



S.A. No.811 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03-07-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No. 811 of 2017

N. Sundaram

.. Appellant

Versus

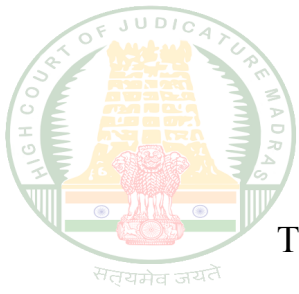
1. N. Saroja
2. The Assistant Engineer,
Doordarshan T.V. Relay Centre,
Krishnagiri.
3. The Special District Revenue Officer,
N.H.46, Jakkappan Nagar,
Krishnagiri 635 001.
4. The Special Thasildar,
(Land Acquisition)
Krishnagiri.

.. Respondents

Second Appeal filed under Section 100 of The Code of Civil Procedure against the Judgment and Decree dated 03.07.2017 made in A.S. No. 46 of 2016 on the file of the Principal District Judge, Krishnagiri, confirming the Judgment and Decree dated 21.12.2015 made in O.S. No. 38 of 2004 on the file of the Additional Special Judge, Krishnagiri.

For Appellant	:	Mrs. V. Srimathi
For R1	:	Mr. P.M. Duraiswamy
For RR 3 & 4	:	Mr. M. Muthusamy Government Advocate

JUDGMENT



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This Second Appeal is filed against the Judgment and Decree dated 03.07.2017 made in A.S. No. 46 of 2016 on the file of the Principal District Judge, Krishnagiri, confirming the Judgment and Decree dated 21.12.2015 made in O.S. No. 38 of 2004 on the file of the learned Additional Special Judge, Krishnagiri.

2. The Appellant is the first Defendant in O.S. No. 38 of 2004. The first Respondent in this appeal is the Plaintiff in the said suit. The Respondents 2 to 4 in this appeal are the Defendants 3, 4 and 5 in the suit. The second Defendant in the suit died even before the Judgment was delivered by the Trial Court. The sixth Defendant was called absent and set *ex parte* and he was exonerated even before the Trial Court.

3. Thus, for the sake of convenience, the parties to this Second Appeal are referred to as per their litigative status in the suit as 'Plaintiff' and 'Defendants'.

4. The plaint averments are as follows:-

4.1. The Plaintiff/first Respondent in this appeal is the daughter of late. Narayanasamy born through his second wife Smt. Ponnammal. The first Defendant is the son of late Narayanasamy born through the first wife Smt.



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Mari, who is the second Defendant in the suit. The second Defendant is the step-mother of the Plaintiff and the mother of first Defendant.

4.2. The suit properties more fully described in the schedule are the self-acquired property of late Narayanasamy, son of Chinnappa Gounder, who died as intestate on 20.04.1995 leaving behind the Plaintiff and the Defendants 1 and 2 as his legal representatives. There was no encumbrance or family debts on the date of death of late Narayanasamy. The Patta in respect of suit properties jointly stands in the name of Plaintiff and the first Defendant after the death of late Narayanasamy. According to the Plaintiff, late. Narayanasamy had no children born through his first wife/second Defendant for several years and therefore, with the consent of the second Defendant, late Narayanasamy married Smt. Ponnammal, the mother of the Plaintiff. While Narayanasamy was alive, he rented out the building situate in the suit properties to third Defendant for running T.V. relay Centre on monthly rent. After the death of late Narayanasamy, the first Defendant was receiving the rent from the third Defendant. The Plaintiff and the second Defendant also given consent letter to the first Defendant for letting the premises for rent. Thus, on behalf of the Plaintiff, the first Defendant was collecting the rent. While so, on 5.10.1995, the second Defendant given a consent muchalika stating that she is old and she could not maintain the suit properties, thereby she relinquished her entire rights in favour of the Plaintiff and the first

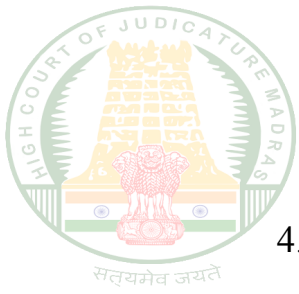


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Defendant. Further, an affidavit was also given by the Plaintiff and the second Defendant duly attested by the notary public on 03.01.1995 authorising the first Defendant to receive the rent from the third Defendant. Accordingly, the first Defendant was collecting the rent from the third Defendant. Initially the first Defendant was giving the Plaintiff's 1/2 share of rents, but subsequently, he stopped paying the share of the Plaintiff.

4.3. In spite of oral demands made by the Plaintiff personally and also through mediators, the first Defendant has been evading to pay the legitimate share of 50% to the Plaintiff. The suit properties are jointly possessed and enjoyed by the Plaintiff and the first and second Defendants from the date of death of late Narayanasamy. After the death of late Narayanasamy, the Plaintiff demanded the Defendants 1 and 2 on 19.01.1997, to divide the suit properties into two equal share and allot one such share to her but the first Defendant did not comply with such demand. Further, while Narayanasamy was alive, he leased out some vacant land for running a coconut mundy to the 6th Defendant on yearly rent. The 6th Defendant was paying yearly rent to late Narayanasamy till his death and after his demise, the first Defendant was collecting the said rent. But the first Defendant has not paid the 1/2 share to the Plaintiff. The Plaintiff wrote letters to the Defendants 3 and 6 and insisted them not to pay the rent to the first Defendant, but in spite of such letters, the Defendants 3 and 6 are paying the entire rent to the first Defendant.



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4.4. In the plaint it was also stated that the first Defendant has given consent to the Defendants 4 and 5 to pay compensation amount for the temporary sheds put up by the 6th Defendant in the acquired land and thereby the sixth Defendant received the compensation amount from the Defendants 4 and 5 inspite of objections by the Plaintiff. Since the remaining land was not sufficient to do business in coconut mundy by the 6th Defendant, some extra land was also leased by the Defendants 1 and 2 adjacent to the existing coconut mundy and the Defendants 1 and 2 have received one year rent amount as advance from the 6th Defendant inspite of the objection/protest by the Plaintiff. The first Defendant has not parted with any share in the said advance amount even though she got half right in the said amount.

4.5. Further, the Defendants 4 and 5 acquired some portion of land in S. Nos. 417/B, 383/B, 382/1A and 543 in the suit village for widening N.H.46 road. The Defendants 4 and 5 sent notice to the Plaintiff under the Land Acquisition act for enquiry. The Plaintiff appeared before the Defendants 4 and 5 and claimed her half share of compensation for the acquired land but the Defendants 4 and 5 have not paid her half share. The Plaintiff also wrote letters to the Defendants 4 and 5 requesting them to pay her half share in the compensation award amount and also issued a legal notice through her Counsel on 10.11.2003 to all the Defendants. On receipt of the notice, the Defendants 1 and 2 issued a reply notice dated 5.1.2004 containing false averments. The



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Defendants also denied the Plaintiff's right in the suit properties to receive the compensation amount, rent etc., Hence, the suit was filed for partition and separate possession by the Plaintiff and also for a mandatory injunction directing the Defendants 4 and 5 to deposit the compensation amount for the lands acquired and the Defendants 3 and 6 to deposit the rents for the building and vacant portions occupied by them into the Court.

5. The averments in the Written statement filed by the first Defendant are as follows:-

5.1. The relationship of the Plaintiff and 1 and 2 Defendants are true and the second Defendant is the legally wedded wife of Narayanasamy. The first Defendant Sundaram is the only son born to late Narayanasamy and the second Defendant. The Plaintiff is the daughter of Narayanasamy born through his concubine Ponnammal and she is the illegitimate child and cannot claim any equal share from the suit properties. The allegations that late. Narayanasamy married Ponnammal as his second wife with the consent of the second Defendant is not correct and there was no marriage took place between them. Even if it is so, Ponnammal will not be treated as the wife of Late Narayanasamy when his first wife is alive. Even though the Plaintiff is an illegitimate child, she is entitled to get a share from her father's property. The first Defendant also contended that late. Narayanasamy has rented the building



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to the 3rd Defendant to establish a T.V. Relay Station on monthly rent. During the life time of Narayansamy, on 12.03.1994, through an oral partition between him, his wife and son, they agreed that after the death of Narayanasamy the property in S.No. 383/B1, measuring 6100 square feet and the two R.C.C. Building to be given to Minor Prasanth, son of the first Defendant and grandson of Narayanasamy. After the death of Narayanasamy the property absolutely belongs to Minor Prasanth and on his behalf, as his guardian, the first Defendant executed rental agreement in favour of the 3rd Defendant. The 3rd Defendant is a Government organization and on the unlawful demand by the Plaintiff, they insisted this Defendant to obtain a no objection from the Plaintiff and that is why a consent letter was obtained from the Plaintiff. The consent letter will not confer any right to the Plaintiff over the plaint described properties.

