



A.S.NOS.223 & 224 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2025

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CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NOS.223 AND 224 OF 2017

A.S.NO.223 OF 2017

1.Latifa Beevi
2.Jannathil Firdoz
3.Fathima

... Appellants / Defendants

Vs.

Shahul Hameed

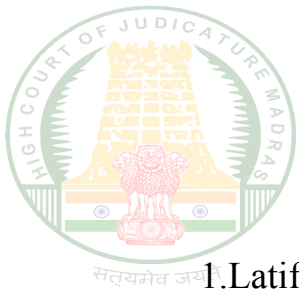
... Respondent / Plaintiff

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated April 26, 2016 passed in O.S.No.1 of 2014 by the Additional District and Sessions Court, Ariyalur.

For Appellants : Ms.D.Sathya
for Ms.Zeenath Begum

For Respondent : Mr.P.Valliappan, Senior Counsel,
assisted by
Mr.S.M.S.Shriram Narayanan

A.S.NO.224 OF 2017



A.S.NOS.223 & 224 OF 2017

1.Latifa Beevi

2.Jannathil Firdoz

3.Fathima

... Appellants/ Defendants/
Counter Claimants

Vs.

Shahul Hameed

... Respondent / Plaintiff

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated April 26, 2016 made in the Counter-Claim in O.S.No.1 of 2014 by the Additional District and Sessions Court, Ariyalur.

For Appellants : Ms.D.Sathya
for Ms.Zeenath Begum

For Respondent : Mr.P.Valliappan, Senior Counsel
assisted by
Mr.S.M.S.Shriram Narayanan

ORDER

This matter is listed today under the caption 'for being mentioned' at the instance of the learned Senior Counsel for the respondent.

2.This Order shall serve as a corrigendum to the Common Judgment dated August 21, 2025 passed in the main Appeal Suits. In the said Judgment, in Paragraph No.30, this Court noted that the address of the counter-claim property has been mentioned by the plaintiff in the plaint



cause-title as the address of defendants 1 and 3. For ready reference,

Paragraph No.30 is extracted hereunder:

*'30. As far as the counter-claim property is concerned, it is true that the defendants have not filed any document to show that Samsudeen was running 'Priya's Readymade Shop' and passed away leaving behind the said business. But the plaintiff in his reply statement contends that Samsudeen was running a business which he closed in 2003 on account of his poor health and that thereafter, in 2006, he found Sumangali Readymades. In short, he contends that 'Sumangali Readymade Shop' have nothing to do with the Samsudeen's business. The plaintiff has evasively not specified the name of the shop or the nature of the business. Later, during the cross-examination of D.W.1, the plaintiff's side suggested that Samsudeen was running Peas Shop. Pleadings have to be specific and cannot be evasive. Evasive pleadings cannot be permitted to be used in their favour at a later point of time. **Interestingly, the plaintiff in the cause title of the plaint, has mentioned the address of first defendant and third defendant, as 'Sumangali Javuli Store, Kunnam, Kunnam Taluk, Perambalur District', which he claims to be his self-acquired property.** From the conjoint reading of the written statement as well as the reply statement, it could only be inferred that the plaintiff had admitted that Samsudeen was running a readymade clothes retail shop. When the plaintiff has admitted that the father was running a readymade cloth retail shop, the defendants have discharged their initial burden and the onus shifts onto the plaintiff to prove that 'Sumangali Readymade Shop' is different from the Samsudeen's 'Priya's Readymade Shop'. The plaintiff has to*



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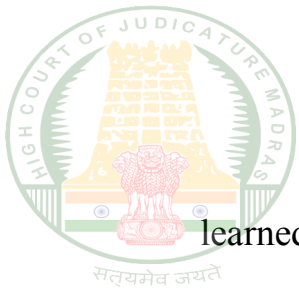
prove that he started 'Sumangali Readymade Shop' in the year 2006 out of his own exertions. There is no evidence available on record to prove the same. Hence, this Court is of the view that the plaintiff has failed to discharge the onus upon him. In these circumstances, counter-claim property can only be considered as a property left behind by Samsudeen and consequently, the parties being his legal heirs are entitled for partition in the same. As per Mohameddan law, the first defendant is entitled to 1/8 share, and in the remaining 7/8 share, the plaintiff is entitled to 2 shares and the defendants 2 and 3 are each entitled to one share. The Trial Court ought to have decreed the counter-claim as well. Point Nos.(iii), (iv) and (v) are answered accordingly.'

[Emphasis supplied by this Court]

3.Mr.P.Valliappan, learned Senior Counsel, assisted by Mr.S.M.S.Shriram Narayanan, learned Counsel for the respondent / plaintiff submits that the said address is different from that of the counter-claim property and expresses his apprehension that the aforesaid observation would have influenced the decision of this Court.

4.It is hereby clarified that the finding of this Court was only on the basis of the plaint, written statement, the reply statement and the evidence available on record and the aforesaid observation did not have any significant influence on it. However, in view of the submission of the

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learned Senior Counsel, the following lines found in Paragraph No.30 shall

be deleted:

'Interestingly, the plaintiff in the cause title of the plaint, has mentioned the address of first defendant and third defendant, as 'Sumangali Javuli Store, Kunnam, Kunnam Taluk, Perambalur District', which he claims to be his self-acquired property.'

5.Registry shall annex this corrigendum to the Common Judgment in the main Appeal Suits.

28.08.2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
TK

To

The Additional District and Sessions Court
Ariyalur.

R. SAKTHIVEL, J.

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