

A.S.No.486 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 486 of 2017

1. Neelavathi
2. Kannadasan
S/o.Dharmalingam,
Rep. by Power Agent K.Sumathi
W/o.Kannadasan,
No.37, Sarvamanya Street,
Nehru Nagar, Sirkali,
Nagapattinam District.

... Appellants

Versus

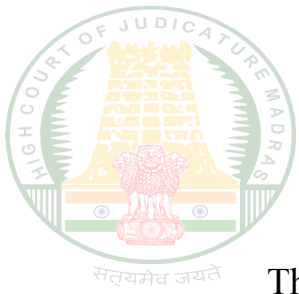
1. Saminathan
2. Vasuki
3. Vijayalakshmi
4. Amirthavalli
5. Padmavathi
6. Natarajan
7. Sampath
8. Subbulakshmi

... Respondents

Appeal Suit is filed under Section 96 r/w. Order XLI, Rule 1 of Civil Procedure Code against the judgment and decree dated 12.12.2016 made in O.S.No.18 of 2011 on the file of the learned District Judge, Nagapattinam.

For Appellants	:	Mr. A. Arun Babu for Mr.M.J.Srinivas
For Respondents 1 to 5 & 8	:	Mr. J. Zeakumar for M/s. Achari & Antoni Associates
For Respondent 6	:	No appearance
For Respondent 7	:	Dispensed with

JUDGMENT



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This Appeal Suit had been filed seeking to set aside the judgment and decree dated 12.12.2016 made in O.S.No.18 of 2011 on the file of the learned District Judge, Nagapattinam.

2.1. The plaint averments in brief, are as follows:-

The suit in O.S. No. 18 of 2011 had been filed by the Respondents 1 to 5 herein as Plaintiffs seeking partition of the suit properties. The Plaintiffs and Defendants 2 to 5 are brothers and sisters and they are the legal heirs of Dharmalingam Asari. The first Defendant is the wife of Dharmalingam Asari. Item-1 of the suit property is the joint family property of Dharmalingam Asari and his brother Rengaiyan. The properties were partitioned among them through registered partition deed dated 18.09.1974, which was marked as Ex.A-1 during the trial. Subsequent to the partition, the father of the Plaintiffs and Defendants 2 to 5, Dharmalingam Asari, had purchased the share of his brother Rengaiyan through a registered sale deed dated 09.02.1979 which was marked as Ex.A-2. Subsequently, the father of the Plaintiffs and Defendant 2 to 5, husband of the first Defendant, Dharmalingam Asari had from the income derived from the Item 1 of the property and from his own source of income, purchased the property in Item 2 which is an agricultural property. The Plaintiffs claim partition of 1/10 share in the suit properties as though



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they have rights equal to that of the sons. The daughters of Dharmalingam Asari were married off by releasing their shares in the suit properties by Dharmalingam Asari during his lifetime.

2.2. The written statement of the Defendants 1 and 4 in brief are as follows:-

The Defendants 1 and 4 had filed written statement contending that the daughters were all married prior to the Tamil Nadu Amendment Act to the Hindu Succession Act, 1989 and the father of the Plaintiffs and Defendants 2 to 5 died intestate on 29.04.1988. The fourth Defendant had gone abroad and sent remittances during the lifetime of his father. Based on the remittances of the fourth Defendant only the father Dharmalingam Asari was able to marry off his daughters, Plaintiffs 3 to 5. During his lifetime, the said Dharmalingam Asari had orally partitioned the property thereby granting right over the properties to his wife and his sons viz., first Plaintiff and Defendants 2 to 4. The Plaintiffs 2 to 4 and fifth Defendant are not entitled to right of partition. The suit is to be dismissed.

2.3. The written statement of the fifth Defendant in brief are as follows:-

The averments found in Paragraphs 1 to 5 in the plaint are correct. The



relationship stated in the plaint is also correct. It is also correct as the suit properties belong to one Dharmalingam Asari and he died intestate on 29.04.1988. The fifth Defendant is having equal right of 1/10 share along with Plaintiffs and other Defendants in the suit properties.

2.4. On the pleadings of the Plaintiffs and the written statement of the Defendants, the following issues were framed:

(i) To say whether any oral partition were occurred during life time of Dharmalainga Asari or not?