5.2. According to the first Defendant, the entire properties of late. Narayanasamy absolutely belongs to Minor Prasanth, the son of the first Defendant in which the Plaintiff has no right. Therefore, minor Prasanth is a necessary party to this suit but he was not impleaded. The allegation that on 05.10.1995 the second Defendant given a consent Muchilika stating that she is old and she relinquish her entire rights in favour of the Plaintiff and the first Defendant. Even it is so it will not confer any right to the Plaintiff. The said Muchalika is a forged one and this Defendant denies the same. The Plaintiff



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cannot claim any share from the rent amount of the T.V. relay center, much less 50% as claimed. The suit properties are not jointly possessed property of the Plaintiff and Defendants as alleged. It is also false to allege that she has demanded partition on 19.01.1997 to divide the properties into 2 equal shares and to allot one such share to her. There was no demand made by the Plaintiff or she is entitled to half share in the suit properties.

5.3. In the written statement, it was further stated that it is true that the Government acquired some portions of the land in S.No. 471/B, 383/B, 382/1A and 543 for widening of the 4 lane road and the compensation amount was not received by the first Defendant but it was in Court deposit. The first Defendant did not receive any compensation amount for the land Acquisition or the rent amount after the death of his father. Except the properties in S.No.383/B1 the Plaintiff, the 1 and 2 Defendants are having equal share including the land acquisition amount viz., 1/3 shares each. Accordingly, the first Defendant prayed for dismissal of the suit filed by the Plaintiff for partition.

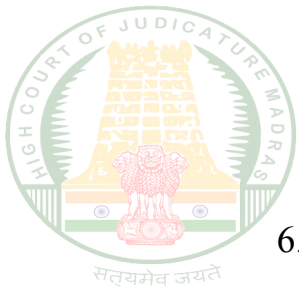
6. The averments in the Written statement filed by the third Defendant are as follows:-

6.1. As far as the third Defendant is concerned, Late Narayanasamy, during his life time entered into a Lease-Agreement with Doordarshan, T.V. Relay Station put up at Krishnagiri on 31.3.1994 thereby leasing out the



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building at No.2/29, Madras High Road, Opposite to Tamil Nadu Hotel, Krishnagiri along with open space for the purpose of T.V. Relay Station for an initial period of 5 years from 31.3.1994 at the agreed monthly rent of Rs.4,900/-. The third Defendant was paying the said rents regularly to Narayanasamy during his life time. The said Narayanasamy Landlord died on 30.4.1995 due to ill-health leaving behind his son N. Sundaram through his first wife Mari and the Plaintiff born through his second wife, Ponnammal. When the above Lease was subsisting, the Plaintiff and the second Defendant were called upon to sign a notarised Affidavit and accordingly it was given on 31.10.1995, thereby authorizing first Defendant to receive the periodical monthly Rents from the third Defendant. Accordingly, the third Defendant was paying the periodical monthly rent to the first Defendant. Since the lease was terminated, a fresh Lease Agreement was entered on 1.3.2001 between the first Defendant and Government of India (President of India) in respect of the building put up in D.No.2/20 (Survey No. 383/B) Madras High Road with the vacant space occupied. As per the lease agreement dated 01.03.2001, the monthly rent was enhanced to Rs.8,300/- from Rs.4,900/- and the lease commenced from 31.3.1999 for 5 years with an option to the Government of India for continuation of the Lease for further period as set out in clause 14 of the present Agreement. As per this second Agreement, the third Defendant has been paying periodical rents to the first Defendant.



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6.2. The third Defendant received two Registered letters dated 3.4.2003 and 3.9.2003 from the Plaintiff to stop payment of rent to the first Defendant. Therefore, this Defendant stopped payment of periodical rents from August 2003. Thereafter, the Plaintiff has filed the present suit on 29.03.2004. Therefore, the rent from August 2003 was not paid to any one so far and the accumulated arrears are ready to be deposited as per the directions of the Court. Subsequently, third Defendant received a legal Notice dated 14.11.2003 for which no reply was given by this third Defendant as it is for the Defendants 1 and 2 to give suitable replies. As far as this Defendant No.3 is concerned they are always ready and willing to deposit the periodical rents and the future rents but due to the family disputes, they could not pay rent from August 2003. Now, the department is ready to deposit the rent before the Court in the above suit till the disposal of the suit. Accordingly, the third Defendant prayed for dismissal of the suit.

7. The Averments in the Additional Written Statement Filed by the Defendants 1 and 2 are as follows:

7.1. The Plaintiff is not entitled to partition and separate possession of half share in the suit property, including the rent and acquisition amount. The suit is bad for misjoinder of Defendants 4 to 6, since they are wrongly impleaded. Since no relief is claimed against the 4th and 5th Defendants in



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this suit, they are unnecessary party to the suit. The 5th Defendant has deposited the compensation amount in Court and the Plaintiff ought to have filed a separate application in the land acquisition proceedings itself. The 3rd Defendant entered into an agreement with first and second Defendants as an abundant caution did not pay the rent but expressed their willingness to deposit the rent. The Plaintiff cannot seek for mandatory injunction directing the Defendants to deposit rent, which is not maintainable in law.

7.2. The 6th Defendant has vacated the lease site even prior to the filing of the above suit, hence the 6th Defendant is unnecessary party to the suit. The Defendants 1 and 2 are entitled to exemplary cost of Rupees one lakh by way of damages and the said exemplary cost have to be paid by the Plaintiff. The suit is bad for non joinder of proper parties viz. the children of the first Defendant namely Prasanth and Vijai. The first Defendant's grandfather Chennappa Gounder got some lands through his father Muniappa Gounder. Apart from the ancestral properties, the said Chennappa Gounder purchased some lands as per Document No.73/1926, dated 02.01.1926 and Doc.No.1345/27, dt.29.04.1927. After the demise of Periya Chennappan namely the grandfather, he left behind him, his wife Konammal, his sons Oblikhan @ Muniappan, Chinnapaiyan @ Venkatappan and minor Narayanappa @ Narayanasamy and Periyapaiyan @ Venkatasamy. The said Periyapaiyan @ Venkatasamy executed a release deed in favour of Konammal



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and others on 05.04.1937 and Venkatrama Gounder, S/o. Chennappa Gounder purchased a thatched house on 14.05.1938. After the demise of Chennappa Gounder, Konammal managed the joint family properties and looked after the family.

7.3. During the management of Konammal, she had purchased some properties from the nucleus of ancestral properties and all the properties including the property purchased by her are treated and enjoyed by the joint family as joint family properties. One of the sons Periyapaiyan @ Venkatasamy released himself from the joint family by getting some share through the release deed dated 05.04.1937. The other joint family members Obligan @ Muniappan, Chinnapaiyan @ Venkatappan and Narasappan @ Narayanasamy partitioned their joint family property in or about 1957. Though Konammal purchased some property, she purchased the same on behalf of the joint family and she executed a sale deed and gift deed in favour of Narayanasamy and those properties also treated and enjoyed by the joint family of these Defendants.

7.4. Whenever the joint family requires money for improving the joint family lands or purchase of new lands, Chennappan, Konammal and her sons executed mortgage deeds and raised money for the joint family needs on several occasions namely on 07.11.1912, 30.06.1937, 17.11.1942, 20.07.1949 etc. and managed the joint family. This Defendant's father Narayanasamy got



some joint family properties through the oral partition in the year 1957 and sold some joint family properties with which, he purchased some properties as per the sale deed dated 10.10.1960 and 24.07.1986. The properties given by Konammal as per the gift deed date 15.11.1973 are also the joint family properties of Narayanasamy and these Defendants. Therefore all the properties are treated and enjoyed by Narayanasamy and these Defendants as joint family properties. Narayanasamy married the second Defendant in the year 1947 after discharge from Army and he lived with the second Defendant as husband and wife, begotten two female child and two male child during the wedlock. Narayanasamy died on 20.04.1995 leaving behind the first and second Defendants as L.Rs. Thereafter, the first Defendant is managing the suit properties.

