



A.S.No.515 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.07.2025

Pronounced on : 09.07.2025

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.515 of 2022

1.G.Parthiban, aged about 60 years,
S/o Govindasamy,
Athuvambadi Village and Post,
Polur taluk, Tiruvannamalai District. ..Plaintiff/Appellant

/versus/

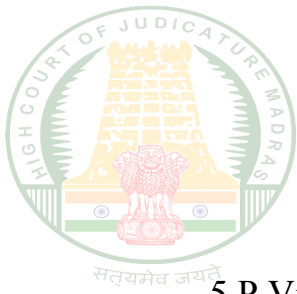
1.M.Govindasamy, aged about 86 years(died)
S/o Muniya Gounder.

2.G.Palanisamy, aged about 58 years,
S/o Govindasamy.

3.G.Arumugam, aged about 52 years,
S/o Govindasamy.

4.P.Vinothkumar, aged about 34 years,
S/o Palanisamy.

(R1 died.LR's of the R1 i.e Appellant @ R2, R3 are
already on record. Memo. Recorded vide. Court
Order dated 23.06.2025(GJJ))(Memo dated 20.12.2022
USR No.37749)



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5.P.Vijayakumar, aged about 31,
S/o Palanisamy.

6.P.Nathiya, aged about 36 years,
D/o Palanisamy.

All are Hindus, reising at Athuvambadi Village
and Post, Polur Taluk, Tiruvannamalai District.

...Defendants/Respondents

Appeal Suit has been filed under Section 96 of C.P.C., praying to allow the appeal setting aside the decree and judgment passed in O.S.No.46 of 2018, dated 07.07.2022 passed by the learned Principal District Judge, Tirvuannamalai, by allowing the above the first appeal and dismissing the suit.

For Appellant :Mr.V.Raghavachari,
Senior Counsel for
Mr.T.R.Rajaraman

For Respondents :Ms. Chenthoori Pugazendhi for
Mr.K.Balu, for R2, R4 to R6

R3-No appearance

R1- died



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JUDGMENT

This Appeal Suit is against the dismissal of the partition suit filed by Mr.G.Parthiban, against his father Govindasamy and two brothers namely Palanisamy and Arumugam.

2. The aggrieved plaintiff is the appellant herein.

3. The case of the Appellant/Plaintiff:

The suit properties 33 in numbers are either the ancestral properties or the properties purchased in the name of the defendants 1, 2 and 4 from the ancestral nucleus put into hotchpot of the joint family properties. The suit properties are in joint enjoyment of the plaintiff along with defendants 1 to

3. While so, for past three years, the plaintiff oral request to divide the properties and give his 1/4th share, but not heeded by the defendants.

Hence, the suit for partition and delivery of separate possession.



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4. In support of his claim, the appellant/plaintiff had relied upon his oral evidence and the following documents:

(1)Patta issued in the name of his grand father Muniya Gounder, S/o Parasurama Gounder for suit properties described in items 1 to 7 (Ex.A-1).

(2)Patta issued in the name of Seenu Gounder (alias Muniya Gounder), S/o Parasurama Gounder for suit properties described in items 8 to 11 (Ex.A-2)

(3)Patta issued in the name of his father Govindasamy (first defendant), S/o Muniya Gounder for suit properties items 31 to 33(Ex.A-3).

(4)Patta issued in the name of his father Govindasamy (first defendant), S/o Muniya Gounder for suit properties items 12 to 18(Ex A-4).

(5)Sale deed dated 21.06.1993 in favour of Palanisamy (2nd defendant) for suit property items 20 to 22(Ex.A-5)

(6)Sale deed dated 12.10.1998 in favour of Palanisamy (2nd defendant) for suit property item 23. (Ex.A-6)

(7)Sale deed dated 29.01.1999 in favour of Palanisamy (2nd defendant) for suit property items 24 and 25 (Ex.A-7).