(ii) To say whether as the marriage for 2nd, 3rd and 4th Plaintiffs took place before 1989, the Plaintiffs are entitled to get the share as required in the plaint or not?

(iii) To say whether 5th Defendant is entitled to get 1/10 share over the suit properties or not?

(iv) To say whether these Plaintiffs are entitled to get relief of Partition by getting 1/10 share over the suit properties or not?

(v) What are all other reliefs?

2.5. In the interest of justice and as per Rule 5(2) in Order XIV C.P.C., the issues which are necessary for determining the matter in controversy between the parties are reframed as follow:

(i) Whether the Plaintiffs are entitled to get the relief of Preliminary Decree to the extent of 1/10 shares to each of them in the suit properties?



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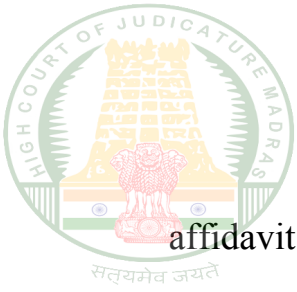
(ii) Whether the 5th Defendant is entitled to get share to the extent of 1/10 in the suit properties?

(iii) Whether the right of 2 to 5 Plaintiffs and 5th Defendant to claim partition is barred by Hindu Succession (Tamil Nadu Amendment) Act, 1990?

(iv) Whether suit properties were divided by way of Oral Partition during the life time of Dharmalingam?

(v) What other relief, if any, the Plaintiffs are entitled to?

2.6. During trial, on the side of the Plaintiffs, the third Plaintiff Vijayalakshmi was examined as P.W-1 and marked documents Ex.A-1 to Ex.A-13. On the side of the Defendants, the wife of the fourth Defendant Tmt.Sumathi had deposed evidence as D.W-1. The affidavit filed by the wife of fourth Defendant was treated as examination in chief of D.W-1. The contention of the Defendants in the written statement filed by the fourth Defendant and adopted by first Defendant were stated by the wife of fourth Defendant as D.W-1. She was cross examined on behalf of the Plaintiffs in which she had denied the suggestion that the Plaintiffs are entitled to partition. She had admitted fairly that the marriage of Plaintiffs 2 to 5 took place before her marriage with fourth Defendant. Therefore, she did not have first-hand knowledge of the facts stated in the written statement. The mother of the Plaintiffs and Defendants 2 to 5 was examined as D.W-2. She had in her



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affidavit filed as examination-in-chief stated the facts stated in their written statement filed by Defendant-4. She had denied the suggestion in the cross examination that the Plaintiffs are entitled to partition. She had in her cross-examination clearly state that the fourth Defendant had sent remittances based on which, the marriage of the Plaintiffs were conducted. The suit property had been partitioned during the life time of her husband Dharmalingam Asari whereby the suit properties were allotted in the oral partition to her and to her sons, Plaintiff-1 and Defendant 2 to 4. Therefore, Plaintiffs 2 to 5 and the fifth Defendant are not entitled to partition. During the evidence of the Defendants, the documents relied by the Defendants was marked as Ex.B-1.

2.7. After conclusion of the trial, the learned District Judge, Nagapattinam by judgment dated 12.12.2016 ignored the evidence of the Defendants particularly the evidence of D.W-2 the mother of the Plaintiffs and Defendants 2 to 5, who is the competent witness to speak about oral partition and the learned Judge had mechanically granted preliminary decree of 1/10 share to the Plaintiffs.

2.8. Aggrieved, the Defendants 1 and 4 the wife and son of Dharmalingam Asari had filed this Appeal Suit.



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3. The Appellants have raised the following grounds that the Court below failed to see that as per recital in Ex.A-1 half of item 1 of suit property should be treated as co-parcenary property as Dharmalingam Asari got the same under Family Partition with his brother Rangaiyan. The Court below failed to see the sons of Dharmalingam Asari have got right in the suit item 1 by birth . The Court below erred in treating suit item 1 as separate property of Dharmalingam Asari overlooking Ex.A-1 Partition Deed. The Court below ought to have dismissed the claim of Plaintiffs for equal share at least in respect of half of suit item 1. The Court below failed to see the recitals in Ex.A-1 confirms existence of Joint family nucleus and hence, subsequent acquisition of Dharmalingam Asari in the year 1976 and 1979 under Ex.A-3 and Ex.A-2 should be treated as joint family properties. The Court below failed to see once existence of joint family nucleus is established, any acquisition in the name of Kartha of Joint family shall take the character for joint family property. Hence, entire suit property should have been treated as joint family property. In that case, Plaintiffs 2 to 5 and 5th Defendant, daughters, can only claim 1/10th share in the 1/5th share of Dharmalingam Asari and they are not entitled to equal share with sons. The Court below failed to see that Partition opened in the year 1988, on death of Dharmalingam