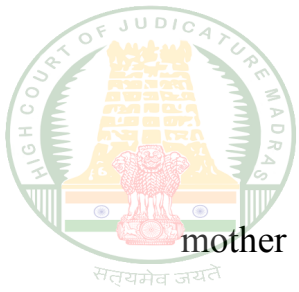
7.5. The Plaintiff's mother Ponnammal was married to one Muthu Gounder of Naganampatty Village in or about the year 1954. The said marriage was solemnized at Kanavapatty Koil in Krishnagiri. The said Ponnammal lived with her husband for about a year and thereafter the said Ponnammal was deserted by her husband and lived along with her parents at Thandekuppam village. During the stay at Thandekuppam in or about the year 1959, she had illicit intimacy with Narayanasamy and because of the illicit intimacy the Plaintiff was born to them. The said Ponnammal along with the Plaintiff lived in their parents' house at Thandekuppam. The said



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WEB.COM Narayanasamy and Ponnammal never lived as husband and wife. Therefore it is not correct to state that the said Ponnammal, the mother of the Plaintiff married Narayanasamy as second wife. Hence the Plaintiff is the illegitimate child of Narayanasamy and if at all she is entitled to any share, she is entitled only to 1/9th share in the suit properties including the amount in Court deposit as per the Provisions of Sec. 16 of Hindu Marriage Act.

7.6. The first Defendant's father Narayanasamy sold some of the ancestral joint family properties and improved the house property and also purchased some suit properties from the purchase money of the ancestral property. Hence all the suit properties are treated as joint family property of the first and second Defendants. The Plaintiff was never treated as joint family member. Two daughters was born to the second Defendant even prior to the birth of the first Defendant and they died within one year of birth. The first Defendant was the 3rd child born to Narayanasamy and second Defendant. Apart from the first Defendant, the second Defendant gave birth to a second son (4th child) in or about the year 1963 and the said second son was named as Chennappan. Therefore on the death of Narayanasamy, first Defendant has 4/9 share, second Defendant has 4/9 share and the Plaintiff being the illegitimate child, is entitled to 1/9th share in the suit properties since Narayanasamy has 1/3 share at the time of his death on 20.04.1995. The Plaintiff Saroja was married to one Govindan at the age of 14 years and then the Plaintiff and her

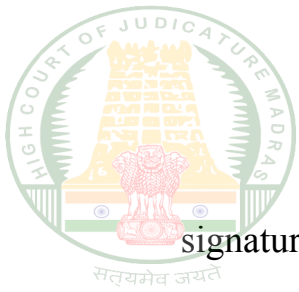


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mother Ponnammal settled at Bangalore and for the past about 36 years they are living at Bangalore. The Plaintiff was never treated as joint family member.

7.7. The second Defendant and Narayanasamy bear the marriage expenses of the Plaintiff and also given gold ornaments etc. during the marriage. Narayanasamy converted the lands comprised in S.No.381/A2B. 382/A and 382/B into 19 house plots and sold them to third parties. The said Narayanasamy have also sold 5 cents of suit property abetting Madras road to one Dhanapal Chettiar of Bargur. These Defendants though instructed to their advocate regarding the joint family, they could not get the old family documents and because of the same, the Defendants 1 and 2 could not instruct their advocate properly to file the written statement. These Defendants are not aware of the implication of filing the written statement on 09.02.2005. These Defendants neither understand the plaint nor the written statement during the year 2004 and 2005. Now these Defendants understand the suit filed by the Plaintiff and now got the family records, genealogy of Narayanasamy etc. and filing this additional written statement with correct particulars.

7.8. The suit property is not the self acquired property of Narayanasamy. The Plaintiff's mother never married to Narayanasamy and never lived as husband and wife. The present revenue records are created for the purpose of filing the false suit. The Plaintiff and her mother obtained some



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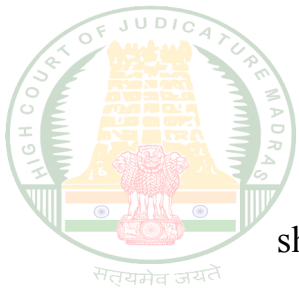
signature from these Defendants and changed the revenue records etc. The legal heir certificate etc. are also created for the purpose of the suit. The contents in the Plaint are false. The letter correspondence of the Plaintiff with the Government are also concocted ones. Hence the Additional Written Statement is filed to put forth the real facts of the case. Accordingly, the Defendants 1 and 2 prayed the Court to receive the additional written statement and to dismiss the suit filed by the Plaintiff.

8. On the basis of the above pleadings, the trial Court framed the following issues and they are:-

1. Whether the Plaintiff is entitled to claim partition in the suit properties?
2. Whether the Plaintiff has no share in suit survey No.383/B1 and rent from the Building?
3. Whether the compensation paid for acquisition of part of the suit lands to be shared by Defendants 1 and 2 only?
4. Whether the Plaintiff is the legal heir of late Narayanasamy or not and she entitled for half share or 1/3rd share in the suit properties?
5. To what relief, the parties are entitled?

9. Subsequently, the trial Court re-casted the issues as follows:

1. Whether the Plaintiff is the legal heir of late Narayanasamy and whether



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she is entitled for half share in the suit properties?

WEB COPY 2. Whether the Plaintiff is entitled for mandatory injunction as prayed for?

3. Whether the suit is bad for non-joinder of necessary parties?
4. To what relief, the Plaintiff is entitled?

10. During trial, the Plaintiff examined herself as P.W-1 along with three other witnesses as P.W-2 to P.W-4. Ex.P-1 to Ex.P-27 were marked. On behalf of the Defendants, the first Defendant examined himself as D.W-1 and three other witnesses were examined as D.W-2 to D.W-4. The Defendants also marked Ex.D-1 to Ex.D-24 as documents on their side. The trial Court, on appreciation of the oral and documentary evidence, held that the Plaintiff, as an illegitimate child of late. Narayanasamy, is entitled to 1/3 share in the plaint described properties.

11. Aggrieved by the Judgment and Decree dated 21.12.2015 passed in O.S. No. 38 of 2004, the Plaintiff filed A.S. No. 8 of 2017 before the First Appellate Court. The first Defendant also filed A.S. No. 46 of 2016. The first appellate Court, on appreciation of the oral and documentary evidence, held that the appeal in A.S. No. 46 of 2016 filed by the first Defendant deserves dismissal and confirmed the judgment and decree of the trial Court. As far as the appeal preferred by the Plaintiff in A.S. No. 8 of 2017, the first appellate



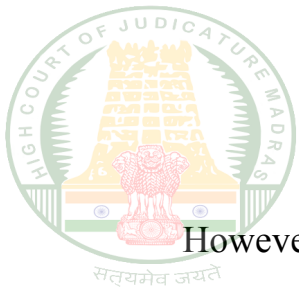
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Court held that the trial Court is right in issuing a Mandatory Injunction against the Defendants. However, in respect of item No.6, the finding of the trial Court that the Plaintiff is not entitled to 1/3 share is set aside. Consequently, except the land acquired in item No.6, the Plaintiff is entitled to get 1/3 share from the first Defendant.

12. As against the Judgment dated 03.07.2017 passed in A.S. No. 46 of 2016, the present Second Appeal is filed by the first Defendant.

13.1. The learned Counsel for the Appellant submitted that the Plaintiff was not the legitimate daughter of Late. Narayanasamy. The mother of the Plaintiff Ponnammal was married to her maternal uncle Muthu Gounder and they were living as husband and wife. After two years of the marital life, there had been dispute between them and she separated from her husband. In the course of such separation, she developed illicit relationship and extra marital relationship with the father of the first Defendant Narayanasamy. It is the claim of the Plaintiff that she is the daughter born to Late. Narayanasamy and Ponnammal. When Narayanasamy was already married, through extra marital life with the mother of the Plaintiff, the Plaintiff was born. The mother of the Plaintiff was already married to Muthu Gounder and the said marriage was subsisting. While so, she lead an extra marital life with Narayanasamy.



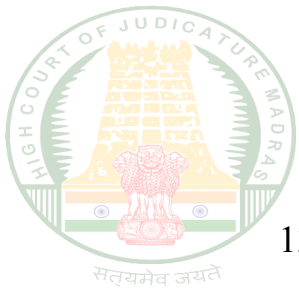
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However, the Plaintiff claims that her mother was married to Narayanasamy.

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Even if any such marriage was solemnised, such marriage is void because the first marriage of the Plaintiff's mother Ponnammal with Muthu Gounder was subsisting and not dissolved in a manner known to law. Therefore, as on the date of birth of the Plaintiff, she was not the daughter born to late. Narayanasamy and her mother. These facts are not at all considered by the trial Court as well as the first appellate Court and it calls for interference by this Court.

13.2. The first Defendant is the son born to Narayanasamy through his first wife and he is the legitimate son of Narayanasamy through his legally wedded wife. As such, he is entitled to succeed and inherit the ancestral properties of Narayanasamy. The Plaintiff is not a daughter born out of a legally wedded marriage. She is the daughter born through voidable marriage which cannot be considered as marriage in the eye of law. Therefore, she cannot claim partition in the ancestral properties of the father of the first Defendant. The first Defendant had not disputed the paternity of the Plaintiff. The first Defendant raised the question of legitimacy of the Plaintiff to claim partition in an ancestral property. The claim of the Plaintiff for partition was on the basis of the presumption that Narayanasamy, father of the Plaintiff, had purchased the plaintiff described properties, but it is not so. Therefore also, the Plaintiff is not entitled for any share in the plaintiff described property.