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(8) Sale deed dated 09.07.2003 in favour of Minor Vinodkumar (4th defendant), Son of Palanisamy (2nd defendant) for suit property items 26 to 30(Ex.A-8).

(9) Settlement deed dated 31.08.2015 executed by Govindasamy (the first defendant) in favour of Vijayakumar (5th defendant) for suit property items 12, 13, 15 to 19.(Ex A-9). In this settlement deed, item No.21, bearing S.No.315/2 measuring 0.02 cents, out of 0.06 cents also included but patta for this survey number is not in the name of Govindasamy. Item 21 is one of the property in Ex.A-5 sale deed in favour of Palanisamy (2nd defendant) sold by Chinnasamy and his son Nataarajan.

(10) Settlement deed dated 29.03.2016 executed by Govindasamy (first defendant) in favour of Nathiya (6th defendant) for suit property items 8 to 11(Ex A-10).

5. In Ex.A-9, Govindasamy had described the properties items 12 to 19 (except item 14) settled to the 5th defendant as his self acquired property purchased from his income as a Teacher on various dates . In Ex.A-10, he



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had described the properties, items 8 to 11 as properties inherited from his ancestors. (Pithurajiaya).

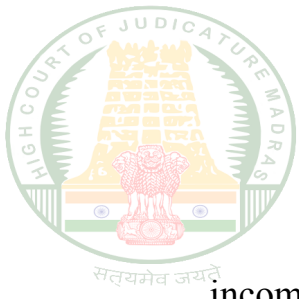
6. During the cross examination of PW-1, the first defendant had marked Ex.B-1 to Ex.B-12. These 12 documents are:

Ex.B-1 to Ex.B-6 and Ex.B-8 are the sale deeds in the name of Munia Gounder for the purchase of suit items 1 to 6.

Ex.B-7 is a pronote executed by the 2nd defendant in favour of A.S.Subramaniam for borrowing Rs.23,000/-. In this pronote, the plaintiff is one of the attesting witness.

Ex.B-11 is the sale deed in favour of the first defendant in respect of properties in S.No.90/1 measuring 296 $\frac{1}{4}$ sq ft and 1387 $\frac{1}{2}$ sqft with specific boundaries. First defendant had settled 1387 $\frac{1}{2}$ sq t to the plaintiff under Ex.B-9 and 296 $\frac{1}{4}$ sqft to the 3rd defendant under Ex B-10, both dated 06.06.1989.

Ex.B-12 dated 16.05.2008 is the sale deed in favour of the plaintiff. The plaintiff claims as his self acquired property purchased out of his



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income as a Teacher.

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7. Case of the Respondents/ Defendants:

The defendants 1 and 2 in the common written statement had denied the plaint averments that the suit properties items 1 to 11 and 31 to 33 are the ancestral properties and the other items of properties are purchased in the name of defendants 1, 2 and 4 from out of the surplus earned from the ancestral properties.

8. Their specific case is that, items 1 to 11 were the properties purchased by Muniya Gounder between 1930 to 1954 from out of his self earning. On his death, those properties devolved on his only son Govindasamy (first defendant), who is enjoying the property as his absolute property as the sole heir of Muniya Gounder as per intestate succession. The properties were neither the ancestral property nor enjoyed jointly with the plaintiff. The first defendant is a retired Teacher. While in service, he purchased items 12 to 19, from out of his earnings. As far as items 3 to 33,



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they are grama natham land assigned to the first defendant during the Natham Nilavari Thittam. Items 20 to 25 were purchased by the 2nd defendant from out of his individual income and they were never blended with the remaining properties as claimed by the plaintiff. Items 26 to 30 were purchased by the 2nd defendant in the name of his minor son, the 4th defendant, from out of his separate income and borrowings. Apart from the patta in the respective names, chitta and adangal are marked by the respondents/defendants to substantiate their plea.

9. In support of their plea, the second defendant Thiru.G.Palanisamy examined as DW-1. Ex.B-13 to Ex.B-35 marked through him.