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Asari well prior to Tamil Nadu Act 1/1990 and hence, in any event, daughters are not entitled to equal share. The Court below erred in not considering the evidence of D.W-1 and D.W-2 with regard to oral partition in the family. The Court below having accepted the evidence of D.W-1 as a competent witness to speak about family affairs erred in not considering her evidence with regard to oral Partition. The Court below erred in not considering the admission of P.W-1 and evidence of D.W-1 and D.W-2 in proper perspective. Therefore, the Appellants prays to set aside the judgment and decree dated 12.12.2016 passed in O.S.No.18 of 2011 by the learned District Judge, Nagapattinam.

4. The learned Counsel for the Appellants submitted that the Defendant-1/Mother and Defendant-4 are the Appellants in this Appeal. The suit was filed by the daughters of the Defendant-1. It is the contention of the Defendant-4 in the written statement that he went abroad and sent remittances. Based on his earnings from abroad, the Plaintiffs 3 to 5 were married thereby disputing the claim of partition and sought dismissal of the suit. After full trial, the learned District Judge, Nagapattinam by judgment dated 12.12.2016 granted preliminary decree for 1/10 shares to the Plaintiffs. Aggrieved by the grant of preliminary decree, the Defendants 1 and 4 as Appellants had preferred this Appeal.



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5. It is the contention of the learned Counsel for the Appellants that as per the the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990), the daughters who were married prior to 1989 cannot seek partition and that was relied by Defendant-4. The mother as Defendant-1 also supported the claim of the Defendant-4. Still the learned Judge had rejected the contention of the Defendants and granted preliminary decree for partition.

6. It is the further contention of the learned Counsel for the Appellants that in the family partition in the family of the father of Plaintiffs and Defendants Dharmalingam, father Dharmalingam was allotted 4.5 cents in Item 1 of the suit property. He was allotted only $4\frac{1}{4}$ cents and other $4\frac{1}{4}$ cents allotted to his brother. Subsequently, he purchased the share of his brother. Therefore, he is the absolute owner of $8\frac{1}{2}$ cents. Now, the Defendants are residing in the suit property. The other brothers had not claimed partition. They were aware of the oral partition. Therefore, they had not agitated. Only the daughters had filed the suit.

7. The learned Counsel for the Appellants invited the attention of this Court to the discussion of the learned District Judge, Nagapattinam to Issue-4. The learned District Judge, Nagapattinam had in the concluding paragraph to Issue-4, rejected the claim of the mother as Defendant-1 and

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brother as Defendant-4 regarding oral partition and granted preliminary decree in favour of the Plaintiffs.

8. Considering the extent of property, the learned Counsel for the Appellants submits that even now, the Defendant-4 is ready and prepared to pay monetary compensation for the claim of the Plaintiffs. He seeks time to amicably settle the claim of the Plaintiffs 1 to 4.

9. The learned Counsel for the Respondents 1 to 5 and 8 Mr.J.Zeakumar submitted that there is no possibility of settlement. The claim made by the Defendant 1 and 4 in the written statement that there was an oral partition in the family by which the property was allotted to Defendant-4 was not proved during trial. It is the contention of the learned Counsel for the Respondents that all the sisters of Defendant-4 were married during the lifetime of their father Dharmalingam Asari except the youngest daughter/Defendant-5. By that time, Defendant-4 went abroad, all the daughters were married. Therefore, the claim of Defendant-4 regarding the oral partition and sending remittance from abroad were not proved before the trial Court. The Defendant-4 is alleged to have gone abroad in the year 1984 and for that also there is no proof. Therefore, the trial Court had rejected the



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contention of the Defendant-4 and Defendant-1 and decreed the suit for partition granting preliminary decree to the Plaintiffs. Therefore, it is a well reasoned judgment which does not warrant any interference by this Court. The Appeal lacks merit and is to be dismissed.

