is on the plaintiffs to establish each and every one of the facts. The plaintiffs have failed to discharge their burden. Except producing the Birth Certificate - Ex.A4, which does not contain the name of the second plaintiff, no other evidence has been let in to substantiate the birth of the second plaintiff. It is well settled that illegitimate son is not entitled for any share in the ancestral property, as laid down by the Hon'ble Supreme Court in the decision in *Madan Mohan Singh and Others v. Rajni Kant and another* [2010 (9) SCC 209] and *Revanasiddappa and another v. Mallikarjun and Others* [2023 (10) SCC 1]. Therefore, the first plaintiff is not entitled for any relief, since she is not the legally wedded wife of the deceased Selvaraj. Similarly, the second plaintiff is also not entitled for any share in the



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suit schedule properties and prays to allow the appeal in A.S.No.157 of 2024.

13. This Court has considered the submissions made on either side and also perused the materials on record.

14. The points for determination arises in these appeals are:

- (i) Whether the first plaintiff / Mrs.Pugazhenthhi is the legally wedded wife of deceased A.Selvaraj ?
- (ii) Whether Ex.B21- Death Certificate is a valid document or not?
- (iii) Whether the plaintiffs are entitled for 2/5th share in the suit schedule properties ?
- (iv) Whether the suit schedule properties are joint family properties.

15. It is not in dispute that the defendants 1 to 3 are daughter and sons of late A.Selvaraj, born through his first wife, namely Manimekalai. The said A.Selvaraj is a native of Kurumbapalayam and he was a PWD contractor by



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profession. He initially married the said Manimekalai.

16. It is the specific case of the plaintiffs that after the death of the said Manimekalai, Selvaraj married the first plaintiff on 04.07.1988 at his residence in Bharathidasan Nagar, Perambalur, under Suyamariyathai / Seerthiruththa form of marriage, which is legally recognised under Section 7-A of the Hindu Marriage Act, 1955. The second plaintiff was born on 30.03.1989. The plaintiffs lived along with Selvaraj in Trichy, since the first plaintiff is working in Trichy. The said Selvaraj died intestate on 03.12.2011. After the death of Selvaraj, the defendants 1 to 3 excluded the plaintiffs from the succession process and subsequently obtained a legal heirship certificate and brought forth a partition deed among themselves, excluding the plaintiffs altogether from inheriting the property of the deceased Selvaraj.

17. Ex.A2 is the Death Certificate dated 13.01.2012, stands in the name of Selvaraj, who died on 03.12.2011. Ex.A3 is the copy of the Transfer Certificate issued by Prince Shri Venkateshwara Padmavathy Engineering College,



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Medavakkam, Chennai, in favour of the second plaintiff dated 08.10.2012, wherein it was mentioned that the name of the father as A.Selvaraj and the date of Birth of the second plaintiff was mentioned as 10.03.1989. Ex.A4 is the Birth Certificate dated 13.10.2010 stands in the name of the second plaintiff to show that he was born on 10.03.1989, wherein the name of the father was mentioned as one Selvaraj, issued by the Headquarters Deputy Tahsildar, Kurumbapalayam. Ex.A5 is the copy of Voter Identity Card stands in the name of the second plaintiff. Ex.A6 is the Driving Licence stands in the name of the second plaintiff. In Exs.A5 and A6, the father's name was mentioned as Selvaraj. Ex.A7 is the Family Card issued in the year 2005-2009, wherein the name of the first plaintiff, second plaintiff and one Selvaraj along with two other persons was mentioned and the residential address was mentioned as Old No.22, New No.49, Bharathi Street, Srirangam Taluk, Trichy District. Ex.A8 is the copy of the passport, stands in the name of the second plaintiff, wherein the father's name was mentioned one Selvaraj. Ex.A9 is the Aadhar Card stands in the name of the first plaintiff, wherein her husband's name was mentioned one Selvaraj issued in the year 2013.



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18. It is the specific case of the defendants that the status of the first plaintiff is denied and she is not the legally wedded wife and questioned the legitimacy of the second plaintiff by citing the Death Certificate- Ex.B21, to show that her mother Manimekalai died on 23.08.1997 and hence, the second marriage is invalid under Hindu Law.

19. It is relevant to refer Section 5 of the Hindu Marriage Act, 1955, which speaks about the conditions for a Hindu marriage. Section 5(1) reads hereunder:

5.Conditions for a Hindu marriage - A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage;

...

...

It is also relevant to refer Section 7 of the Hindu Marriage Act, 1955, which reads hereunder:

7.Ceremonies for a Hindu marriage - (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the *saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken."



