



A.S.No.523 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 30-04-2026**

CORAM

**THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI**

**A.S No. 523 of 2017**

**ORDER**

Today, the matter is listed under the caption "for being mentioned", at the instance of the learned counsel for the appellant and the respondent.

2. It is brought to the notice of this Court that in the Cause title of the Judgment dated 20.01.2025 passed by this Court, it has been wrongly mentioned that LR's of the 3<sup>rd</sup> Respondent are brought on record instead of L.R;s of the deceased 4<sup>th</sup> respondent while the 3<sup>rd</sup> respondent is alive. It is only the L.R's of deceased 4<sup>th</sup> respondent are brought on record. Hence, the mistake in the cause title may be ordered to be corrected.

3. In view of the above, the cause title of the Judgment dated 20.01.2025 is modified as under:



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---

- 1.V.Arumugam
- 2.Boomi Udaiyar
- 3.Sellammal (Died)
- 4.Nallammal

... Appellants

<sup>rd</sup>  
(3 <sup>rd</sup> appellant died as per memo recorded dated 25.01.2022 S.R.No.2777 vide Court order dated 27.01.2022 made in A.S.No.523 of 2017 (AANJ).

<sup>rd</sup>  
(3 <sup>rd</sup> appellant died, her husband Cheenu Udaiyar also died on 05.03.2023.  
Hence, 3 <sup>rd</sup> appellant died without any children recorded vide order of Court dated 04.07.2023 made in A.S.No.523 / 2017 (TVTSJ) and memo recorded dated 05.06.2023 (16471).

Versus

- 1.Ramasamy
- 2.Sellammal (Died)
- 3.Sellamuthu
- 4.R.Maruthamuthu (Died)
- 5.R.Kandhasamy
- 6.Pappathi
- 7.R.Bharathi
- 8.Mallika
- 9.Kanagaselvi
- 10.Parimala
- 11.Pabitha

... Respondents

(RR7 brought on record as Lrs of the deceased R2 vide order of the Court dated 19.12.2019, made in CMP.No.27258 /2019 in A.S.No.523/17.



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RR8 to RR11 brought on record as Lrs of the deceased R4 vide order of Court dated 19.12.2019, made in CMP.No.27260/19 in A.S.No.523 /17 (SMSJ).

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4. Registry is directed to correct the cause title as stated above and issue fresh order copy to the parties forthwith.

5. In other respects, the order dated 20.01.2025 shall remain unaltered.

**30.04.2026**

Index : Yes/No  
Speaking/Non Speaking order  
Neutral Citation:Yes/No

Lbm

To

1. The Principal District Judge, Namakkal.
- 2.The Section Officer,  
VR-Section, High Court of Madras.



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A.S.No.523 of 2017

**T.V.THAMILSELVI, J.**

Lbm

A.S.No.523 of 2017

**30.04.2026**



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CORAM :

**THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI**

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... Respondents



A.S.No.523 of 2017

(RR7 brought on record as Lrs of the deceased R2 vide order of the Court dated 19.12.2019, made in CMP.No.27258 /2019 in A.S.No.523/17.

RR8 to RR11 brought on record as Lrs of the deceased R3 vide order of Court dated 19.12.2019, made in CMP.No.27260/19 in A.S.No.523 /17 (SMSJ).

Appeal Suit filed Under Section 96 r/w of XLI Rule 2 of the Code of Civil Procedure, praying to set aside the Judgment and decree dated 12.06.2017 made in O.S.No.154 of 2012 on the file of the Principal District Court, Namakkal.

|                   |   |                                                    |
|-------------------|---|----------------------------------------------------|
| For Appellants    | : | Mr. S.T.Bharath Gowtham<br>for M/s. P.Veena Suresh |
| For R1 ,R4 to R11 | : | Mr.S.Kelyanaraman                                  |
| For R2 & R3       | : | Died                                               |

### **ORDER**

The appellant has filed this appeal to set aside the Judgement and decree in O.S.No.154 of 2012 on the file of the Principal District Court, Namakkal, dated 12.06.2017.

2. Heard Mr. S.T.Bharath Gowtham, learned counsel for M/s. P.Veena Suresh, learned counsel for the appellants and Mr.S.Kelyanaraman, learned Counsel for the respondents 1, 4 to 11 and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they were ranked in the suit.



