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AS Nos.34 & 922 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2025

CORAM

**THE HONOURABLE MRS JUSTICE J. NISHA BANU
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**AS Nos.34 & 922 of 2024
and
CMP NO.24477 OF 2024**

A.S.No.34 of 2024:

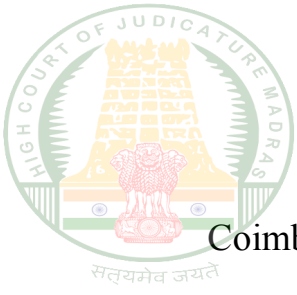
1.Nirmala
W/o.P.Soundararajan,
60, Patel Street, Veeriyampalayam, Coimbatore-641048
Address for communication
74, Sivasakthi Nagar, Thudiyalur Road, Saravanampatti,
Coimbatore-641035

2.Ashwatth Krishna
S/o.P.Soundararajan,
60, Patel Street, Veeriyampalayam, Coimbatore-641048
Address for communication
74, Sivasakthi Nagar, Thudiyalur Road, Saravanampatti,
Coimbatore-641035

Appellant(s)

Vs

1.P.Soundararajan
S/o.P.Soundararajan,
60, Patel Street, Veeriyampalayam, Coimbatore-641048
Address for communication
74, Sivasakthi Nagar, Thudiyalur Road, Saravanampatti,



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Coimbatore-641035

2.P.Durairaj

S/o.R.Purushothaman, C/o.B.Sathish Kumar,
East Thottam, Veerampalayam, Kalapatti Post,
Coimbatore-641048

Respondent(s)

A.S.No.922 of 2024:

1.P.Soundararajan

S/o. R.Purushothaman

No. 60, Patel Street, Veeriyampalayam, Coimbatore 641 048

Communication Address, 74, Sivasakthi Nagar, Thudiyalur

Road, Saravanampatti, Coimbatore 641 035

Appellant(s)

Vs

1.P.Durairaj

S/o. R.Purushothaman

C/o. Sathish Kumar, East Thottam Veerampalayam,
Kalapatti Post, Coimbatore 641048

2.S.Nirmala

W/o. P.Soundararajan,

No.60, Patel Street, Veeriyampalayam, Coimbatore 641 048

3.Ashwatth Krishna

S/o. P.Soundararajan

No. 60, Patel Street, Veeriyampalayam, Coimbatore 641 048

Communication Address 74, Sivasakthi Nagar,

Thudiyalur Road, Saravanampatti, Coimbatore 641 035



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Respondent(s)

PRAYER in AS No. 34 of 2024:

First Appeal filed under Section 96 CPC r/w Order XLI Rule 1 of CPC r/w Order IV Rule 4 of the Madras High Court Appellate side Rules, 1965, to call for the records and set aside the judgment and decree dated 25.09.2023 passed in O.S.No.302 of 2017 on the file of the IV Additional District Judge, Coimbatore.

PRAYER in AS No. 922 of 2024:

First Appeal filed under Section 96 CPC r/w Order XLI Rule 1 of CPC r/w Order IV Rule 4 of the Madras High Court Appellate side Rules, 1965, to call for the records and set aside the judgment and decree dated 25.09.2023 passed in O.S.No.302 of 2017 on the file of the IV Additional District Judge, Coimbatore.

AS No. 34 of 2024:

For Appellant(s): Nirmala (Party-in-Person)



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For R1: P.Soundararajan (Party-in-Person)
For R2: Mr.L.K.Manjunath

AS No. 922 of 2024:

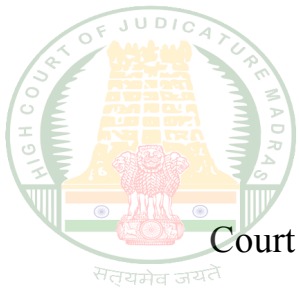
For Appellant(s): P.Soundararajan (Party-in-Person)
For R1: Mr.L.K.Manjunath
For RR 2 and 3: Nirmala (Party-in-Person)

COMMON JUDGMENT
(Delivered by M.Jothiraman J.)

Unsuccessful defendants 2 and 3 have preferred the appeal in A.S.No.34 of 2024 and the plaintiff has preferred the appeal in A.S.No.922 of 2024.

