



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.12.2025

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Coram:

The Honourable Mrs.Justice T.V.THAMILSELVI

**S.A.No.718 of 2025
and C.M.P.No.26758 of 2025**

1.Muthuvijayan

2.Muthuselvan

...Appellants

Versus

V.M.Arthanari (Died)

1.M.Thirumurugan

Nanjammal (Died)

2.Bakayalakshmi

3.Jothimani

4.Sangeetha

5.V.K.Marappan

Kannammal (Died)

6.Punithavathi

7.Sakthi

8.Manjula

9.Chinnathambi



10.Sasirajan

11.Sasianandh

12.Jothi

Ellammal (Died)

13.V.R.Pari

S.Sarojadevi (Died)

14.Manimegalai

Senthamarai (Died)

15.Santhi

16.Radhi

17.V.S.Ganeshan

18.V.S.Geethadevi

19.R.Latha

20.R.Sudha

...Respondents

Prayer: This Second Appeal is filed under Section 100 of C.P.C praying to set aside the Judgment and Decree dated 05.11.2024 in A.S.No.12 of 2017 on the file of III Additional District Judge, Gobichettipalayam confirming the Final Decree and Judgment dated 26.10.2016 passed in I.A.No.553 of 2012 in O.S.No.74 of 2000 on the file of Subordinate Court of Gobichettipalayam by allowing the Second Appeal.



(Cause Title accepted vide Court Order dated 09.09.2025 made in C.M.P.No.21401 of 2025 in S.A.SR.No.73578 of 2025)

For Appellants : Mr.S.Mukunth,
Senior Counsel
for Ms.R.Danyuktaa Shruti

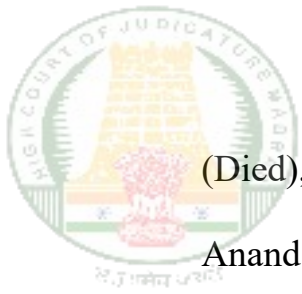
For Respondents – 2 to 4,
5, 12 & 13 to 20 : Mr.V.Raghavachari,
Senior Counsel
for Mr.K.Krishnan

JUDGMENT

This Second Appeal has been preferred by the Appellants praying to set aside the Judgment and Decree dated 05.11.2024 in A.S.No.12 of 2017 passed by the learned III Additional District Judge, Gobichettipalayam, confirming the Final Decree and Judgment dated 26.10.2016 in I.A.No.553 of 2012 in O.S.No.74 of 2000 passed by the learned Subordinate Judge, Gobichettipalayam.

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

The 5th Respondent had filed a suit in O.S.No.74 of 2000 before the Subordinate Court, Gobichettipalayam as against V.M.Arthanari (Died), V.M.Thirumurugan (1st Respondent), Kannammal (Died), Punithavathi (6th Respondent), Sakthi (7th Respondent), Manjula (8th Respondent), Nanjammal



(Died), Chinnathambi (9th Respondent), Sarirajan (10th Respondent), Sasi Anand (11th Respondent), Bagyalakshmi (2nd Respondent), Jothi (12th Respondent), Elammal (Died), Pari (13th Respondent), Sarojadevi (Died), Manimegalai (14th Respondent), Senthamarai (Died) and Santhi (15th Respondent). The reliefs sought in the said suit are as follows:

- “(a) To direct the Defendants to divide the undivided suit properties into 3 equal shares and allot such share to the Plaintiff;*
- (b) To direct the Defendants to put the Plaintiff in possession of the said share of the Plaintiff’s property;*
- (c) To direct the Defendants to pay mesne profits to the Plaintiff; and*
- (d) To award costs of the suit.”*

3. The learned I Additional Subordinate Judge, Gobichettipalayam vide Judgment dated 30.04.2009, disposed of the suit in O.S.No.74 of 2000 by passing a preliminary decree for partition of the suit schedule property into three equal shares and directing the Defendants to allot 1/3 share to the Plaintiff. Thereafter, 5th Respondent/Plaintiff had filed an Interlocutory Application in I.A.No.553 of 2012 in O.S.No.74 of 2000 praying to appoint an Advocate Commissioner for dividing the suit schedule property into three equal shares and allot 1/3 share to the Plaintiff as per the Preliminary Decree dated 30.04.2009 in O.S.No.74 of 2000 and to pass a Final Decree in O.S.No.74 of 2000.