(i) Ex.B-13, dated 21.12.1975, Ex-14 dated 15.11.1983 and Ex.B-15 dated 11.08.1988 are the sale deeds in favour of Govindasamy (first defendant) in respect of S.No:315/1, 315/2 and 315/3.

(ii) Ex.B-16 to Ex.B-18 are the Chitta, Adangal and tax receipts in the name of the first defendant.



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(iii) Ex.B-19, Ex.B-20 and Ex.B-21 are the Chitta, Adangal and tax receipts in the name of 5th defendant.

(iv) Ex.B-22 to Ex.B-24 are the Chitta, Adangal and Tax receipts in the name of 6th defendants.

(v) Ex.B-28 to Ex.B-30 are Chitta, Adangal and Tax receipts in the name of 2nd defendant.

(vi) Ex.B-32 to Ex.34 are Chitta, Adangal and Tax receipts in the name of 4th defendant.

10. The revenue records are relied by the first defendant to show that the properties are his separate properties enjoyed exclusively by him and he had settled few items of the properties to the plaintiff, the 3rd defendant as well as the defendants 5 and 6. The settlement deeds been accepted and acted upon by respective parties including the plaintiff and the 3rd defendant.



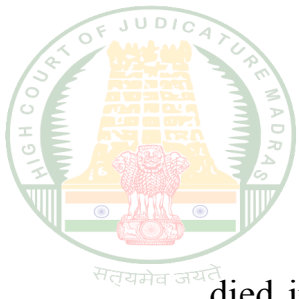
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11. In respect of the gold chain of Parvathiammal, W/o Govindasamy, her three sons namely Parthiban (plaintiff), Palanisamy (second defendant) and Arumugam (third son) along with their mother had agreed to share it equally. Each of them had received Rs.7000/- from Palanisamy as their share and give the gold chain to Palanisamy. Ex.B-35 is the acknowledgement receipt for the amount.

12. Ex.B-7, Ex.B-25(series), Ex.B-26(series) and Ex.B-27 (series), which are pronotes executed by the second defendant to show the source for the second defendant to buy these properties in items 20 to 25. For the purpose of disproving the case of the plaintiff that they were bought in the name of the 2nd defendant from the joint family nucleus.

13. The 3rd defendant in his written statement had contended that, there was oral partition between the son and grand sons of Muniya Gounder, about 21 years ago, in respect of the properties left by Muniya Gounder who



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died intestate. As per the oral partition, his father Govindasamy out of his own will and violation did not take any share in the landed properties. Under the oral partition, the plaintiff was allotted items 3 to 6, to an extent of 0.12.0 hectre in items 11, 12, 13, 18, 21 and 30 along with a terraced house situated in the natham No:556 of 23 and a Bullet motor cycle. For the 3rd defendant, items 1, 2, 8 to 10, and 0.06 acre in item 11, 31 and 33 were allotted along with a terraced house and vacant site comprised in natham S.No.90/1 situated at Kalasthambadi village. From the date of oral partition, he is in absolute possession and enjoyment of the properties allotted to him.

14. On 18.08.2015 he caused notice through his lawyer calling upon his father and the brother to execute partition deed as per the oral partition. They did not come forward to execute the partition deed. The 3rd defendant had further contended that, the settlement deed dated 31.08.2015 (Ex.A-9) executed by the first defendant in favour of 5th defendant is not valid. This document was created after he caused notice for partition. Likewise the settlement deed dated 29.03.2016 (Ex.A-10) in favour of the 6th defendant



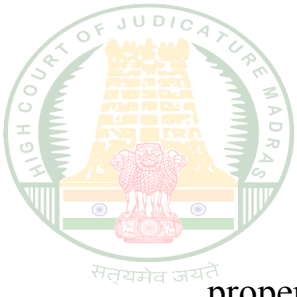
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is also not valid. This settlement includes items 8 to 11 which were already allotted to him under the oral partition. However, the settlement deed of his father in favour of him and the plaintiff is valid, since it was the personal property of his father (1st defendant)