10. If at all the Plaintiffs claim any share in the property, they are entitled to the share allotted to the father Dharmalingam Asari i.e., $1/5^{\text{th}}$ of the share of Dharmalingam Asari is to be divided between the Plaintiffs 1 to 5 and Defendant 1 to 5 in which case, $1/5^{\text{th}}$ of the share of the Dharmalingam Asari is to be divided equally among the 10 legal heirs, the Plaintiff and Defendants 1 to 5 and not the entire property as such as claimed in the plaint. The learned Judge erred in appreciation of evidence and granted preliminary decree erroneously granting $1/10$ share in all the properties ignoring the fact of the oral partition as stated by the mother the competent witness in her evidence and as admitted by P.W-1 Vijayalakshmi in her cross-examination.

11. The learned Counsel for the Appellants by way to reply to the submission of the learned Counsel for the Respondents submits that the evidence of the Defendant-1, mother of the Plaintiffs as D.W-2 in the cross examination, had clearly stated that on equity to the shares of the daughters



were given to each of them and she had not specified the amount. Therefore, the learned District Judge, Nagapattinam rejected to evidence of D.W-2. It is the case where the Plaintiffs had not been given money equal to the shares of the Defendants 2 to 4. The pain of the mother can be observed in the cross examination of D.W-2.

Point for determination:

Whether the judgment and decree dated 12.12.2016 passed in O.S.No.18 of 2011 by the learned District Judge, Nagapattinam, is erroneous warranting interference of this Court?

12. Heard the learned Counsel for the Appellant Mr.A.Arun Babu for Mr.M.J.Srinivas and the learned Counsel for the Respondents 1 to 5 and 8 Mr.J.Zeakumar for M/s.Achari & Antoni Associates.

13. The parties are referred as per their status before the trial Court as Plaintiffs and Defendants.

14. Perused the documents and the judgment and decree dated 12.12.2016 made in O.S.No.18 of 2011 on the file of the learned District Judge, Nagapattinam.

15. The learned District Judge on assessment of evidence available



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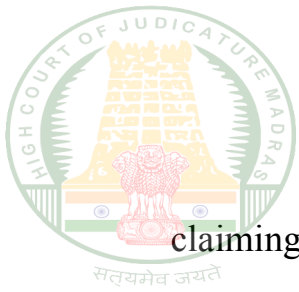
through the evidence of P.W-1 and Ex.A-1 to Ex.A-13 and D.W-1 and D.W-2 and Ex.B-1 had answered the issues. Issue 3 is with regard to the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990). The issue 3 pertains to the claim of the Plaintiffs 2 to 5 and Defendant-5 for partition is barred under Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990). The learned Judge on appreciation of evidence had arrived at a conclusion that the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) is applicable to co-parcenary property, whereas as per evidence, the properties in the suit are self-acquired properties of Dharmalingam Asari, as per evidence available before the learned District Judge, Nagapattinam. Therefore, the contention of the Defendants in the written statement and evidence of the Defendants as D.W-1 and D.W-2 was rejected by the learned District Judge. The Issue-3 was answered in favour of the Plaintiffs and against the Defendants. Issue No.4 was with regard to oral partition as claimed by the Defendants 1 and 4. On the basis of evidence available before the learned District Judge, the issue four was also answered in favour of the Plaintiffs and against the Defendants. The issues were answered in favour of the Plaintiffs 2 to 5 and Defendant-5 thereby the learned District Judge on proper appreciation of evidence arrived at a conclusion that the claim made in the written statement was not true. The contention of the Defendants 1 and 4



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in the written statement that as per the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990), the claim of the Plaintiffs is bar had been rejected on the ground that the suit properties are not ancestral properties. Those are self acquired properties of Dharmalingam Asari. Under those circumstances, the learned Judge had rejected the contentions of the Defendants in the written statement as well as the evidence of the mother of the Plaintiffs and Defendant-2 to 5 as D.W-2.