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13.3. The learned Counsel for the first Defendant/Appellant submitted that the Appellant, as first Defendant, in the written statement had clearly disputed the status of the Plaintiff as a legitimate daughter born through the legally wedded wife and also the fact that the property claimed by the Plaintiff is not a self-acquired property of Narayanasamy but it was an ancestral property. The father of the first Defendant Narayanasamy was allotted his share in the family partition from the ancestral properties. The properties that came to the share of Narayanasamy was sold by Narayanasamy and subsequently, from the sale proceeds he had purchased the suit properties. The father of the first Defendant late. Narayanasamy did not purchase the properties from his own earning. He had purchased the properties by selling ancestral properties which he had got in the family partition. Therefore, such properties are ancestral properties and not self-acquired properties and consequently, the Plaintiff cannot claim partition.

13.4. The learned Counsel for the Appellant invited the attention of this Court to the written statement of the first Defendant as also the additional written statement, in which he had clearly denied the claim of the Plaintiff on the ground that legitimacy of the Plaintiff that she is not a daughter born to the legally wedded wife is not correct. She was born out of a voidable marriage between Narayanasamy and Ponnammal. When the Plaintiff was born, the marriage between the mother of the Plaintiff and her husband/Muthu Gounder



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was subsisting. The properties of Narayanasamy are not his self-acquired property as claimed by the Plaintiff. It is, in fact, purchased from the funds available after selling the ancestral properties of Narayanasamy. Therefore, son or daughter born through a concubine cannot claim partition in the ancestral properties. This was ignored by the trial Court while framing issues regarding illegitimacy of the Plaintiff. Regarding the status of the property whether it was an ancestral property of Narayanasamy or self-acquired properties of Narayanasamy, the learned trial Judge had not framed proper issues.

13.5. It is further submitted that the learned trial Judge had also discussed in evidence, regarding the legal heir certificate issued to the Plaintiff by the Tahsildar. As per the Judgment of this Court, a Tahsildar is competent to decide the legal heir of a person whether, son or daughter born to legally wedded husband and wife. But the learned trial Judge discussed the legal heir certificate issued by the Tahsildar to examine the claim of the Plaintiff. When the Plaintiff is not the legitimate daughter of deceased Narayanasamy the legal heir certificate issued by the Tahsildar cannot be considered to prove her status as legal heir of Late. Narayanasamy. The discussion in this regard by the learned trial Judge is against the reported ruling of this Court as well as the Honourable Supreme Court. The learned Appellate Judge/Additional District Judge who dismissed the Appeal and confirmed the Judgment of the learned



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trial Judge failed to consider the grounds of Appeal raised by the Appellant while modifying the judgment and decree of the trial Court. Accordingly, the learned Counsel for the first Defendant/Appellant prayed for dismissal of the suit filed by the Plaintiff.

14.1. On the other hand, the learned Counsel for the first Respondent/Plaintiff would only contend that even in the written statement, the first Defendant agreed that the Plaintiff has got 1/3 shares. Subsequently, in the additional written statement, he has submitted that the Plaintiff has got 1/9 share by referring to the ancestral nature of the properties. It was also admitted by the first Defendant that the Plaintiff is a legitimate child born out of the relationship between Late. Narayanasamy and Ponnammal. When it was admitted by the first Defendant that there was an illegitimate relationship between Narayanasamy and Ponnammal, the Plaintiff cannot be denied a share in the properties of late. Narayanasamy. As per settled position of law, only the mother of the Plaintiff Ponnammal, who had an illicit relationship with Late. Narayanasamy, is not entitled to any share and not the Plaintiff who was born out of such relationship. On the basis of such settled proposition of law, both the Courts have rightly held that the Plaintiff is also having a share in the suit properties. There is no substantial question of law involved in this Second Appeal and the question of laws framed are related to factual disputes. The



Second Appeal has no merits and it is liable to be dismissed.

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15. On the basis of the arguments advanced by the Counsel for both sides, this Court admitted this Second Appeal on 29.04.2022 and framed the following substantial questions of law for determination in this appeal:

“1. Whether the Plaintiff is entitled to a decree for partition without proving the factum of marriage between the Plaintiff's mother and Narayanasamy when it is admitted by Ponnammal during her cross examination that she had already married one Muthu Gounder who left her?

2. Whether the marriage between Ponnammal and Narayanasamy can be presumed merely by saying that they were living for a long period?

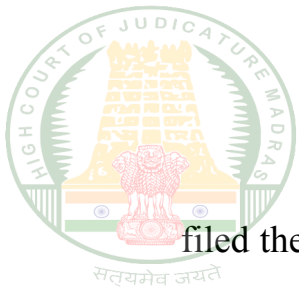
16. When this appeal was taken up for hearing, the learned Counsel for the Appellant submitted that additional substantial questions of law are also to be raised in this Appeal. Accordingly, the following additional substantial questions of law are framed for consideration and they are as follows:

3. Whether the Plaintiff is the legitimate daughter of Narayanasamy?

4. Whether the property left by Narayanasamy is ancestral property or self-acquired property?

5. Whether the Plaintiff is entitled to claim partition?

17.1. The learned Counsel for the Appellant submitted that the documents of the year 1926 to 1978 have been marked to show the continuous possession of the ancestral properties in the family of Narayanasamy. It is the contention of the learned Counsel for the Appellant that it is the Plaintiff, who



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filed the suit, has to prove the case and the burden is always on her. However, the learned trial Judge ignored that the Plaintiff has not proved her case as laid down by the Hon'ble Supreme Court regarding the burden of proof of Plaintiff. Instead, the learned trial Judge cast the burden on the Defendants to disprove the claim of the Plaintiff. When the Defendants claimed that the Plaintiff was not born to Narayanasamy through his legally wedded wife, the Plaintiff has to prove the legitimate nature of her birth through Narayanasamy and her mother Ponnammal by producing decree of divorce, if any, obtained from the competent Court of law, but it was not done so. Thus, the Plaintiff has not discharged the burden cast on her to prove her paternity and legitimacy to claim partition.

17.2. The learned Counsel for the Appellant also invited the attention of this Court to Section 16 of the Hindu Marriage Act, particularly, sub-clause 1 to 3. It is the submission of the learned Counsel for the Appellant that the entire plaint averments, averments in the written statement and the evidence of the parties during trial discussed by the learned trial Judge shall be interpreted in the light of Section 16 of the Hindu Marriage Act. The learned Judge had failed to consider the provisions of Section 16 of the Hindu Marriage Act and misdirected herself by shifting the burden on the Defendants by observing that the Defendants have not objected to the legal heir certificate when the Tahsildar conducted an enquiry. Therefore, the Tahsildar had issued legal heir



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certificate to the Plaintiff by stating that the mother of the Plaintiff as Ponnammal and father of the Plaintiff as Narayanaswamy. Also, the learned Judge had relied on the Transfer Certificate of the Plaintiff and observed that the Defendants on coming to know about the filing of the legal heir certificate as a document by the Plaintiff, during trial, had not filed any suit for declaration to declare that the Plaintiff is not the legitimate child of Narayanasamy.

17.3. It is the further contention of the learned Counsel for the Appellant that an important issue raised in the written statement was not at all considered by the learned trial Judge. The right to claim partition by the Plaintiff in the ancestral property is an important issue in this case. When the Defendants had clearly stated in the written statement that Narayanasamy, during his life time, had, after inheriting the ancestral properties as his share in the family partition, sold some of the properties and purchased some other properties, which are shown in the plaint schedule. Therefore, it cannot be held to be the self-acquired property of Narayanasamy as stated by the Plaintiff in the plaint. To prove such contention, the Defendants have marked documents from the year 1927 to 1978. However, the learned Judge shifted the burden on the Defendants as though it is the Defendant's burden to prove the character and ancestral nature of the properties obtained by late. Narayanasamy. When the Plaintiff sought for a share in the property, it is for her to prove that it is the



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self-acquired property of late. Narayanasamy, which she failed to prove.