15. To show that suit properties were purchased from ancestral nucleus, the 3rd defendant had marked Ex.B-36 to Ex.B-40. The sale deed dated 29.03.1940 by Thiruvenkathan Gounder in favour of Parasurama Gounder in S.No.363/8 measuring 1.45 acres out of 2.90 acres is Ex.B-36. The sale deed dated 02.07.1924 by Chellamuthu Gounder and Kantha Gounder in favour of Parasurama Gounder in S.No:361/6 measuring to an extent of 0.86 cents out of 2.13 acres is Ex.B-37.

16. Ex.B-38 is the notice sent on behalf of the 3rd defendant on 18.08.2015 two years prior to the partition suit. In this notice, the 3rd defendant had demanded the others for execution of the partition deed as per the oral partition happened 18 years ago. He has mentioned the



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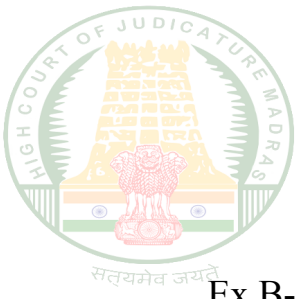
properties allotted to respective sharers under schedule A, B and C.

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17. In this notice, 3rd defendant had stated that as per the oral partition S.No:363/8 purchased by Parasuraman under Ex.B-36 is shown as 363/8 A to 363/8 E in Schedule 'A' allotted to Parthiban/the plaintiff. S.No.361/6 purchased by Parasuraman under Ex.B-37 in schedule 'B' allotted to Palanisamy the second defendant.

18. The plaintiff through evidence could not establish joint family nucleus and blending of the properties purchased in the name of individual members of the family, hence, the trial Court dismissed the suit.

19. In the appeal, Mr.V.Ragavachari, the Learned Senior Counsel contended that, the trial Court failed to frame proper issues. Court below failed to see the documentary evidence let in by the parties properly. Several admissions of the first defendant that the properties were held in common as joint family property not considered by the trial Court. Despite evidence like

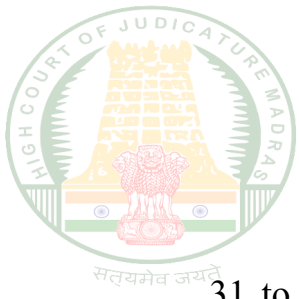


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Ex.B-36 and Ex.B-37 to show that Muniya Gounder got property from his father Parasurama Gounder and only from the income derived from that property he purchased the other properties listed as items 12 to 18 and items 31 to 33, the trial Court overlooked those evidence. The first defendant Govindasamy who is the father of the plaintiff and defendants 2 and 3, ought to have mounted the witness box to tell the court how the properties were acquired. Failure to give evidence ought to presume adverse to him.

20. Ms.Chenthoori Pugazendhi, the Learned Counsel appearing for the respondents, submitted that the plaintiff, cannot claim partition of his father's property during the life time of his father, on the false ground that the properties are ancestral properties and he being a coparcener, is entitled for a share. The plaintiff had not proved that he and the defendants are in a joint Hindu Family as a coparceners or the suit properties were purchased from the nucleus of a joint family properties. From plaintiff's own documents and documents he admitted during the cross examination, the defendants have proved that the properties shown as Items 1 to 11 and items



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31 to 33 are not ancestral properties for the plaintiff to claim share. They were the properties of the first defendant inherited from his father Muniya Gounder or by purchase by him from his personal income. The partition among the Parasurama Gounder and his four sons is admitted by PW-1 in the cross examination. Though the 3rd defendant had pleaded that there was oral partition between the plaintiff and defendants 1 to 3 about 18 years ago, no evidence placed before the Court to prove the said oral partition.