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In State of Tamil Nadu, after S.7, insert the following section, namely:-

"7-A. *Special provision regarding suyamariythai and seerthiruththa marriage.*-(1) This section shall apply to any marriage between any two Hindus, whether called suyamariyathai marriage or seerthiruththa marriage or by any other name, solemnized in the presence of relatives, friends or other person-

(a) by each party to the marriage declaring in any language (which is understood by the parties and by at least two persons in whose presence the marriage is solemnized), that each takes the other to be his wife or, as the case may be, her husband; or

(b) by each to the marriage garlanding the other or putting a ring upon any finger or the other; or

(c) by the tying of the thali.

2(a) Notwithstanding anything contained in section 7, but subject to the other provisions of this Act, all marriages to which the section applies solemnized after the commencement of the Hindu Marriage (Pondicherry Amendment) Act, 1971, shall be good and valid in law.

It is relevant to refer Section 11 of the Hindu Marriage Act, 1955, which is extracted hereunder:

11.Void marriages.- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.

It is relevant to refer Section 16 of the Hindu Marriage Act, 1955, which speaks



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about Legitimacy of children of void and voidable marriages, which reads hereunder:

"16.Legitimacy of children of void and voidable marriages.-

(1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding of the decree of nullity.

(3) Nothing contained in sub-section (1) of sub-section(2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."

20. In order to prove the case of the plaintiffs that the marriage between the first plaintiff and A.Selvaraj was solemnized on Perambalur, by a Senior Advocate Mr.Mahadevan, an ardent follower of Thanthai Periyar, the said Advocate Mahadevan was examined as PW2.



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21. At this juncture, it is relevant to refer to Sections 101 to 103 of the Indian Evidence Act, 1872, which is extracted hereunder:

Section 101. Burden of proof. — Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 102. On whom burden of proof lies. — The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section 103. Burden of proof as to particular fact. — The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

22. PW1, in her cross examination, deposed that she has not filed any document to show that the marriage was solemnized between her and Selvaraj, but the marriage was solemnized under Suyamariyathai / Seerthiruththa form. The marriage was performed on 04.07.1988 and through their wedlock, the second plaintiff was born on 30.03.1989. But inadvertently her father had mentioned the second plaintiff's date of birth as 10.03.1989 in school admission record. She did



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not know when the first wife of Selvaraj died and she knew that his first wife died. The deceased Selvaraj informed to PW1 that his wife was died in the year 1987. PW1 admits that there was a hut and lands in Kurumpalayam village, which was ancestrally owned by the deceased Selvaraj and subsequently, he informed that the same has been sold out.

23. PW2, in his chief examination, stated that the marriage between the first plaintiff and Selvaraj was solemnized by him on 04.07.1988 in the house of Selvaraj. He is the follower of Thanthai Periyar. It has also been stated that the deceased Selvaraj informed him that his first wife died and would like to marry the first plaintiff and requested him to conduct the marriage. The age of PW2 was mentioned in his proof affidavit as 80 years old in the year 2018. PW2 in his cross examination deposed that he did not know the deceased directly, but he came to know only as a bride and the marriage of Selvaraj was solemnized only in the year 1988. PW2 is unable to recollect the date of marriage and the day of marriage. PW2 has not issued any marriage certificate and stated that in respect of the marriage conducted under Suyamariyathai / Seerthiruththa form, it is not



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necessary to issue any marriage certificate. The evidence of PW2 would reveal that the marriage between the first plaintiff and the Selvaraj was solemnized in the form of Suyamariyathai / Seerthiruththa marriage.

24. The Court below rightly found that the marriage ceremony took place between the first plaintiff and the late A.Selvaraj, as deposed by PW2. The Court below also held that the marriage was invalid, relying solely on Ex.B21 - Death Certificate of Manimekalai. It is the specific case of the defendants that their mother Manimekalai died on 23.08.1997 and strengthen their contention relied upon Ex.B21 - Death Certificate. A perusal of Ex.B21 shows that the said Manimekalai, wife of Selvaraj died on 23.08.1997. It is the contention of the plaintiffs that Ex.B21 came to be acquired, after the issuance of Legal Notice dated 11.12.2012 and the same cannot be taken into consideration. It is also contended that if any entry made in the official records by the officer / authority concerned, it may require corresponding corroboration, but the defendants have not chosen to produce any document or examine any witness to that effect. It is to be noted that the plaintiffs have also not chosen to file any evidence contra to the



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document pertaining to the Death Certificate - Ex.B21 standing in the name of Manimekalai or to dispute / disprove the date of death of said Manimekalai.

25. Initial burden of proof lies on the plaintiffs has not been discharged. The Court below has rightly accepted the Death Certificate - Ex.B21 and shifted the burden on the plaintiffs to disprove the same. The evidence of PWs.1 and 2 and Ex.B21 - Death Certificate would amply prove that the first wife Manimekalai died on 23.08.1997 and the marriage between the first plaintiff and the deceased Selvaraj was solemnized on 04.07.1988 while the first wife was alive. The Court below finds that when the marriage with Manimekalai was subsisting, the marriage with the first plaintiff cannot be termed as valid marriage and the same will not confer the first plaintiff the status of legally wedded wife.