WEB COPY 17.4. The learned Judge also failed to consider the grounds of appeal raised by the Appellant/Defendants regarding the findings rendered by the learned trial Judge and dismissed the appeal. It is the further contention of the learned Counsel for the Appellant that even though the issues have not been framed by the trial Judge regarding the status of the Plaintiff, the same can be raised in the Second Appeal as a substantial questions of law

17.5. When the marriage of Ponnammal with her maternal uncle Muthu Gounder was not dissolved through the competent Court and it was subsisting besides the first wife of Narayanasamy was alive on the date of trial, the so called relationship between late. Narayanasamy and Ponnammal is legally not acceptable and consequently, the Plaintiff, who is born out of such relationship, is not entitled to get any share in the property of late. Narayanasamy. Both the Courts below failed to consider this important aspect and it warrants interference by this Court. Accordingly, the learned Counsel for the Appellant-first Defendant prayed for setting aside the Judgment and Decree passed by the Courts below and to allow this appeal.

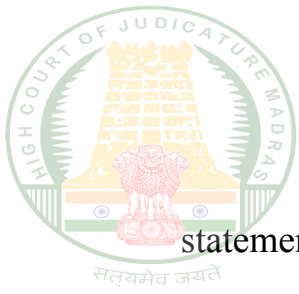
18.1. Thiru. P.M. Duraiswamy, learned Counsel for the first Respondent/Plaintiff submitted that the Plaintiff is the daughter of late Narayanasamy, through his second wife Ponnammal. The first Defendant is



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the son of Narayanasamy through his first wife. The second Defendant is the mother of the first Defendant and the first wife of Narayanasamy. The third Defendant was impleaded during the pendency of the suit because the premises/property belonging to Narayanasamy was let out on lease for erecting and operating of Doordarshan Relay Station Tower. The fourth Defendant - Special District Revenue Officer, Krishnagiri and the Fifth Defendant - Special Thasildar (Land Acquisition), N.H.46, Krishnagiri were impleaded because a part of the property belonging to Narayanasamy was acquired under the Land Acquisition Act for widening of the National Highway between Bangalore and Chennai, for which compensation was deposited by the Fourth and Fifth Defendant in the Court. Such deposit was made in view of the dispute regarding ownership of the property/land acquired by the Highways Department for widening of the NH-46.

18.2. The learned Counsel for the Plaintiff further submitted that the suit was filed for partition and separate possession of half share of the Plaintiff, including the lands acquired by the Fourth and Fifth Defendants for widening of the NH-46. There were ten items of properties mentioned in the plaint schedule. Among the list of the properties, the 6th item of property shown is the property acquired for the widening of the NH-46. The learned Counsel invited the attention of this Court to the contents of the written



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statement in which the relationship of Plaintiff was admitted by the First Defendant. It is contended in the written statement that the Plaintiff is the daughter of Narayanasamy born through his concubine Ponnammal, she is the illegitimate child of Narayanasamy and hence she cannot claim equal rights from the suit properties.

18.3. The learned Counsel for the first Respondent/Plaintiff further submitted that the Sixth Defendant vacated the premises after institution of the suit. The Defendants 3 to 6 were tenants in the properties in question. The Sixth Defendant was running a Coconut Mandi on lease and was paying rent to Narayanasamy. After the death of Narayanasamy, the Defendants 3 to 6 were paying rent to the First Defendant. The Plaintiff therefore issued lawyer's notice demanding half of the rental amount to be paid to her and also for partition of the properties of Late Narayanasamy. The Defendant 3 to 6 failed to do so. Therefore the Plaintiff filed the suit. The written statement of the First Defendant admit the paternity of the Plaintiff that she was born to Narayanasamy but it is disputed that she is not legally entitled to claim partition in the ancestral property. Thus, the dispute raised by the First Defendant is only with regard to the quantum of half share claimed by the Plaintiff. At the same time, the First Defendant has conceded that the Plaintiff is entitled only to one-third share. In paragraph 13 of the written statement the first Defendant conceded that the Plaintiff is entitled to only to one-third share

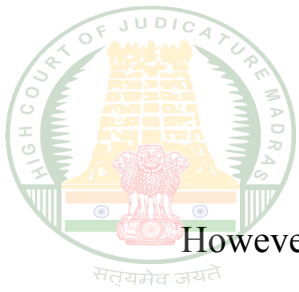


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in the suit properties except the property in Survey No.381/B1, which was settled in favour of the son of the first Defendant and grandson of Narayanasamy. However, now, the First Defendant disputed the claim of partition itself on the ground of the Plaintiff being an illegitimate child. This ground raised in the Second Appeal does not hold good and the Second Appeal is to be dismissed in the light of admissions made in the written statement of the first Defendant.

18.4. The learned Counsel for the first Respondent also submitted that the Plaintiff is none other than the daughter of the elder sister of the Second Defendant. The Plaintiff's mother – Ponnammal married Muthu Gounder and lived as husband and wife. Muthu Gounder is none other than the maternal uncle of Ponnammal and the Second Defendant namely Mari. After two years, there was matrimonial disputes between Ponnammal and Muthu Gounder, hence, she was living separately. In the course of such life, as per the claim of the Appellant, she developed intimacy with Narayanasamy, who was already married to Mari. Ponnammal through that relationship with Narayanasamy gave birth to the Plaintiff. This was conceded in the written statement and therefore submitted that the Plaintiff is entitled to one-third share. The ruling of the Hon'ble Supreme Court in *Revanna Siddappa and another vs. Mallikarjun and other [(2023) 10 SCC]*, relied on by the Counsel for the Appellant related to legitimacy which has no bearing to the facts of this case.



However, the first Defendant denied the right of the Plaintiff by placing
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18.5. The learned Counsel for the first Respondent/Plaintiff submitted that the judgment of the learned Sub Judge, Krishnagiri in O.S.38 of 2004, dated 21.12.2005 is on proper appreciation of evidence and it does not warrant any interference in the Second Appeal. Also the learned Counsel for the first Respondent invited the attention of this Court to the discussion and observations of the learned Sub Judge, Krishnagiri, wherein it is stated that Narayanasamy had married Mari, since there was no issue born through such wedlock, Narayanasamy married Ponnammal, the mother of the Plaintiff. Only after the birth of the Plaintiff, Narayanasamy begot children through Mari. Further, it is the submission of the learned Counsel for the Respondent that the properties were enjoyed in common by the joint family. The father of the Plaintiff and the First Defendant, Narayanasamy was earlier working in the Indian Army for five years. Therefore he had enough resources for purchasing the property/land. The claim made by the First Defendant that properties were acquired after selling the ancestral property has to be proved by the Defendant and not by the Plaintiff. The Defendant failed to prove the same and that was considered by the learned Sub Judge, Krishnagiri.

18.6. The learned Counsel for the First Respondent/Plaintiff also invited the attention of this Court to the judgment of the Appellate Court and



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submitted that the Appellate Court on proper appreciation of evidence arrived at the conclusion that the Plaintiff is entitled to claim partition. The learned Principal District Judge, Krishnagiri as Appellate Judge, discussed the evidence brought on record and on proper appreciation of such evidence held that the properties mentioned in the suit were purchased by grandmother of Narayanasamy namely Konnammal. Subsequently, there was partition in the family, consisting of sons of Konnammal, in which Narayanasamy was allotted the property. In the property allotted in the family partition, Narayanasamy sold it as plots. As per Ex.A.12-Muchalika dated 15.10.1995, the Second Defendant had stated that her son and daughter shall receive and enjoy the properties in equal shares. Exs.A.13 and A.14 – Patta stands in the name of Plaintiff and first Defendant. Under Ex.A.15, Narayanasamy, purchased the property in Survey No.383/B1 in the year 1960. Under Ex.A.16 – Konnammal, grandmother of Narayanasamy executed a settlement deed, in which the recitals stated that Konnammal purchased the property in Survey Nos.381/A to B, 381/1A, 382/A and settled it in favour of Narayanasamy. Therefore, the learned Principal District Judge as Appellate Judge has stated that those properties are self acquired properties of Narayanasamy.

18.7. The learned Counsel for the First Respondent-Plaintiff further submitted that Ex.A.17 is the property purchased by Narayanasamy from one Noorula Saheeb, in which the land in Survey Nos. 378/1, 376/1 and 376/3 are



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covered and they are also self acquired properties of Narayanasamy. Ex.A.19 is the Panchayat Union receipt issued for the building plan in the name of Narayanasamy. Ex.A.20 is the identity card of Narayanasamy, in which the names of Second Defendant and the mother of the Plaintiff are also found. Ex.A.21 is the proceedings for the land acquisition for the 6th item of the property, which stood in the name of the Plaintiff and First Defendant. Ex.A.22 is the sale deed dated 13.03.1997 executed by Narayanasamy to one Chinnasamy in respect of the land in Survey No.381/1AB, 383/B and they have been converted as house sites. The seller – Narayanasamy has stated that it was his self acquired property and it was in his possession.