2. The parties are referred to as per their rankings in the trial Court.

3. The suit is filed for partition of the property into two equal shares and allot them to the plaintiff and first defendant each. The trial



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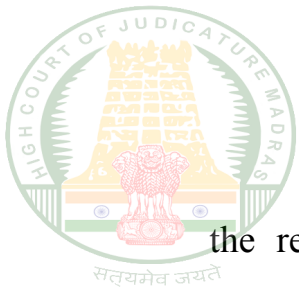
Court has passed a preliminary decree for partition.

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4. The brief case of the plaintiff is as follows:

4.1 The defendants 1 to 3 are the brother, wife and son of the plaintiff, respectively. The suit property is consisting of land and building. The land measuring to an extent of 19 cents and 348 sq.ft.

4.2 The suit property originally belonged to Dharman Perumal, the great grandfather of the plaintiff. He left behind his only son Raju Naidu to succeed the property. On the death of Raju Naidu, his two sons Purushothammn and Venugopal succeeded the suit property and when Venugopal released his share in the property in favour of his brother Purushothamman on 09.06.1998, the plaintiff's father Purushothamman became the sole owner of the suit property. The said Purushothamman purchased an extent measuring 5 cents 431 sq.ft. of vacant land under registered sale deed dated 22.11.1972. Subsequently, Purushothamman settled the said extent of land in favour of the plaintiff through a registered settlement deed dated 28.01.2008. The plaintiff, in turn, settled the said property in favour of his wife and son, second and third defendants under



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the registered settlement deed dated 30.08.2014. Purushothamman died intestate on 29.01.2015 leaving behind the plaintiff and first defendant as Class I legal heirs. The plaintiff's mother died intestate on 20.02.2017. Thus, the plaintiff and the first defendant are entitled for $\frac{1}{2}$ share each in the suit property. The plaintiff filed a suit in O.S.No.1691 of 2014 to declare that there was an oral partition and that the plaintiff was entitled to a particular portion of the property. The first defendant and his father directed the plaintiff to withdraw the suit and have a regular partition itself. The suit in O.S.No.1691 of 2014 was dismissed as steps were not taken to recognize the legal representatives. After the death of plaintiff's father and mother, which has gained rise to fresh cause of action, the suit is filed seeking partition by meets and bounds.

5. The brief case of the first defendant is as follows:

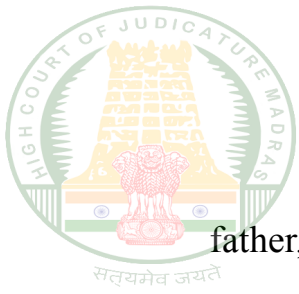
The plaintiff's father Purushothamman had purchased the property measuring to an extent of 5 cents 431 sq.ft., but, the first defendant did not admit that his father had settled the said property in favour of the plaintiff and in turn, the plaintiff had settled the property in favour of the second and



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third defendants. It is false to state that there is a common pathway in the suit property. The defendants 2 and 3 have no right of title over the the suit property and that they are not in joint possession of the suit property at any point of time. The first defendant never permitted anyone to use any portion of the suit property as pathway at any point of time. In such circumstances, the plaintiff filed a suit in O.S.No.1691 of 2014 on the file of the Principal District Munsif Court, Coimbatore, against the the first defendant and his father Purushothamman, for declaration that the plaintiff is the absolute owner of the particular portion of the suit property, as if, the plaintiff, first defendant and their father had orally partitioned the suit property. Contrary to the stand taken in the above suit in O.S.No.1691 of 2014, the plaintiff now contended that the said suit was filed based on an oral arrangement to divide the suit property. The plaintiff had filed another suit in O.S.No.2435 of 2014 on the file of the Principal District Munsif Court, Coimbatore, against the first defendant and his father for permanent injunction. In that suit also, the plaintiff took the very same stand that the suit property had been orally divided between the sharers. During the pendency of the above suits, the said Purushothamman died on 29.01.2015. After the death of his



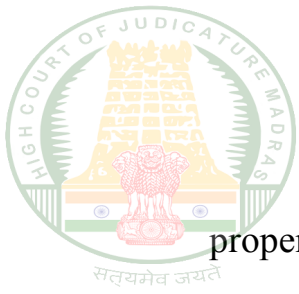
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father, the plaintiff has filed an application in O.S.No.1691 of 2014 seeking leave of the Court to withdraw the suit with liberty to file a fresh suit on the same cause of action, but, the Court dismissed the said application after contest. In the meantime, the second defendant had filed a suit in O.S.No.4 of 2016 on the file of the I Additional District Munsif Court, Coimbatore, against the first defendant and his mother Savithri for declaration and permanent injunction, with regard to common pathway. The plaintiff has no right to create a pathway in the suit property to anyone without the consent of the other co-owners. The above suit has been filed by the plaintiff and the defendants 2 and 3 with an intention to grab a specific portion of the suit property under the guise of pathway. After filing of the suit in O.S.No.1691 of 2014, the mother of the plaintiff died on 20.02.2017. After the death of his mother, the first defendant and the plaintiff have $\frac{1}{2}$ share each over the suit property. Since, there is no cause of action in the suit, the first defendant prayed to dismiss the suit.