4. Subsequently, an Advocate Commissioner was appointed to divide the suit schedule property. The said Advocate Commissioner had visited the suit schedule property and measured the same with the help of a Surveyor. The Advocate Commissioner's Report was marked as Ex.C1 and the Surveyor's Sketches were marked as Exs.C2 & C3.

5. The learned Subordinate Judge, Gobichettipalayam vide Order dated 26.10.2016, allowed I.A.No.553 of 2012 and passed a Final Decree in O.S.No.74 of 2000 stating that as per the Advocate Commissioner's Report, the suit property has been divided into three portions viz., (I), (II) & (III), out of which, Portion (I) is allotted to Defendants 1 to 12, Portion (II) is allotted to Plaintiff and Portion (III) is allotted to Defendants 13 to 18. Challenging the said Final Decree, V.M.Arthanari (Died), V.M.Thirumurugan (1st Respondent), Nanjammal (Died), Bagyalakshmi (2nd Respondent), Jothimani (3rd Respondent), Muthu Vijayan (1st Appellant), Sangeetha (4th Respondent) and Muthuselvan (2nd Appellant) had preferred an Appeal Suit in A.S.No.12 of 2017 before the Principal District Court, Erode. The learned III Additional District Judge, Gobichettipalayam vide Judgment and Decree dated 05.11.2024, dismissed the said Appeal Suit and confirmed the Final Decree passed by the learned Subordinate Judge,



Gobichettipalayam vide Order dated 26.10.2016 in I.A.No.553 of 2012 in O.S.No.74 of 2000. Aggrieved by the same, Appellants have preferred this

Second Appeal by raising the following substantial questions of law:

“1. Whether the Advocate Commissioner Report is legally valid when it infringes upon the fundamental rights of the Appellant?

2. Whether the allotment of all existing irrigation sources exclusively to one party, without ensuring equitable access to water and religious structures for other co-owners, contravenes Section 2 of the Partition Act, 1893 and settled principles of equitable partition?

3. Whether denial of the opportunity to cross-examine the Court appointed Commissioner on his report amounts to a violation of principles of natural justice, thereby invalidating reliance on such report in a final decree proceeding?

4. Whether the impugned judgment and decree are liable to be set aside for failure to consider binding precedents of the Hon'ble Supreme Court in matters involving equitable access to irrigation facilities in partition of agricultural lands?”

6. The learned Senior Counsel appearing for Appellants submitted that while passing the final decree, it was observed by the learned Subordinate Judge, Gobichettipalayam that the Advocate Commissioner has divided the suit property into three equal portions; as per the Advocate Commissioner's Report, Portion (I) of the suit property contains a well & buildings, whereas, Portions (II) & (III) does not contain any buildings or well, but, a Samaadhi is located in Portion (III) of the suit property; thus,



except the area where the said Samaadhi is located, the remaining 9.99 Acres of land has been divided into 3 equal shares. It was further observed by the learned Subordinate Judge that since Plaintiff and Defendants 13 to 16 & 18 have no objection for allotting the Portion (I) of suit property which is of high value, to the Defendants 1 to 12 and hence, no necessity arises to check the value of the land comprised in Portion (I) of the suit property and that apart, since all the three portions of the suit property have the direct road facility, no necessity arises to divide pathway to the said portions of the suit property.