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4. The appellants herein, who are the plaintiffs in O.S.No.154 of 2012 on the file of the Principal District Court, Namakkal, have preferred this appeal challenging the decree passed by the learned trial Judge in a suit for partition filed by them against the respondents/defendants. The appellants contend that the learned trial Judge erred in dismissing the suit by relying on Ex.B1 and Ex.B3 instead of properly appreciating the documents produced by the plaintiffs, which were marked as Ex.A1 and Ex.A2, and pertained to the suit properties.

5. Further, the appellants submit that the learned trial Judge failed to note that Ex.B1 and Ex.B3, produced on the side of the respondents/defendants, do not refer to the properties purchased under Ex.A1 and Ex.A2. In fact, those documents refer only to ancestral properties. Therefore, the documents produced by the plaintiffs were not properly appreciated. The appellants argue that the suit is fit for fresh consideration because the documents relied upon by the plaintiffs were not considered appropriately by the learned trial Judge. To support this claim, the appellants' counsel cited the following authorities:

(i) 2018 SCC Online Mad 285: (2018) 3 Mad LJ 264: (2018) 2 MWN (Civil) 404: (2018) 190 AIC 383, in para 9, where it is mentioned as follows:

*“9. On a careful consideration of the materials*



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*available on record and the submissions made by the learned counsel on either side and also the judgements relied upon by the learned counsel for the appellant, it could be seen that admittedly, the plaintiff has marked 17 documents before the trial Court. However, the trial Court proceeded to dismiss the suit observing that the plaintiff has marked only 5 documents. That apart, in paragraphs 18 & 19 of its judgment, the trial Court observed that the plaintiff has not established his case by oral and documentary evidences. In spite of the fact that the plaintiff has marked 17 documents, the trial Court erroneously ignored 12 documents and dismissed the suit considering only 5 documents. It is total non-application of mind by the trial Court in not considering the documents marked on the side of the plaintiff. It is needless to say that the Courts should consider all the oral and documentary evidences let in by the parties and pass a reasoned judgment. Even without considering the documents marked on the side of the plaintiff, the trial Court has erroneously given a finding that the plaintiff has not proved his case by oral and documentary evidences. The lower Appellate Court, considering all these aspects, rightly set aside the judgment and decree of the trial Court and remanded the matter to the trial Court.”*

(ii) 2008 3 SCC 78, Brihanmumbai Mahanagar Palika and another vs.

Akruti Nirman (P) Ltd. and another, in paras 6 and 7, where it is mentioned,

*“6. It is to be noted that after making detailed reference to the arguments and contentions raised, abrupt conclusions were arrived at by the High Court. That is not a proper way to dispose of the first appeal.*

*7. In the circumstances without expressing any opinion on the merits of the case, we set aside the impugned judgment of the High Court and remit the matter to it for fresh consideration on merit in accordance with law”.*

(iii) (2012) 2 SCC, in para 30, where it is mentioned as follows:

*“30. We may have remanded the matter to the High Court for fresh disposal of the appeals filed by the appellant and respondent 2 but keeping in view the fact that the findings*



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*recorded in the two suits regarding Item 5 of Schedule B properties specified in the plaint of O.S.No.4528 of 1980 are contradictory and substantial portion of the judgment of O.S.No.4528 of 1980 is based on surmises and conjectures, we feel that the ends of justice would be met by setting aside the impugned judgment and remitting the matter to the trial Court for fresh disposal of the suits filed by respondents 1 and 2.”*

6. Countering this argument, the learned counsel for the respondents/defendants submitted that Old Survey No.255/3 has now been subdivided into S.No.255/3A, 3B, 3C, 3D, and 3E. At the time of the purchase made by the paternal grandfather, Thanakkappa Udaiyar, through sale deeds dated 15.03.1927 and 09.03.1936, the properties were listed as Old Survey No.255/3. These properties were self-acquired by the paternal grandfather. Upon his intestate death, he left behind three sons: Karuppudaiyar, Veeramuthu Udaiyar, and Ramasamy Udaiyar. The plaintiffs are the children of Veeramuthu Udaiyar, while the defendants are the children of Ramasamy Udaiyar and Karuppudaiyar. Each branch is entitled to a one-third share.

7. During his lifetime, the plaintiffs' father, Veeramuthu, along with his father, Thanakkappa Udaiyar, sold their share of the suit properties to 1<sup>st</sup> defendant/Ramasamy through a sale deed dated 25.08.1964. Therefore,



neither the plaintiffs nor their father have any share in the suit properties.

Additionally, with respect to another property in Vasanthapuram village, D1, the plaintiffs' father Veeramuthu, and their children released their share in favor of Ramasamy Udaiyar through a release deed dated 21.04.1971. After Ramasamy's demise, that properties passed to his children, D3 to D6. Consequently, the plaintiffs have no right to the suit properties.