18.8. The learned Principal District Judge had in the judgment observed that Ex.A.24 – Patta stood in the name of the Plaintiff and the First Defendant, with regard to 6th item of the property. Similarly, Ex.A.25 – Patta stood in the name of the Plaintiff and the First Defendant. Ex.A.26 is the 'A' register copy for the land in Survey Nos.376/1, 378/1, 376/3, 378/2B,381/A1, 383/B and 544 for which the patta stood in the name of Narayanasamy. The patta of the Survey No.417/B stood in the name of Narayanasamy. It also discloses that from the previous owner's name, the patta has been changed to the name of Narayanasamy. Ex.A.27 is the Chitta and Adangal for those properties left behind by Narayanasamy for which chitta and adangal stood in the name of the Plaintiff and the First Defendant. Therefore, the learned Appellate Judge has



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held that the Plaintiff is entitled to partition. It was further decided that there was no income from selling of ancestral property, through which it was alleged that the properties were acquired by Narayanasamy in his name. The Appellate Judge also observed that in the written statement the First Defendant had not stated that the ancestral properties were sold and from the income derived from the sale of ancestral property, the father of the first Defendant and the First Defendant purchased the properties. The details regarding the ancestral properties sold and the income from the ancestral properties derived were not given in the written statement of the first Defendant. Therefore, after the demise of Narayanasamy, his wife Mari, the second Defendant, his son Sundar, the First Defendant and the Plaintiff are entitled to equal share in the suit properties. However, as far as the 6th item of plaint schedule, it was contended by the First Defendant that it was settled in favour of his son Prasanth which was reversed by the learned Appellate Judge conferring the relief with respect to the 6th item of property as well. Thus, as per the judgment of the Trial Court as well as Appellate Court, the Plaintiff is entitled to partition. The Plaintiff cannot be discriminated by placing reference to Section 16 of the Hindu Marriage Act that she is an illegitimate. For the conduct of her parents, the Plaintiff cannot be punished. The Second Appeal filed by the Appellant has no merits. The Second Appeal has no merits and accordingly he prayed for dismissal of the Second Appeal.



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WEB COPY19. Heard the learned Counsel for the Appellant, learned Counsel for the first Respondent and the learned Government Advocate for the Respondents 3 and 4.

20. During the course of trial, the Plaintiff examined herself as P.W-1 and she was cross-examined on behalf of the Defendants 1 and 2. In the cross-examination a suggestion was put to the Plaintiff that her mother Ponnammal was earlier married to one Muthusamy Gounder and after living as husband and wife for two years, she was separated from Muthusamy Gounder. It was also suggested that in the course of her life, she developed illicit relationship with Narayanasamy who was the husband of her elder sister Mari. The Plaintiff denied such suggestion and stated that Narayanasamy married Ponnammal mother of the Plaintiff whereas Mari was already married to her paternal uncle's son. Since the husband was dark in complexion she attempted suicide. Therefore, the maternal grandfather of the Plaintiff brought her back home. Subsequently, she developed intimacy with the father of the Plaintiff. The maternal grandfather performed the marriage of Plaintiff's mother with Narayanasamy. Since there was illicit relationship with Mari, the maternal grandfather insisted Narayanasamy to marry both of them. Narayanasamy refuses to marry Mari on the ground that she was not divorced from her



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husband. Therefore, he performed the marriage with Ponnammal. On the insistence of relatives both were married by Narayanasamy. This is the evidence available through P.W-1 about her mother P.W-2 Ponnammal. Whereas Mari was not alive on the date of trial. From the evidence, it is found that Plaintiff and first Defendant are brother and sister through two women who happened to be sisters. Mari is the elder sister and Ponnammal is the younger sister. Even though Ponnammal is the younger sister, Ponnammal delivered a child five years prior to Mari giving birth to first Defendant. Therefore, the Plaintiff is five years elder to first Defendant. Whatever first Defendant claims is not based on direct knowledge. It is only based on hearsay. A person who is older alone is competent to speak about the existence of relationship. Under those circumstances, the competent person to speak about the marriage with late Narayanasamy is Ponnammal. Ponnammal was alive. She was examined as P.W-2. She admitted the marriage with Muthusamy Gounder and claims that Muthusamy Gounder developed extramarital relationship with some other woman. Therefore, she did not live with him. Further, as per their custom prevailing in vanniya community, customary divorce was granted by which the sacred thread *Thali* was returned to Ponnammal in Village Panchayat conducted by the elders of the community. To the pointed question whether there was a decree from competent Civil Court regarding divorce, she claims that there was no such decree from Court.



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Thus, Ponnammal is an illiterate woman and she was 45 years in the year 2004.

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Therefore, she might have born in 1959, after three years of coming into force of the Hindu Marriage Act, 1956. As per the said Act divorce should be obtained only from a competent Civil Court. In those days there was no awareness about personal laws and illiteracy galore. Even though the age of marriage was 18, still there were marriages taking place among young children. Therefore, the period under which she claims that she was given divorce in the village by invoking customary laws is found reasonable.

21. To prove that she is the daughter born through Narayanasamy, the Plaintiff marked her School certificate wherein her father's name is given as Narayanasamy and this is sufficient proof to accept paternity. However, the first Defendant disputes that she is not born to Narayanasamy. The evidence of first Defendant, who is five years younger to Plaintiff, claiming that she is not the daughter of Narayanasamy is found only to deny her share in the properties. To prove that she was not born to Narayanasamy, the first Defendant examined one Venkatraman as D.W-2 who is cousin of Narayanasamy. DW2 in his examination in chief claimed that the averments stated in the written statement of the first Defendant are correct. In his cross-examination, he deposed that he does not know the details of the family life of Narayanasamy. Similarly he was unable to clarify regarding the enjoyment of the property by



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Narayanasamy - whether it is self-acquired or ancestral.

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22. D.W-3 Srinivasan is the staff of the Ex-serviceman Welfare Board attached to District Collectorate. As per his evidence, Narayanasamy served in the Indian Army. After retirement, he was furnished with Ex-serviceman Welfare Card for purchase of commodities from the Ex-serviceman's Canteen. After his death, the first wife Mari was furnished with the same card. In the cross-examination on behalf of the Plaintiff, he admitted that after the death of Mari, Ponnammal has given requisition seeking identity card as wife of Narayanasamy, but he had not produced such documents regarding the same.

23. The Plaintiff examined her maternal aunt Krishnamma as P.W-3 who claims that the marriage between Narayana Swamy and Ponnammal had taken place. She further deposed that her eldest sister Mari was already married to her paternal aunt's son Narayanasamy. Since he was dark in complexion she did not want to live with him and attempted suicide. Therefore, she was brought home by her father. Subsequently she had developed illicit relationship with the husband of Ponnammal namely Narayana Swamy. On insistence of the maternal grandfather of Plaintiff, Narayana Swamy married Mari as his second wife. Since Mari was the eldest sister, people identified her as Narayanaswamy's first wife and Ponnammal as the second wife since she is



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younger to Mari. The evidence of P.W-3 is found unacceptable since she was too young on the date of alleged marriage. Whatever she says is based on hearsay, similar to the evidence given by DW-2 Venkataraman who is the cousin of Narayanaswamy.

24. The first Defendant, when cross examined on behalf of Plaintiff, refused to summon any relative on his mothers side which indicates that whatever he claims in the written statement is not supported by his mother side. The first Defendant is facing a suit for partition. The burden of proof in a suit for partition is equal as that of Plaintiff and the Defendant as well. The same burden is on the first Defendant. The general principle is that the Plaintiff cannot seek a relief by picking holes in the evidence of Defendant, but this principle will not hold good in a case for partition. What is the burden on the Plaintiff is the same as to the Defendant also in a suit for partition. The Defendant dispute the facts that the mother of the first Defendant, the second Defendant and the Plaintiff jointly executed a notarised affidavit to the third Defendant Doordharshan Kendra for the Doordharshan Kendra to pay the rent to the first Defendant and they do not have any objection. This fact was stated in the written statement by third Defendant. When D.W-1 confronted regarding the contents of the written statement, he denied that there is no such affidavit filed by second Defendant and Plaintiff. Also the Plaintiff had in her evidence



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stated that her maternal aunt, the second Defendant in this case had executed a muchilika in which she had stated that after her death, the property shall be divided between Plaintiff and Defendant. This muchilika is disputed by the first Defendant by claiming that the Plaintiff had obtained it by false representation. It was also contended that the Plaintiff had obtained legal heir certificate behind the back of the first Defendant.