6.1. It is further submitted by the learned Senior Counsel for Appellants that based on the Advocate Commissioner's Report, the learned Subordinate Judge, Gobichettipalayam has allotted Portion (I) to Defendants 1 to 12, Portion (II) to Plaintiff and Portion (III) to Defendants 13 to 18. However, the Advocate Commissioner's Report contains several discrepancies. Therefore, executing the Final Decree on the basis of Advocate Commissioner's Report would lead to multiplicity of proceedings.

6.2. The learned Senior Counsel for Appellants specifically pointed out that there are two wells in the suit schedule property, but, the Advocate



Commissioner's Report refers to an industrial well which is not in use and it does not refer to an agricultural well which is located in Portion (III) of the suit property. An agricultural well and a pond existed in Portion (III) of the suit schedule property which has been allotted to Defendants 13 to 18, but, the Advocate Commissioner's Report does not refer anything about the existence of said water sources. Further, the tombs of Appellants' ancestors are located in Portion (III) of the suit schedule property which has been allotted to Defendants 13 to 18 and the Appellants are denied access to the said tombs and thus, Appellants are unable to worship the tombs of their ancestors.

6.3. It is submitted by the learned Senior Counsel for Appellants that the Advocate Commissioner's Report is an inconsistent and incomplete Report because it does not mention anything about the agricultural well, bore-well, electricity service connection, small temple and tombs existed in Portion (III) of the suit schedule property.

6.4. The learned Senior Counsel for Appellants also submitted that the Appellants are the sons of deceased 1st Defendant. A well which is stated to be existed in Portion (I) of the suit property which has been allotted to



Defendants 1 to 12, is an unused industrial well. Though Portion (I) of the suit property which has been allotted to Defendants 1 to 12 is of high value, there is no water source in the said portion, but, Portion (III) of suit property which has been allotted to Defendants 13 to 18, has an agricultural well. Therefore, Appellants are praying this Court to issue an appropriate direction to the Defendants 13 to 18 to permit the Appellants to take water from the agricultural well which is existing in Portion (III) of the suit schedule property.

7. On the other hand, learned Senior Counsel appearing on behalf of Respondents 2 to 4, 5, 12 & 13 to 20 submitted that if the Appellants want to irrigate the property which has been allotted to them, they can reconstruct the industrial well which existed in Portion (I) of the suit schedule property which has been allotted to them and use it for irrigation. He further submitted that Samaadhi which is located in Portion (III) of the suit schedule property is currently in an unused and dilapidated condition and hence, no pathway is required to be created to reach the said Samaadhi.

8. Heard the learned Senior Counsel for Appellants and the learned Senior Counsel for Respondents 2 to 4, 5, 12 & 13 to 20.



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9. Admittedly, the learned Subordinate Judge, Gobichettipalayam vide Order dated 26.10.2016 in I.A.No.553 of 2012, passed a Final Decree in O.S.No.74 of 2000 stating that as per the Advocate Commissioner's Report, the suit property has been divided into three portions viz., (I), (II) & (III), out of which, Portion (I) is allotted to Defendants 1 to 12, Portion (II) is allotted to Plaintiff and Portion (III) is allotted to Defendants 13 to 18. Challenging the said Final Decree, Defendants 1, 2, 7 & 11, Wife & Daughter of deceased 1st Defendant (Respondents 3 & 4) and two sons of deceased 1st Defendant (Appellants) had preferred an Appeal Suit in A.S.No.12 of 2017 before the Principal District Court, Erode, but, the said Appeal Suit came to be dismissed on 05.11.2024. Hence, Appellants have preferred the present Second Appeal before this Court.

10. According to the Appellants, their ancestors' tombs are located in Portion (III) of the suit schedule property which has been allotted to Defendants 13 to 18 and the Appellants are denied access to the said tombs. Further, there is no water source in Portion (I) of the suit property which has been allotted to Defendants 1 to 12, whereas, an agricultural well is located in Portion (III) of suit property which has been allotted to Defendants 13 to



18. Therefore, Appellants are seeking permission to take water from the agricultural well which is located in Portion (III) of the suit schedule property.