21. There is not a piece of land available to characterise the suit properties as ancestral property. Contrarily, when evidence placed to proves that first defendant from his personal income as a Teacher purchased properties shown as items 12 to 19 and two other properties under Ex.B-11 which he settled the plaintiff and 2nd defendant under Ex.B-9 and Ex.B-10. The plaintiff deliberately suppressed Ex.B9 to Ex.B10 in his plaint to sustain his the baseless suit for partition.



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22. The first defendant, who purchased items 12 to 19 from his income, later settled it in favour of his grand son the 5th defendant. Similarly, he had settled items 8 to 11 to the 6th defendant his grand daughter. Being the absolute owner of these properties, those settlement deeds executed by the first defendant are valid.

23. The Learned Counsel also contended that there is no evidence of joint living or blending of the properties purchased either by the first defendant or by the second defendant in their names or in the name of the minor children. The suit for partition being baseless and ill-conceived, the trial Court rightly dismissed the suit. The appeal also therefore deserved to be dismissed.

24. Point for determination:

Whether properties purchased by Parasurama Gounder under Ex.B-36 and Ex.B-37 are sufficient to presume that the suit properties, which are purchased by Muniya Gounder or his son the first defendant in his name or

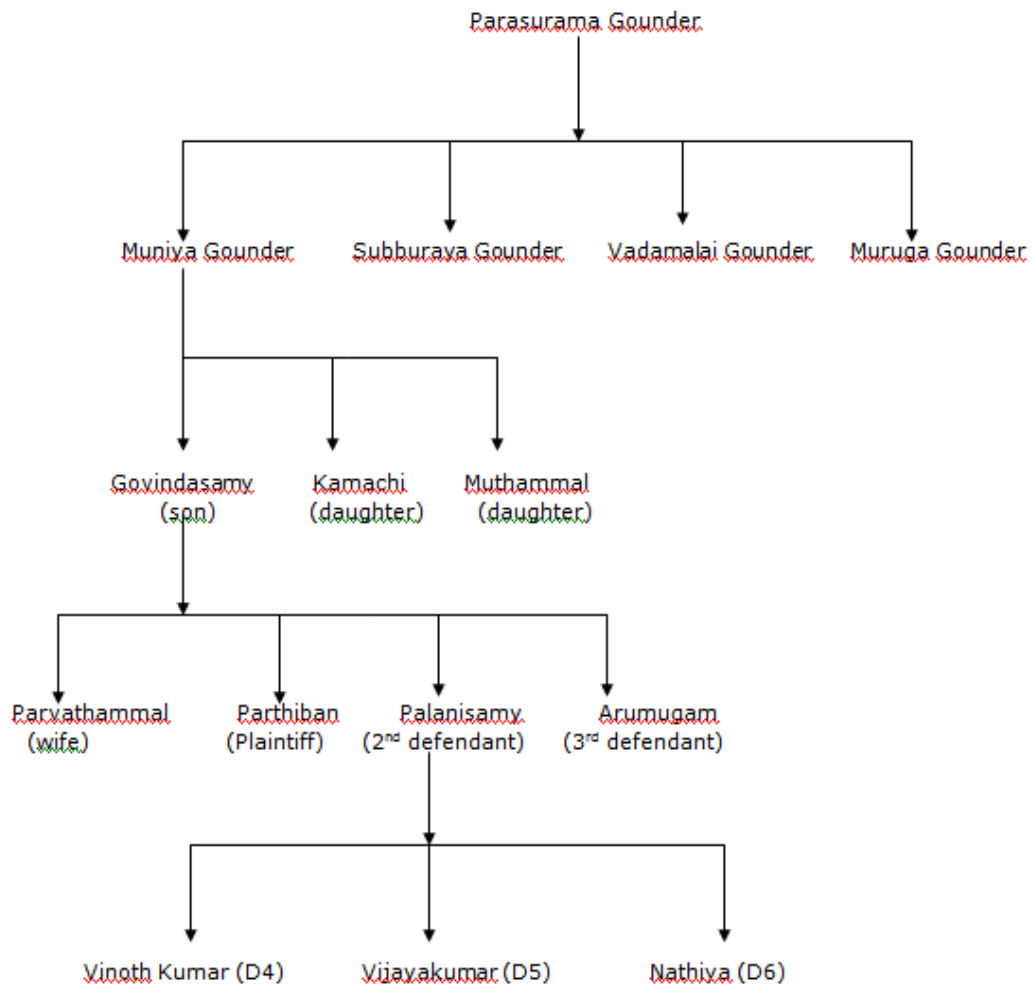


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the second defendant in his minor children names were from and out of surplus income derived from these two properties and got blended into the hotchpot of the family nucleus?

25. The family tree of the parties to the suit is as under:-





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26. In Hindu Law, a person as coparcener gains right by birth in the joint family property, if the property has gained the character of coparcenary property. Otherwise, succession will open only on the death of the owner of the property.

27. Ex.B-36 the sale deed dated 29.03.1940 executed by Venkatathan Gounder in favour of Parasurama Gounder is in respect of S.No.363/8 measuring to an extent of 1.45 acres, out of 2.90 acres. Part of this property is shown under item 7 as available with the joint family for division. The survey number of this property shown in the plaint is S.No.363/8A measuring to an extent of 0.55.0 hectare. The sub division of the survey numbers 363/8 into 363/8A is one proof that the property purchased by Parusrama Gounder had been subjected to division and lost the character of ancestral property due to the interruption, probably when the sons of Parasuraman entered into partition as admitted by the parties in their oral evidence. Thus, S.No.363/8A allotted to Muniya Gounder had become his