25. From the transfer certificate filed by the Plaintiff it is found that as per the School records Narayanaswamy is her father. Regarding marriage, there is no proof as per the present condition. She has to summon someone who is elder to her to prove the marriage. Therefore, in the absence of elderly persons who are elder to P.W-2, the claim of marriage is not proved. The fact that she was married to Muthusamy Gounder is admitted by her in her cross examination. She claims that Muthusamy Gounder developed illicit relationship with another woman, forcing her to come back to her maternal home and her father had arranged marriage with Narayanaswamy. She clearly stated that in the village Panchayat conducted by the elders of vanniya community people, the *Thali* was returned to Muthusamy Gounder. What had been stated by Plaintiff as well as first Defendant in their evidence regarding disputed parentage are all hearsay. The component witnesses had not been examined on both sides. With the available materials the learned Sub Judge

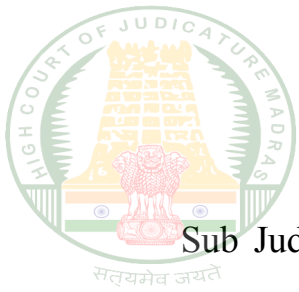


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had granted a decree in favour of the Plaintiff. The claim of the Plaintiff regarding Item 6 alone was dismissed based on the claim of the first Defendant that the father of the Plaintiff and first Defendant Narayanaswamy had given oral gift regarding Item 6 in favour of the son of the first Defendant minor Prashant. Therefore, as guardian of the minor, he had entered into lease agreement with Doordarshan authorities and he is competent to receive the rent is not found proper and reasonable in the light of the written statement filed by the third Defendant stating that they had obtained notarised affidavit from the sister of first Defendant, the Plaintiff herein and the mother of the first Defendant Mari, based on which rent had been paid to the first Defendant. Therefore, the claim of the first Defendant that the sixth item of suit property was allotted as gift to his minor son had not been proved through proper evidence before the trial Court. The first Defendant as D.W-1, in his cross examination admitted that there was dispute regarding sharing of the compensation for the lands acquired to widen the National Highway between Chennai and Bengaluru. Since there was dispute regarding the share in the properties, the Revenue authorities had deposited the compensation amount for the land acquired by them for road widening project in the Court of the learned Sub Judge.

26. On perusal of the judgment of the learned Sub Judge, the learned

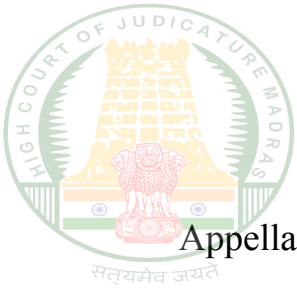


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Sub Judge had on proper appreciation of evidence, answered the Issue No.1 that the Plaintiff is the legal heir of late Narayanaswamy. Even though the Plaintiff claimed half share, the Court had granted her preliminary decree for 1/3rd share on the ground that she is not the daughter of Mari but she is the daughter of Ponnammal. In fact, Ponnammal, who, by her own admission, claims that she is the second wife of Narayanasamy. Since the wife alone is entitled to claim rights in the property of her husband, Ponnammal is not granted any share whereas Mari had to be granted a share in the property of late Narayanaswamy. Therefore, the property of Narayanasamy has to be divided equally between Mari, wife of Narayanaswamy, Sundaram, son of Narayanasamy through Mari and the Plaintiff, daughter of Ponnammal. Therefore, granting 1/3rd share in favour of the Plaintiff by the learned Sub Judge, Krishnagiri is found proper. The learned Subordinate Judge also granted 1/3rd share based on the written statement of the first Defendant, as the first Defendant had admitted in the written statement at the earliest point of time, but subsequently he denied it. In this context, the learned Sub Judge relied on the reported ruling of this Court in **2014-3-L.W. 557 [Sivabakiam and others vs. Mrs. Parvathammal and others]**.

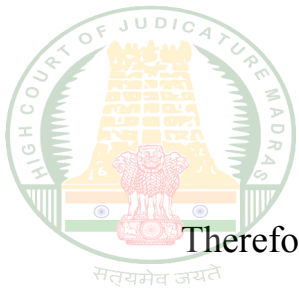
27. Therefore, as per the evidence available through P.W-1 to P.W-4 and the evidence of D.W-2, who is the cousin of late Narayanaswamy, the



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Appellant/first Defendant was unable to prove cogently that there was ancestral properties in the hands of late Narayanaswamy. As per the plaint averments, it is the self-acquired property of Narayanaswamy. The documents relied by the Defendants show that the mother of Narayanasamy, Konammal executed a sale deed and settlement deed in favour of Narayanaswamy. Even if settlement deed is to be treated as separate property of Narayanaswamy. Narayanaswamy having acquired the property from his mother, it cannot be treated as self-acquired property. The evidence of Defendant witnesses claim that late Narayanasamy after discharge from Indian Army had money with him to purchase property. This fact had not been proved through cogent evidence by both the Plaintiff and the Defendants. From the document marked, it is found that there is reference to Narayanasamy's mother executing settlement deed and sale deed in his favour whereby he claims that those properties were acquired by him out of his own funds “சுயார்ஜித சம்பாத்தியம்”. There is evidence in the trial Court that the father of Narayanaswamy died, when Narayanasamy and his siblings were children and they were maintained by the mother along with the properties. What was allotted to Narayanasamy during his lifetime from the family properties also has to be treated as his separate property. When Narayanasamy's siblings had not partitioned their properties, the Plaintiff is entitled to a share in those properties. As per the evidence available before the Court, Narayanasamy treated his daughter and son equally. He died intestate.



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Therefore as per the laws available in the statute book, as on the date of filing of the suit, the daughter is also entitled to share in her father's property.

Whether the son or daughter being illegitimate or legitimate the Court shall not discriminate such child as per the amendment to the Hindu Succession Act, 1956. Therefore, the reliance placed by the learned Counsel for the Appellant that the marriage had not been proved between Ponnammal and Narayanasamy cannot be countenanced.

28. In the light of the discussion of the learned Sub Judge regarding paternity of Plaintiff/Saroja, while answering Issue No.1 it has to be analysed from the socio-economic status of the parties. The parties are hailing from Krishnagiri District, which is considered a backward District as far as education and socio-economic conditions are concerned. In far flung villages throughout India, the laws, particularly Personal laws, are not strictly followed and implemented. Therefore, this sort of things occur and recur because of illiteracy. The community holds Panchayat for matrimonial disputes. And only persons living in the cities obtain decree of divorce from competent Civil Courts. Ignorance of law is not an excuse but it cannot be strictly enforced by this Court in this case to deny the Plaintiff her legitimate claim.

29. The mother of the Plaintiff Ponnammal was examined as P.W-2.



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On the date of examination, she had stated that she is aged 80. The written statement of third Defendant/authorities of Doordarshan Kendra states that they had obtained a notarised affidavit from the mother of the first Defendant and the sister of first Defendant, the Plaintiff, to the effect that they have no objection to the first Defendant receiving rent for the TV Relay station. This shows that the mother of first Defendant who is none other than the maternal aunt of the Plaintiff had recognised the Plaintiff as daughter.

30. The interpretation “void marriage” has to be invoked in this case. In those days, in 1959, the period in which the Plaintiff was born, the District of Krishnagiri and Dharmapuri were combined Districts which was socially and educationally backward Districts. The literacy of common man were such that they will not approach the Court for divorce. The marriage and divorce were part of the Personal Laws which is being followed as customary rules. Even marriages were not registered till the Tamil Nadu Registration of Marriage Act, 2009 came into force. The marriage and divorce were part of the Personal Laws which who had followed as customary rules. Therefore, the submission of the learned Counsel for Appellant that long cohabitation does not give a status of wife and the fact that the Plaintiff failed to prove the marriage between Narayanasamy and Ponnammal cannot be accepted. It is clear from the evidence of Ponnammal that she was given divorce in the village



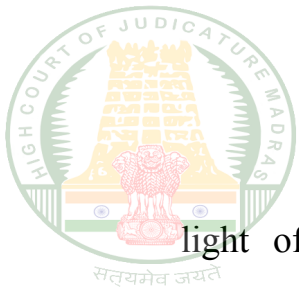
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Panchayat. It is a customary practice in backward classes, schedule caste and schedule tribes community where elders decide the marriage and divorce.

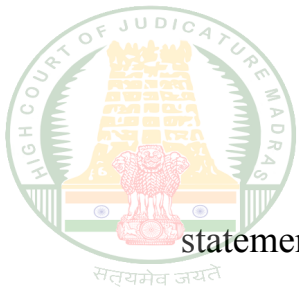
Denying the legitimate right of a daughter to share in the immovable property as per the Hindu Succession Act, 1956 as amended in 2005 is not correct. The Act does not discriminate between illegitimate and legitimate heirs. Therefore, the learned Sub Judge is wholly justified in granting a decree for 1/3rd share to the Plaintiff who is none other than the maternal aunt's daughter and who is elder to the first Defendant.

