



S.A.No.606 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2025

PRESENT:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

S.A. No. 606 of 2014

B.Amirthalingam
S/o. Balasundaram Pillai
No. 17, Bakthavatsalam Street,
Minjur and Post- 601 203,
Ponneri Taluk

...Appellant

Vs.

1. Gnanasundari (Died)
2. Manicka Pillai (Died)
3. Shanthi D/o. Manicka Pillai
4. Vasantha D/o. Manicka Pillai
3 and 4 are residing at No. 26-A,
Lal Bhagadur 3rd Street,
Minjur and Post- 601 203

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure praying to set aside the judgment and decree passed in A.S.No. 80 of 1997 on the file of the Principal District Judge at Chengalpattu dated 05.11.2013 confirming the judgment and decree passed in O.S.No. 53 of 1990 on the file of Principal Subordinate Court, Thiruvellore dated 04.04.1997 and pass such other suitable orders and thus render justice.



S.A.No.606 of 2014

For Appellant : Mr.C.Jagadish.

For Respondents : R1 & R2 – Died.

Mr. M.S. Subramanian for R3 & R4.

Mr. Suresh Sampath for R5.

J U D G M E N T

Heard.

2.This Second Appeal is filed by the first defendant against the judgment and decree dated 05.11.2013 made in A.S.No.80 of 1997 by the Principal District Judge, Chengalpattu, confirming the judgment and decree dated 03.04.1997 in O.S.No.53 of 1990 on the file of the Subordinate Judge, Thiruvallur.

3. For the sake of convenience, the parties are referred to as arrayed in the suit.

4. The back ground of the case in Nutshell: The case has a long and complicated procedural history between close family members, namely the plaintiff and her brother, the first defendant.



S.A.No.606 of 2014

5. The plaintiff instituted the suit for partition against her brother, arraying her husband as the second defendant, claiming 2/3rd share in the suit property. The unusual feature of the claim is that the plaintiff did not claim as an heir of her parents but claimed succession through her predeceased sons in the joint family property of her husband.

6. According to the plaintiff, the suit property was the ancestral property of the second defendant, her husband. Through him, she gave birth to two sons and two daughters. The two sons predeceased her and her husband. The daughters are respondents 3 and 4 in this appeal, representing their deceased mother, the plaintiff.

7. The plaintiff's case was that her two sons were coparceners in a Mitakshara joint family along with their father. Since both sons died intestate after the commencement of the Hindu Succession Act, 1956, she claimed that she, being a Class I heir, inherited the shares of her deceased sons and thus became entitled to 2/3rd share in the suit property.



S.A.No.606 of 2014

8.The plaintiff further pleaded that the sale deed dated 21.06.1974 executed by her husband in favour of her brother is not binding upon her share and accordingly sought partition and separate possession.

9.The first defendant contested the suit stating that he had purchased the property absolutely from the second defendant; after purchase, the plaintiff and her husband were residing as tenants; after eviction proceedings, possession was recovered from them;even assuming the birth of two sons, the second defendant as *karta* of the family was competent to sell the ancestral property for family necessity;the suit is only a result of collusion between the plaintiff and her husband.

10. The Trial Court decreed the suit granting preliminary decree declaring that the plaintiff is entitled to 2/3rd share.Aggrieved, the 1stdefendant preferred A.S.No.80 of 1997, and the first appellate court initially reversed the decree and dismissed the suit by judgment dated 14.11.1997, mainly on the ground that the dates of death of the two sons were not proved.



S.A.No.606 of 2014

11. It was observed that if the sons had died prior to 17.06.1956, the commencement of the Hindu Succession Act, the devolution would be by survivorship and not by succession. The plaintiff relied upon Ex. A1 and Ex.A2 to prove dates of birth, but did not produce death certificates.

12. The plaintiff aggrieved by the order of appellate court order then filed S.A.No.606 of 1999 along with C.M.P.No.13005 of 1999 seeking to receive death certificates as additional evidence.

13. By order dated 27.03.2013, this Court set aside the appellate court Judgment and decree and remitted the matter to the first appellate court with a limited direction:to permit evidence only regarding the dates of death of the two sons and to adjudicate accordingly.

14.After remand, the appellate court examined: P.W.3 – daughter of the plaintiff and P.W.4 – tenant who had resided near the family. The following documents were received as additional evidence:

Ex. A3 – Death certificate of Loganathan (03.08.1956)



S.A.No.606 of 2014

Ex. A4 – Death certificate of Shanmugam (10.12.1958)

Ex. A5 – Birth certificate dated 10.05.1956

15. On appreciation of the additional evidence, the appellate court found that the two sons died after the commencement of the Hindu Succession Act, 1956 and therefore the plaintiff, being their mother, succeeded to their shares. Accordingly, the appellate court dismissed the appeal and confirmed the decree of trial court.

16. The 1st defendant as appellant raised several grounds primarily questioning:admissibility of Exs.A3 to A5, manner of proof and compliance with remand directions.All these grounds essentially relate to appreciation of evidence.

17. It is seen that the witnesses were examined in compliance with remand directions. The documents are public documents. Full opportunity of cross-examination was given. The scope of remand was strictly adhered to. No procedural lapse or illegality is found in the manner in which additional evidence was admitted and considered.



S.A.No.606 of 2014

WEB COPY 18. It is well settled that under Section 100 CPC, this Court cannot interfere with concurrent findings of fact unless perversity, illegality, or misapplication of law is demonstrated. The findings of the appellate court are supported by pleading, evidence and statutory principles governing succession. No substantial question of law arises.

19. In view of the above discussion, this Second Appeal stands dismissed at the admission stage. There shall be no order as to costs. Consequently, the connected miscellaneous petition, if any, stands closed.

28.11.2025

ay

Index : Yes/No

NCC : Yes/No

Speaking Order / Non-Speaking Order

7/8



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S.A.No.606 of 2014

DR. A.D. MARIA CLETE, J

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To

- 1.The Principal District Judge, Chengalpattu.
- 2.The Principal Subordinate Court, Thiruvellore.
- 3.The Section Officer,
V.R.Section,
High Court of Madras.

S.A. No. 606 of 2014

Dated: 28.11.2025