16. This Court on independent assessment of the evidence under Ex.A-1 to Ex.A-13 and Ex.B-1 reject the claim of the Defendants in the written statement. The claim of the Defendant-4 in the written statement was adopted by other Defendants. The Defendant-5 had filed separate written statement claiming share and paid Court Fees for her share. The Defendant-4 having filed written statement stating that as per the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990), the Plaintiffs 2 to 5 having been married prior to 1990 are not entitled to any share in the immovable properties of the family. The said contention in the written statement is hit by the Hindu Succession Act as amended by the Central Act by Parliament in the year 2005 to Section 6, whereby the daughters are granted equal share as that of the sons from the date of their birth they are entitled to. Their qualification for



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claiming partition regarding share of the daughters in the family property has

been reiterated in the ruling of the Hon'ble Supreme Court reported in **(2020)**

9 SCC 1 in the case of ***Vineeta Sharma Vs. Rakesh Sharma*** wherein it is held as follows:

“Family and Personal Laws- Hindu Succession Act, 1956 – S.6 (as substituted by the Hindu Succession (Amendment) Act, 2005 w.e.f 09.09.2005) -Daughter's right in coparcenary property under substituted S.6 of the HS Act, 1956 – Daughter born before date of enforcement of the 2005 Amendment Act – Held, has same rights as daughter born on or after the amendment – Non-requirement of co-parcener father to be alive on date of coming into force of the said amendment, explained.”

17. Here it is the specific claim of the Plaintiffs in the plaint that the father Dharmalingam Asari died intestate. That had been conceded by the Defendants also. The only contention of the Defendants is that as per the provisions of Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990), the Plaintiffs claim is barred as they had been married prior to the enactment by the State of Tamil Nadu to the Hindu Succession Act as amended in the year 1990.

18. The Courts are bound to take judicial notice of the Acts passed by the Parliament. Therefore, the Hindu Succession Act as amended by the Parliament has overriding effect over the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (1 of 1990) whereby the daughters are granted equal



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right as that of the sons and the right to claim share in the property is from the date of birth of the daughters. There is no disqualification to claim share in the properties. Subsequently as per the judgment of the Honourable Supreme Court reported in **(2020) 9 SCC 1** in the case of ***Vineeta Sharma Vs. Rakesh Sharma***, whether the father of the party is alive or dead, is not relevant in a suit for partition filed by the Hindu woman. In the light of the Hindu Succession Act as amended by the Parliament in 2005, the claim of the Defendants 1 to 4 has to be rejected straight away. Further, the claim of oral partition is always a subject of contest in a Court of law, it is hard to establish. Here, the daughters have come forward claiming partition. The mother claims that there was an oral partition. If there had been oral partition, she should have clearly stated what are all the properties allotted to the sons, the Plaintiff-1 and the Defendants 2 to 4. She was unable to state clearly the share of each of the sons and her own share. Under those circumstances, the claim made by the Defendant-4 in the written statement which he claims that the other Defendants 1 to 3 adopted the same, is only to deny the rightful claim of the Plaintiffs. The learned Judge, on proper consideration of the law as prevailing as on the date of the judgment, had properly applied the law to the facts of the case and had granted 1/10 share to each of the Plaintiffs and Defendants granting preliminary decree. The Defendant-4 cannot have any



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grievance over such grant of preliminary decree. The claim of the Defendant-

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4 in the written statement that he had sent remittances from abroad had not been proved. Even though the mother admits that her son sent the remittances the claim made by the Defendant-4 that his remittances were utilised for marriage of the Plaintiffs 3 to 5 was based on his remittances had not been proved through documentary evidence. What was the remittances sent? What was the expenses utilised? There had not been any documentary evidence marked during trial. Therefore, the claim made by the fourth Defendant had been rejected by the learned District Judge, Nagapattinam. The assessment of evidence by the learned District Judge is found proper as per the provisions of the Indian Evidence Act.

19. The only intention of the Defendants 1 and 4 by filing this Appeal is to delay the grant of final decree. The learned Counsel for the Respondents sought early disposal of the case, appeal by this Court, therefore, on his insistence, this Court had posted the case on the list. When the case came up for hearing on 09.09.2024 the learned Counsel for the Appellants sought adjournment. The learned Counsel for the Respondents was present in Court. Only on his request, the case was listed on the ground that the second Respondent is a Senior Citizen and sought early disposal of the case. The



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learned Counsel for the Respondents submitted that the preliminary decree granted by the trial Court in continuation of which the Respondents/Plaintiffs had filed final decree application before the learned District Judge, Nagapattinam and the same is pending. Only due to the pendency of this Appeal, they are unable to proceed further. Therefore, the learned Counsel for the Appellants was directed to proceed with the arguments on the adjourned dated ie., 18.09.2024 failing which this Appeal will be dismissed. Pending Appeal, the learned Counsel for the Appellants sought for an amicable settlement. Therefore, the subject matter was referred for amicable settlement. Subsequently, the parties reported that there was no settlement. Therefore, the Appeal was heard on merits.