26. According to the first plaintiff, it is an undisputed fact that the first plaintiff lived with late Selvaraj continuously as wife from the year 1988, until his demise in the year 2011, over a period of 23 years and throughout this period, the first plaintiff was treated in the society, family and public records as the wife of



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the deceased. Even assuming that the first wife was alive at the time of second marriage and she died thereafter, longterm cohabitation raises the presumption in favour of marriage.

27. It is relevant to cite the judgment of the Hon'ble Supreme Court in ***S.P.S.Balasubramanyam v. Suruttayan alias Andali Padayachi and Others*** [(1994) 1 SCC 460], wherein it was held as under:

"4. What has been settled by this Court is that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable. (see, *Gokal Chand v. Parvind Kumari*, (1952) 1 SCC 713.

In ***Gokal Chand v. Parvin Kumari alias Usha Rani (supra)***, this Court observed thus:

".....Continuous cohabitation of man and women as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the court cannot ignore them."

28. By applying the ratio laid down by the Hon'ble Supreme Court in the above findings, there cannot be any presumption as to the marriage of the first plaintiff with the deceased Selvaraj, that too when the marriage with Manimekalai



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was subsisting. Therefore, there cannot be any presumption as to the existence of facts.

29. The contention of the plaintiffs is that the defendants in their reply notice under Ex.A1 dated 21.07.2012 admitted that their mother died 25 years ago, which would place her death much before the first plaintiff's marriage in the year 1988, is not an acceptable one, since as per Ex.B21 - Death Certificate stands in the name of Manimekalai, which was acquired in the year 2014 and the same has been issued by the authorities concerned. Therefore, any adverse inference cannot be drawn as against the Death Certificate - Ex.B21.

30. According to the defendants, the suit schedule properties are ancestral properties of the deceased Selvaraj. In order to prove the aforesaid fact, the defendants have not chosen to produce any document or examine any witness to that effect. Based on the document relied upon by the defendants and upon considering the oral and documentary evidence adduced on the side of the defendants, the Court below has rightly concluded that the suit schedule properties



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are not the ancestral properties and the same are self acquired properties of the deceased Selvaraj. The burden of proof lies on the defendants to prove about the ancestral nature and common ancestral nucleus and continuity of title, but the defendants have failed to prove the same. Likewise, stridhana given by Manimekalai to purchase the suit schedule properties was also not established by the defendants. Further, it is the contention of the defendants that they have paid debt to the tune of Rs.32,00,000/-. In order to prove the same, the defendants have not produced any document or examined any witness. Even if it is true, this claim cannot extinguish the rights of the other legal heirs. No concrete proof like bank statements or creditor statements has been produced in support of their claim.

31. It is relevant to refer Section 8 of the Hindu Succession Act, which deals with general rules of succession in the case of males and the same is extracted hereunder:

"8.General rules of succession in the case of males.-

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-



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(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in Class II of the Schedule ;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased, and

(d) lastly, there is no agnate, then upon the cognates of the deceased.

32. At this juncture, it is relevant to cite the judgment reported in ***Neelamma and Others v. Sarojamma and Others [(2006) 9 SCC 612]***, wherein it was held as under:

3.... an illegitimate child cannot succeed / claim a share in the joint Hindu family property. Such illegitimate child would only be entitled to a share in the self-acquired property of the parents.

33. The Court below has rendered a reasoned judgment after appreciating the oral and documentary evidences and rightly held that the second plaintiff is the illegitimate son of the deceased Selvaraj and he is entitled to 1/4th share in the suit schedule properties by relying upon the decision of the Hon'ble Apex Court in



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Revanasiddappa and another v. Mallikarjun and Others [(2011) 11 SCC 1]. The Court below has also rightly held that the suit schedule properties are self acquired properties of the deceased Selvarj and therefore, did not grant any relief to the first plaintiff, apart from entitling 1/4th share of the suit schedule properties to the second plaintiff.

34. In the light of the reasons assigned above, this Court is of the view that there is no reason to interfere with the impugned judgment and decree passed by the Court below and the points for determination in these appeals are answered accordingly.

35. In the result, these Appeal Suits are dismissed. The judgment and decree dated 29.03.2019 in O.S.No.22 of 2015 passed by the Mahila Court, Perambalur is confirmed. No costs.

21.08.2025



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Intex : Yes/No

Internet : Yes/No

Jvm

To

The Mahila Court,
Perambalur District.

*A.S.Nos.501 of 2019
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M.JOTHIRAMAN, J.

Jvm

**Common Judgment in
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