8. However, the plaintiffs have approached the Court, challenging the sale deed executed in favor of the first defendant in 1964, relying on the paternal grandfather's sale deeds, Ex.A1 and Ex.A2, and asserting that the suit properties were in joint family possession and enjoyment after the demise of the paternal grandfather. The learned trial Judge thoroughly analyzed all the documents, including those relied upon by the plaintiffs (marked as Ex.A1 to Ex.A4) and the defendants (marked as Ex.B1 to Ex.B9), and rightly dismissed the suit, holding that the plaintiffs have no right to the suit properties.

9. Hence, respondents submits that there is no necessity to remand the suit for a fresh trial as demanded by the appellants. Therefore, the counsel for the respondents prays that the appeal be dismissed as devoid of merits.

10. Before the trial court, both parties presented oral and documentary evidence. On the plaintiffs' side, Ex.A1 to Ex.A6 documents were marked,



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and the first plaintiff was examined as P.W.1. On the defendants' side, D.W.1 and D.W.2 were examined, and Ex.B1 to Ex.B9 documents were produced.

11. Point for consideration: Whether the Courts below failed to properly appreciate the documents submitted by the appellants / plaintiffs, thereby warranting a remand to the trial court?

12. Considering both sides' submissions, it is an undisputed fact that the suit properties was originally purchased by the plaintiffs' and defendants' grandfather, "Thanakkappa Udaiyar," through sale deeds marked as Ex.A1 and Ex.A2. Thanakkappa Udaiyar had three sons, namely Karuppudaiyar, Veeramuthu Udaiyar, and Raamasamy Udaiyar. It is also an undisputed fact that the plaintiffs and defendants are the legal heirs of all three sons. According to the plaintiffs/appellants, their father, Veeramuthu Udayar, had 1/3rd share in the suit properties. As legal heirs of their grandfather, Thanakkappa Udaiyar, who died intestate, the plaintiffs approached the Court to claim partition of the 1/3rd share since the defendants were not amenable to an amicable partition.

13. Per contra, the 1st defendant contended that the plaintiffs' father, Veeramuthu Udayar, sold his share in the suit properties in favor of the 1st defendant on behalf of himself and his minor children, along with his father,



Thanakkappa Udaiyar, on 25.08.1964, the said sale deed was marked as

Ex.B3. Upon perusal of the documents, it is noted that the suit properties in S.No.255/3 was sold by Veeramuthu Udayar to the 1st defendant. Subsequently, S.No.255/3 was subdivided into 255/3A, 3B, 3C, 3D, and 3E, with corresponding pattas produced by the defendants, marked as Ex.B4 to Ex.B8.

14. Moreover, during cross-examination of P.W.1 deposed they were claiming a share in the landed properties of Vasanthapuram village. He further submitted that the properties were the self-acquired properties of their grandfather, Thanakkappa Udaiyar, as evidenced by Ex.A1 and Ex.A2. However, P.W.1 also deposed that he was unaware of the survey number pertaining to the sale deed dated 25.08.1964, executed by his father, Veeramuthu, on behalf of himself and his minor children. He admitted that the old survey number of the suit properties was 255/3, which had since been subdivided into 255/3A, 3B, 3C, 3D, and 3E.

15. Upon reviewing the sale deed, Ex.B3, it becomes clear that the plaintiffs' father sold his share on behalf of himself and his minor children in favor of the 1st defendant in 1964. The 1st defendant's name was subsequently recorded in the revenue records, with the relevant patta



produced by the defendants, which was duly appreciated by the learned trial judge.

16. Furthermore, a release deed, marked as Ex.B1, was executed in favor of another son of Thanakkappa Udaiyar, namely Ramasamy, the father of defendants D3 to D6, releasing their share in respect of another property in Vasanthapuram village. As a result, the plaintiffs' family has no claim to properties in Vasanthapuram village. Therefore, the trial court correctly appreciated the oral and documentary evidence and rightly concluded that the plaintiffs had no right over the suit properties, as it had already been sold in 1964 through Ex.B3. This finding requires no interference by this court.

17. There is no need to remand the matter, as claimed by the appellants / plaintiffs, and the authorities they relied upon do not apply to the facts of this case.

18. Accordingly, this appeal suit is dismissed as devoid of merit. No costs.

**20.01.2025**

Index : Yes/No  
Speaking/Non Speaking order  
Neutral Citation: Yes/No



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**T.V.THAMILSELVI, J.**

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