



WEB COPY



S.A.No.999 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2025

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

S.A.No.999 of 2021 and
C.M.P.No.18810 of 2021 and
C.M.P.No.3746 of 2022

M.Srinivasan

... Appellant

Vs.

- 1.P.Appasamy (Died)
- P.Ayyanar (Died)
- Chinna Ayyanar @ P.Ayyadurai (Died)
- Smt.Muthu Mariammal (Died)
- 2.Smt.Bagyalakshmi
- 3.Palaniyammal (Died)
- 4.Anandha Kaaniraj
- 5.Balakrishnan
- 6.Rajagopal
- 7.S.Rajalakshmi (Died)
- 8.Natarajan (Died)
- 9.Soundararajan
- 10.Balamohanraj
- 11.Mayandi
- 12.Vekat @ Balakrishnan
- 13.Mrs.Thangalakshmi
- 14.N.Kavitha
- 15.Minor.Priya
(Represented by her mother Mrs.Thangalakshmi)
- (RR13 to 15 are brought on record as LR's of the deceased R8 vide Court order dated 06.02.2024 made in CMP Nos.27563, 27568 & 27569/2023)
- 16.Dinesh Kumar
- 17.Sindhuja
- 18.Gayathri

1/12



S.A.No.999 of 2021

(RR16 to 18 are brought on record as LR's of the deceased R7
vide Court order dated 21.10.2024 made in CMP No.19742/2024)

19.Pichayammal

20.Sree Dhandapani

21.Sankaranarayanan

22.Balanandhakumar

23.Nagaraj

24.Sriayammal

... Respondents

(RR19 to 24 are brought on record as LR's
of the deceased R1 vide Court order dated 23.07.2025
made in CMP Nos.17225, 17228 & 17229 of 2025)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 25.06.2020 made in A.S.No.70 of 2018 on the file of the III Additional District Court, Coimbatore, confirming the Fair and Final Decree dated 03.01.2017 made in I.A.No.560 of 2012 in C.S.No.267 of 2005 on the file of the III Additional Subordinate Court, Coimbatore.

For Appellant	: Mr.R.Bharath Kumar
For R1, 3, 7 & 8	: Died
For R2	: Mr.C.K.Prasanan
For RR 4, 5, & 16 to 18	: No appearance
For R6	: Mr.S.Saravanakumar
For RR 9 to 15	: M/s.Chandini Rajkishore For Mr.T.Sai Krishnan
For RR 19 to 24	: Mr.A.Thiyagarajan

JUDGMENT

This Second Appeal has been filed by the defendant No.4 in the suit for partition and separate possession. Originally, the plaintiff claimed himself as one



S.A.No.999 of 2021

of the legal heirs of one Mr.Balaiya, claimed 1/4th share in the suit property and the same was decreed in his favour. Subsequently, final decree proceedings were initiated by the plaintiff and final decree was also passed on 03.01.2017 in I.A.No.560 of 2012.

2. Aggrieved over the final decree passed by the trial Court, the defendant No.4 in the suit filed an appeal in A.S.No.70 of 2018, challenging the manner in which the allotments have been made, which was confirmed by the Appellate Court.

3. Aggrieved over the Judgment and final decree passed by both the Courts, the present Second Appeal has been filed by the defendant No.4. At the time of admission of the Second Appeal, notices were ordered to the parties and the matter was heard in detail, to verify any substantial question of law is involved in this Second Appeal.

4. The grievance raised by the defendant No.4 is that, the properties have not been divided by properly following the metes and bounds and that the allotments have been made without determining the value of the respective items, thereby caused prejudice to the other defendants. He has further demonstrated



before this Court that the plaintiff has been allotted portions that are advantages to him, whereas the other defendants have allotted portions which, though the extent of the land is equal, but these lands were not having more value than the lands allotted in favour of the plaintiff.

5. The learned counsel for the plaintiff submits that, in the final decree proceedings before the Trial Court, an Advocate Commissioner was appointed, who submitted a Report suggesting the allotments, and none of the parties, except defendant No.5, expressed any intention to challenge it. Defendant No.5 alone stated that she would file objections, but she did not actually filed any objections. before the Trial Court and no one has come forward to file objections with regard to the allotments made. In the absence of any objections, the Trial Court, after considering the Advocate Commissioner's suggestions, independently applied its mind and passed the final decree. The majority of the lands are in possession and enjoyment of the defendants, and they are deriving considerable income from it, and that the present Second Appeal has been filed only with a view to prevent the plaintiff from enjoying the fruits of final decree.

6. The learned counsel for the defendant No.5 also appeared and submitted that the defendant No.5/ Bagyalakshmi is one of the legal heirs of one Mariappan



S.A.No.999 of 2021

and the sister of defendant No.4/ Srinivasan. It was further submitted that she had prayed allotment of 1/12 shares in the final decree proceedings, but the same was not considered on the ground that no preliminary decree had been passed in her favour for such allotment. Since she has an independent right and share in the suit property, her claim has also been taken into consideration in this appeal.

7. I have considered the rival submissions made on both sides and also perused the materials available on record.

8. On perusal of the preliminary decree, it shows that except the plaintiff no other persons /Defendants have claimed any share or they had not come forward to seek partition in their favour. Based on the evidence adduced and the materials placed before the Trial Court, a preliminary decree was passed granting the plaintiff a $\frac{1}{4}$ th share in the suit properties, without determining the specific shares of the defendants. However, the decree directed that the suit properties be divided into four equal parts, with one part to be allotted to the plaintiff. This preliminary decree was challenged by way of Appeal in A.S.No.70 of 2018, on the file of the District Court, Coimbatore, by the defendants 2 to 4 and defendants 6 to 10, and it was dismissed and again Second Appeal was filed in



S.A.No.868 of 2016 before this Court, and same was also dismissed.