31. On reassessment of evidence by the learned Principal District Judge, Krishnagiri, as Appellate Judge, the findings of the learned Sub Judge, Krishnagiri were accepted and the appeal filed by the first Defendant was dismissed while allowing the Appeal filed by the Plaintiff who sought to set aside the judgment of dismissal as against sixth item of the property. In the appeal, the learned Principal District Judge granted preliminary decree for all the properties including item six. The Appellate Court pointed out that Ex.A15, Ex.A16 and Ex.A17 are documents in the name of Narayanasamy which proved the claim of the Plaintiff that the properties were acquired by Narayanasamy. Subsequent to Narayanasamy's death, the Patta Ex.A-13 stands in the name of Plaintiff and Defendant. Therefore, the claim of the Appellant that the properties are ancestral properties will not hold good in the



light of Ex.B-1 to Ex.B-16. Since the properties fell to the share of Narayanasamy was enjoyed by first Defendant as his separate property, after his death, his son and daughter are equally entitled to those properties.

32. The learned Counsel for the Appellant relied on the decision in **(2023) 10 SCC 1 [Revanasiddappa and another vs. Mallikarjun and others]** in which the conclusion have been formulated in Paragraph 81. The facts of this case are peculiar in nature and they cannot be made applicable to the facts involved in the said decision. As per the socio-economic conditions prevailing then, in the early 1950s people did not have the knowledge of the Personal Laws of the country. They were only governed by their customary laws where marriages were not registered, divorces were granted by the village elders belonging to the separate caste as per their customary practice. Here P.W-2 Ponnammal who was aged 80, on the date of her examination admits that she was married to Muthusamy Gounder, but did not live with Muthusamy Gounder as Muthusamy Gounder developed illicit relationship with some other woman. Therefore, she came back to her mother's place and subsequently married to Narayanasamy before the village elders. She admits that in the village Panchayat, Ponnammal returned the *Thali* the sacred thread worn by her to Muthusamy Gounder indicating divorce. There is no witnesses, who are elder to her or who have lived in that period either to prove or disprove her



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statement. The fact that Narayanasamy is the father of Plaintiff/Saroja is proved by School certificate/Transfer certificate under Ex.B-18. The first Defendant who is five years younger than the Plaintiff cannot disprove or question the Transfer Certificate. The presumption is in favour of the Plaintiff. Similarly, the revenue records – Patta, Chitta and Aangal stand in the name of Plaintiff. The legal heirship certificate also, as discussed by the learned Sub Judge, was issued after due enquiry in the village. The mother of the Plaintiff and mother of the first Defendant are sisters. Therefore, admitting that it is a void marriage, the paternity of Narayanasamy had not been disproved. Contrary it is proved through Transfer Certificate that he is the father of the Plaintiff/Saroja. This is sufficient to hold that the Plaintiff is entitled to share in the properties of Narayanasamy. Even the evidence of the Defendants under Ex.B-12 to Ex.B-19 claims that the nature of the properties are coparcenary properties. If the Plaintiff is filing the suit for partition whereby Narayanasamy's brothers and sisters are Defendants in the partition suit, then the Plaintiff is not entitled to claim partition in those properties. As on the date of death of Narayanasamy the properties enjoyed by Narayanasamy are in the name of Narayanasamy as separate properties and not as co-parcenary properties or as joint family properties along with his siblings. Therefore, the grant of decree in favour of Plaintiff by the learned Sub Judge and confirmed by the learned Principal District Judge is found proper.



33. The claim made by the first Defendant that Narayanaswamy, during his lifetime, settled Item 6 of the property by oral gift to the minor son of first Defendant had not been proved through cogent evidence. Therefore, the dismissal of suit with regard to Item No.6 by the learned Sub Judge was set right by the learned Principal District Judge, Krishnagiri by stating that the Plaintiff is entitled to 1/3rd share in the suit properties, including Item No.6 in which the TV Relay Station is functioning for which rent is paid. Therefore, the claim of the first Defendant that he had entered into lease agreement in continuation of the lease executed by the father of the Plaintiff and first Defendant Narayanasamy to TV Relay Station and he had executed lease deed only as the guardian of the minor was rejected by the learned Principal District Judge, Krishnagiri.

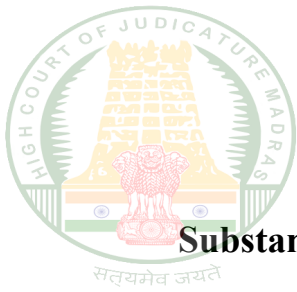
34. In the light of the above discussions, the substantial questions of laws are answered as follows:

Substantial Question of Law-1:

The Plaintiff is entitled to a decree for partition without proving the factum of marriage between the Plaintiff's mother and Narayanasamy. **The Substantial Question of Law-1 is answered in favour of the Plaintiff.**

Substantial Question of Law-2:

The marriage between Ponnammal and Narayanasamy cannot be presumed merely by stating that they were living for a long period. **The**



Substantial Question of Law-2 is answered against the Plaintiff.

WEB C Substantial Question of Law-3 :

In the light of the above discussion, the relationship between the mother of the Plaintiff and Narayanasamy was voidable marriage. Therefore, she is not the legitimate daughter of Narayanasamy. **The Substantial Question of Law-3 is answered against the Plaintiff.**

Substantial Question of Law-4:

In the light of the above discussion, the property left intestate by Narayanasamy was treated as his separate self-acquired property. **The Substantial Question of Law-4 is answered in favour of the Plaintiff.**

Substantial Question of Law-5:

In the light of the above discussion, the Plaintiff irrespective of her status whether she is legitimate or otherwise, she has proved her parentage by furnishing her School Certificate where the name of her father is mentioned as Narayanasamy. Also in the course of evidence, it is proved that the mother of the Plaintiff is none other than the sister of the first Defendant's mother. Both the mother of the Plaintiff and the mother of the first Defendant are sisters. In the course of the evidence, it is proved that the mother of the Plaintiff originally married one Muthusamy Gounder and there had been misunderstanding between them and in the Village Panchayat held by elders their marriage was annulled as per the rights and customs of the parties

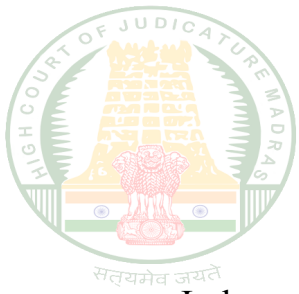


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concerned and the thali – sacred thread tied on the neck of the Plaintiff's mother was removed and handed over to Muthusamy Gounder. Thereafter, she developed relationship with Narayanasamy, who is her brother-in-law, sister's husband. Since Narayanasamy did not have children through his first wife, he co-habited with the mother of the Plaintiff and the Plaintiff was born. After the birth of the Plaintiff, after five years only, a child was born to the first wife of Narayanasamy who is the first Defendant. Under those circumstances, both the Plaintiff and the first Defendant are entitled to partition as per Section 6 of the Hindu Marriage Act (amended Act) where the disqualification of the illegitimate child had been removed. The mother of the Plaintiff alone cannot seek partition. Therefore, the judgment of the learned Sub Judge granting preliminary decree for partition to the Plaintiff is found proper. The Plaintiff is entitled to partition. **The Substantial Question of Law-5 is answered in favour of the Plaintiff and against the first Defendant.**

In the result, **this Second Appeal is dismissed.** The Judgment and Decree dated 03.07.2017 made in A.S. No. 46 of 2016 on the file of the Principal District Judge, Krishnagiri, confirming the Judgment and Decree dated 21.12.2015 made in O.S. No. 38 of 2004 on the file of the Additional Special Judge, Krishnagiri is upheld. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.



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Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
stn/srm/dh

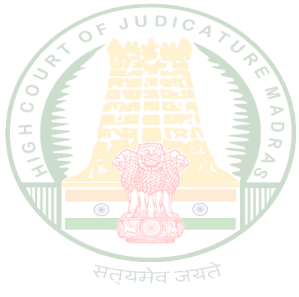
SATHI KUMAR SUKUMARA KURUP, J

stn/srm/dh

To

1. The Principal District Court,
Krishnagiri.
2. The Additional Special Court,
Krishnagiri.
3. The Assistant Engineer,
Doordarshan T.V. Relay Centre,
Krishnagiri.
4. The Special District Revenue Officer,
N.H.46, Jakkappan Nagar,
Krishnagiri 635 001.
5. The Special Thasildar,
(Land Acquisition)
Krishnagiri.
6. The Section Officer,
V.R. Section,
High Court, Madras

Judgment made in
S.A. No.811 of 2017



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