20. On appreciation of evidence available before the trial Court through P.W-1, Ex.A-1 to Ex.A-13, D.W-1 and D.W-2 through Ex.B-1, this Court arrives at a conclusion that the suit Items-1 and 2 belong to Dharmalingam Asari as per documents Ex.1 to Ex.A-13. The fact that Dharmalingam Asari died intestate is admitted by both parties. The suit for partition is resisted by the Defendant-4 only on the ground that he sent remittances from abroad based on which the marriage of Plaintiffs 3 to 5 was performed during the lifetime of the father of the Plaintiffs and Defendants 2



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to 5, for which he had not marked any documents when his wife had deposed

evidence as D.W-1. Therefore, the said contention was rightly rejected by the learned District Judge, Nagapattinam. It is found proper and well reasoned judgment. The next contention was that the Plaintiff 2 to 5 were married prior to 1990, the Hindu Succession Act as amended in the State of Tamil Nadu in the year 1990 where it is specifically stated that those who were married on the date of notification of the Act are not eligible to claim share in the coparcenary properties. The learned Judge had distinguished it stating that the properties in the suit in O.S.No.18 of 2011 are self-acquired properties of Dharmalingam Asari and therefore, Section 29 of the Hindu Succession Act as amended in the State of Tamil Nadu in the year 1990 cannot be invoked and the Plaintiffs and Defendant-5 are entitled to claim partition in the property left intestate by their father. Both the contentions are rejected by the learned District Judge on proper appreciation of evidence.

21. This Court on re-appreciation of the entire materials straight away reject the contents in the written statement on the ground that it is hit by Hindu Succession Act as amended by the Parliament in the year 2005 whereby Hindu women are granted right equal to that of the sons in the family properties. The qualification that on the death of the father only partition



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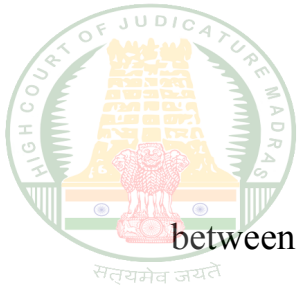
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opens up is removed. The daughters/Hindu women can claim partition. This position had been clearly explained by the judgment of the Honourable Supreme Court reported in **(2020) 9 SCC 1** in the case of ***Vineeta Sharma Vs. Rakesh Sharma***. Therefore, in the light of the Hindu Succession Act as amended by the Parliament in the year 2005 and in continuation of the same the judgment of the Honourable Supreme Court in **(2020) 9 SCC 1** in the case of ***Vineeta Sharma Vs. Rakesh Sharma***, the appeal grounds are rejected straight away. This Appeal Suit lacks merit in the light of the reported ruling of the Hon'ble Supreme Court in the case of ***Vineetha Sharma -vs- Rakesh Sharma and others*** reported in **(2020) 9 Supreme Court Cases 1**.

22. In the light of the above discussion, **the point for determination is answered in favour of the Plaintiffs and against the Defendants 1 and 4 in O.S.No.18 of 2011.** The judgment and decree dated 12.12.2016 passed in O.S.No.18 of 2011 by the learned District Judge, Nagapattinam, is found proper which does not warrant any interference by this Court.

In the result, **this Appeal Suit is dismissed.** The judgment and decree dated 12.12.2016 passed in O.S.No.18 of 2011 by the learned District Judge, Nagapattinam is confirmed. No order as to costs considering the relationship

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between the parties.

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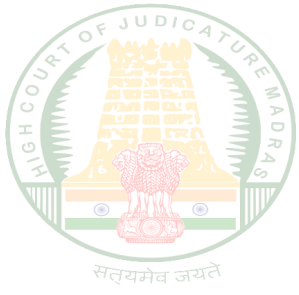
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Index : Yes/No

Index : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

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To

1. The District Court,
Nagapattinam.
2. The Section Officer,
V.R. Section,
High Court Madras.

Judgment made in
A.S.No.486 of 2017

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