WEB COPY

9. In the meantime, based on the application filed by the plaintiff, final decree proceedings were initiated. The trial Court had appointed an Advocate Commissioner to suggest partition. Accordingly, the Report of the Advocate Commissioner filed and it read as follows:

3.I am visited along with corporation surveyor and measured the item No.1 of the suit property which is situated in Coimbatore City Municipal Corporation in New T.S.No.3586 in Jayaprakash Lane in Old Ward No.16, New Ward No.2o. I notice that the subject matter of property is with an extent of 4 cents and 56 square feet and the building facing north. The rooms are like row and the roof is tile which has been constructed more than 50 years ago. It seems to be old building and it is in dilapidated condition and no one is in possession of the property. I have seen that the property is having passage electricity and water connection and there have back yard. The surveyor in his report suggest that the item No.1 of property to be divided into 4 equal share which is marked as A, B, C and D in different colours in which "A" of portion of property is to be allotted to the petitioner or he has also suggest to the complete item No.1 of property with an extent of 4 cents and 56 square feet and along with "A" schedule in item No.3 with an extent of 4 cents and 45 square feet in TS No.17 is to be allotted to the petitioner which is convenient for the usage of the petitioner.

.....

6.Afterwards, I am visited the item No.5 of property which is situated in Coimbatore City Municipal Corporation in T.S.No.124, in Ward No.D(4) and Block No.1. The subject matter of property is with an extent of 5 cents and 222 square feet. I notice that there is a building with RCC roof facing north and east. The item No.5 of property is consisting of 2 shops and several houses, the front side 2 shops are facing north and the co-



S.A.No.999 of 2021

sharers are running business. The houses are in back side facing east. In the first floor there are several houses facing east. There is a passage in the eastern side of the building. The building is in good condition. The tenants are residing in the property. I have seen that the property is having passage electricity and water connection and there have front connection and there have front yard and back yard. The electricity connection bearing No.378. This building is consisting of 2 floors. The surveyor has measured the property and divide the property into 4 equal divisions marked as A, B, C and D in different colours and "A" marked portion is to be allotted to the petitioner or to the complete item No.5 of property alone allotted to the share of petitioner which is convenient for the usage of the petitioner."

10.This report had been objected by the Defendant No.4/Appellant herein, and he has not placed any other suggestion more particularly, indicating the difference in value of property.

11.The objections raised by fourth defendant in this appeal is that, in respect of Item No.1 of the property, the Commissioner has allotted the "A" portion, which lies adjacent to the road and is therefore of higher value, while the "D" portion is situated at the corner of the first item, is comparatively less value. Though this contention appears to be attractive, this Court is not able to agree with the said contention. In the other items of the property, the "A" portion has also been marked adjacent to the road. In item No.2, the "A" portion allotted to the plaintiff is located at the rear end of the property, whereas the "D" portion lies adjacent to the road. Similarly, in Item Nos.3 and 4, the "A" portion is situated in



S.A.No.999 of 2021

the middle, while the “C” and “D” portions are located near the road similarly, in the item No.5 portion is allotted.

12. I have also gone through the exhibits and Advocate Commissioner's Plan and Report.

13. On a perusal of the Commissioner's report, it is evident that the “A” portion of land allotted to the plaintiff has not been placed in any advantageous possession, whereas the other shares have been so placed. The commissioner has consciously marked the allotment of shares, and the Trial Court has duly taken note of the same while allotting only the plaintiff's share. This Court, finds there is no infirmity in such an approach.

14. During the arguments on the side of the fifth defendant, it was submitted that they had paid the court fee for allotment of $1/12^{\text{th}}$ share to the fifth defendant before the Trial Court, but the same was not considered and rejected. This was not put to challenge by the fifth defendant. Even in the present appeal before this Court, she claims entitlement to $1/12^{\text{th}}$ share, but no such allotment has been made. This Court is of the view that since the fifth defendant has failed

8/12



to challenge the order of the Trial Court, she cannot seek allotment of shares in the Second Appeal filed by the other defendants. Further, there is no substantial question of law involved in this case.

15. As far as this appeal with regard to the claim made by the fourth defendant is concerned, this Court is of the view that he is not having any merits. Since there is no substantial question of law involved, the appeal is liable to be dismissed, and the final decree passed by the Trial Court is hereby confirmed. However, without going into the merits of the claim, since the issue involved in this case to enlargement of share of the fourth defendant is not subject matter before passing the final decree in this case, the fourth defendant has to exercise his rights for claiming his share in the remaining properties separately by initiating separate proceedings.

16. In the result, the Second Appeal stands dismissed. The Judgment and Decree dated 25.06.2020 made in A.S.No.70 of 2018 on the file of the III Additional District Court, Coimbatore, confirming the Fair and Final Decree dated 03.01.2017 made in I.A.No.560 of 2012 in C.S.No.267 of 2005 on the file of the III Additional Subordinate Court, Coimbatore, is hereby confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petitions is



closed.

WEB COPY



S.A.No.999 of 2021

03.09.2025

ssi

Index : Yes / No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

1.The III Additional District Judge,
Coimbatore.

2.The III Additional Subordinate Judge,
Coimbatore.

3.The Section Officer,
V.R.Section,
High Court of Madras.



WEB COPY



S.A.No.999 of 2021

K.RAJASEKAR.J.

ssi

S.A.No.999 of 2021



WEB COPY



S.A.No.999 of 2021

03.09.2025