11. From a perusal of the materials available on record, it is evident that the suit schedule property has been divided into three portions viz., (I), (II) & (III), out of which, Portion (I) is allotted to Defendants 1 to 12, Portion (II) is allotted to Plaintiff and Portion (III) is allotted to Defendants 13 to 18. It is also evident that direct road facility is available to all the three portions of the suit property respectively and thus, the parties can easily access their respective share without any difficulty. Therefore, there is no necessity to create a common pathway to access the three portions of the suit property.

12. It is contended by the Appellants that they are denied access to their ancestors' tombs which are located in Portion (III) of the suit property. But the fact remains that the Appellants have not established before the Court below that they have been worshipping their ancestors' tombs which are located in Portion (III) of the suit property. That apart, the said tombs are in a dilapidated condition. While so, permitting the Appellants to create



a new pathway to access their ancestors' tombs located in Portion (III) of the suit property, which has been allotted to Defendants 13 to 18, would invite multiplicity of proceedings and also, it would cause undue hardships to the parties. Therefore, the Appellants cannot be granted permission to create a pathway to access their ancestors' tombs which are located in Portion (III) of the suit property.

13. So far as the Appellants' request to take water from the agricultural well which is located in Portion (III) of the suit property is concerned, Appellants being the sons of deceased 1st Defendant have right over the Portion (I) of the suit property which has been allotted to Defendants 1 to 12 alone and they have no right to take water from the agricultural well located in Portion (III) of the suit property which has been allotted to Defendants 13 to 18. If the Appellants want to irrigate the property which has been allotted to them, they can dig a new well in Portion (I) of the suit property which has been allotted to them and use it for irrigation.

14. It is to be noted that Portion (I) of the suit property which has been allotted to the Defendants 1 to 12 contains a Ricemill, Terrace House &



Well. The Appellants being the sons of deceased 1st Defendant are entitled to a share in Portion (I) of the suit property. While passing the Final Decree in O.S.No.74 of 2000, it has been clearly observed by the learned Subordinate Judge, Gobichettipalayam that Portion (I) of the suit schedule property is of high value. However, the Appellants have raised an objection to the Advocate Commissioner's Report as well as to the Final Decree in O.S.No.74 of 2000. It is also to be noted that except the Appellants, none of the parties have made objection to the Advocate Commissioner's Report and Final Decree in O.S.No.74 of 2000.

15. Considering the above facts and circumstances of the case, I am of the opinion that Judgment & Final Decree dated 26.10.2016 in I.A.No.553 of 2012 in O.S.No.74 of 2000 passed by the learned Subordinate Judge, Gobichettipalayam does not warrant any interference and the objection raised by the Appellants as against the Advocate Commissioner's Report and Final Decree in O.S.No.74 of 2000 is illegal and unsustainable. Further, no question of law, much less a substantial question of law, arises for consideration in this Second Appeal. Therefore, this Court is not inclined to allow this Second Appeal.



16. In the result, this Second Appeal is dismissed and Judgment & Final Decree dated 26.10.2016 in I.A.No.553 of 2012 in O.S.No.74 of 2000 passed by the learned Subordinate Judge, Gobichettipalayam is confirmed.

Liberty is granted to the parties to file an execution petition before the Trial Court for executing the Final Decree dated 26.10.2016 in I.A.No.553 of 2012 in O.S.No.74 of 2000 passed by the learned Subordinate Judge, Gobichettipalayam, within a period of three months from the date of receipt of a copy of this judgment. On filing of such execution petition by any of the parties, the Trial Court shall dispose of the same, as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

03.12.2025

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Index: Yes/No

Speaking Order (or) Non-Speaking Order

Neutral Citation: Yes/No

To

1.III Additional District Court,
Gobichettipalayam.

2.Subordinate Court,
Gobichettipalayam.

14/15



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T.V.THAMILSELVI, J.

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