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absolute property, after its division. Muniya Gounder had left the said property to his only son Govindsamy Gounder, who had succeeded it as the legal heir of Muniya Gounder as intestate succession and enjoying it as his absolute property. While so, seeking partition by the son (the plaintiff in this case) from the properties of the father (first defendant in this case) during the life time of the father or challenging the alienation of the properties by his father by way of settlements are not legally sustainable.

28. Likewise, Ex.B-37-the sale deed dated 02.07.1924 by Chellamuthu Gounder and Kantha Gounder in favour of Parasurama Gounder is in respect of property in S.No:361/6 measuring to an extent of 0.86 cents out of 2.13 acres. Part of this property is shown as S.No.361/6B in item No:14 measuring 0.41.0 hectre (i.e) around 1 acre. How 0.86 cents in 361/6 enlarged into one acre in S.No.361/ 6B is not explained by either of the parties.



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29. A property gains the character of coparcenary property, on satisfying the following conditions:-

(i) If it is inherited from the paternal ancestors through at least four generations or those properties acquired from the income of ancestral property and got blended into the common hotchpot and

(ii) If it remains undivided and enjoyed by the family members jointly without any interruption.

30. As per the plaint, the common male ancestor in this case is Muniya Gounder and not even his father Parasurama Gounder to show the properties passed through 4 generations. It is also not the case of the plaintiff that Muniya Gounder purchased the properties items 1 to 11 and 31 to 33 from out of the income he derived from property, he got from his father Parasurama Gounder. The scrutiny of Ex.B-36 and Ex.B-37, the two properties (i.e.,) items 7 and item 14, in view of its division, it has been enjoyed as separate property of Muniya Gounder, and it does not carry the character of a coparcenary. Muniya Gounder has acquired other properties

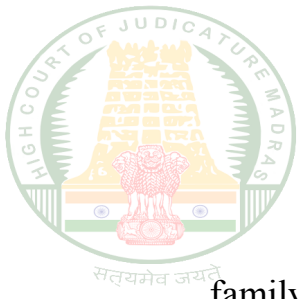


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on his own self and held the properties as his separate properties and not as kartha of the joint family. Therefore, on the death of Muniya Gounder, the properties held by Muniya Gounder has devolved on his only son Govindasamy (first defendant) as per intestate succession under Section 8 of the Hindu Succession Act and not by survivorship. The plaintiff, who is son of Govindasamy cannot have a right to seek for partition as a right by birth since, the suit properties are neither ancestral property nor properties acquired from out of the ancestral properties.

31. The factum of partition in respect of property held by Parasurama Gounder among his 4 sons is not disputed. The plaintiff claims that under Ex.A-1, suit schedule items 1 to 7 and under Ex.A-2, suit schedule items 8 to 11 were purchased by Muniya Gounder. The further case of the plaintiff is that the first defendant Govindasamy got the suit properties 1 to 11 and dealing the properties as common joint family property. However, the documentary evidence before the Court proves that Muniya Gounder was holding the property as his separate property and not as kartha of the joint



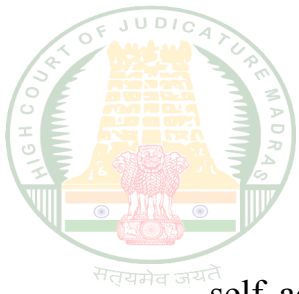
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family. Likewise, Govindasamy, son of Muniya Gounder also was holding the properties not as kartha of the joint family. This fact is established from the recitals in the settlements deeds Ex.B-9 and Ex.B-10 in which the plaintiff along with 3rd defendant are the beneficiaries. For items 31 to 33, 'Thorayamanai patta' is issued to the first defendant under Ex.A-3, based on his long possession.

32. A minuscule piece of land less than 2 acres traced to a common ancestor Parasurama Gounder, with an ample evidence to show, it was subdivided and succession interrupted, does not give the character of joint family property to the majority of the suit properties purchased subsequently by Muniya Gounder or few other properties purchased by the first and second defendants, who had proved their independent source of income to buy these properties.

33. In *Angadi Chandranna v. Shankar and others reported in [2025 INSC 532]*, the Hon'ble Supreme Court regarding doctrine of blending of



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self acquired property with joint family property, relying upon the earlier judgments of the Hon'ble Supreme Court in *Lakkireddi Chinna Venkata Reddy and Others v. Lakkireddi Lakshamama* reported in [1964 (2) SCR 172] and *K.V. Narayanan v. K.V.Ranganandhan and Others* reported in [(1977) 1SCC 244], has observed as below:-

“20.Regarding the doctrine of blending of self-acquired property with joint family, it is settled law that property separate or self-acquired of a member of joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilized out of generosity to support persons whom the holder was either bound or not bound to



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support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness, will not ordinarily be regarded as an admission of a legal obligation.”

34. In the absence of evidence that the properties purchased by Muniya Gounder, Govindasamy (first defendant) and Palanisamy (second defendant) were blended with the other properties and treated as a common property of the joint family, the plaint has to suffer lack of cause of action. More so, when the plaintiff admits that the purchase of property in his name under Ex.B-12 in the year 2008, but excluded that property in the suit for partition by claiming that it is his own self acquired properties and suppressing the settlement deed Ex.B9 by 1st defendant in his favour.

35. For the above said reasons, this Court holds that the trial Court judgment and decree is based on proper appreciation of law and evidence adduced by the parties. Hence, it is to be confirmed.



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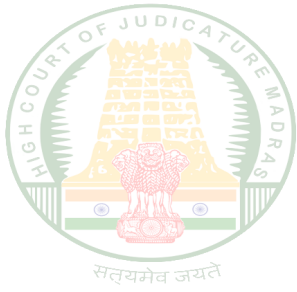
36. As a result, **this Appeal Suit stands dismissed**. No order as to costs.

09.07.2025

Index : Yes
Neutral citation : Yes/No
Speaking/non-speaking order
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To,

- 1.The Principal District Judge, Tiruvannamalai.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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Dr. G.JAYACHANDRAN, J.,

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delivery Judgment made in
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