6. The brief case of the defendants 2 and 3 is as follows:

The defendants 2 and 3 contended that their property abuts the suit

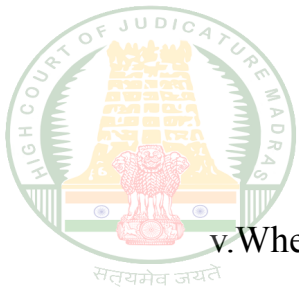


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property on the North and the property of the defendants had access from North-South panchayat road and goes East to reach their property. The passage commence with 16 feet width at Western point and as it goes East, the total width is 30 feet and it is the access for the plaintiff's family property on the further east. The said passage is the only access to the defendants 2 and 3 by way of easement of necessity. The suit property is an ancestral property and hence, without delineating the passage no decree can be passed.

7. Based on the pleadings, the trial Court framed the following issues:

- i. Whether the suit property is the joint family property of the plaintiff and first defendant?
- ii. Whether the plaintiff is entitled to $\frac{1}{2}$ share as claimed by him?
- iii. Whether the suit is maintainable, when another suit filed by the plaintiff in O.S.No.1691/2014 is pending, as alleged by the first defendant?
- iv. Whether the property has not been described property as alleged by the second and third defendant?



v. Whether the plaintiff is entitled to the preliminary decree for partition?

vi. To what other reliefs?

8. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and Exs.A1 to A5 were marked. On the side of the defendants, the first defendant examined himself as DW1, the second defendant was examined as DW2 and third defendant was examined as DW3 and Exs.B1 to B9 were marked.

Findings of the trial Court:

9. The first defendant admitted that by virtue of a release deed in Ex.A1, his father has got the title over the suit property and his father had purchased the property to an extent of 5.43 cents and by virtue of the sale deed, the same had been settled in favour of the plaintiff under Ex.A2. During the lifetime of Purushothamman, no partition had taken place, but, after the death of their mother the plaintiff and the first defendant are entitled to succeed the suit property as Class I heirs.

10. The defendants 2 and 3/appellants in A.S.No.34 of 2024, who appeared in-person, would submit that the trial Court has not considered



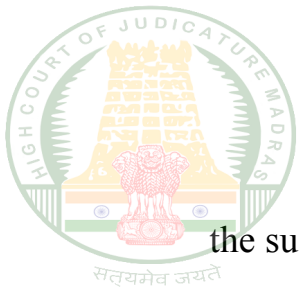
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their specific plea that the common pathway in the suit property is the only access to their individual property of 5.431 cents abuts on the Northern of the said pathway. The trial Court ought to have excluded the area of pathway in the suit property from partition of the suit property. With regard to the pathway, the defendants also pleaded in their written statement that the pathway in the suit property is the only access to their property by easement of necessity. The plaintiff's father executed the settlement deed dated 28.01.2008 in favour of the plaintiff and in turn, the plaintiff has executed the settlement deed dated 30.07.2014 in favour of the defendants 2 and 3 and that they did not have alternative pathway to access their property so the pathway in the suit property should be set apart from partition of the suit property. Though the trial Court has framed one of the issues that whether the property has not been described property as alleged by the second and third defendants, but, the same was not discussed or answered in the preliminary decree. The trial Court also failed to consider the evidence adduced by DW3 and has passed an erroneous decree, which is not sustainable under law.



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11. The plaintiff/appellant in A.S.No.922 of 2024 would submit that the title of the second and third defendants in 5.431 cents is not in dispute. The pathway rights in the suit property to access 5.431 cents property is transferred through the settlement deed. Section 19 of the Indian Easement Act, 1882, deals with the transfer of an easement, when dominant heritage (the land benefiting from the easement) is transferred. Therefore, the rights of second and third defendants to use the pathway in suit property is established through the settlement deed dated 30.07.2014 by the plaintiff and it cannot be denied either by the first defendant or by the trial Court. The trial Court though observed that the common pathway has been used by the second and third defendants, but, failed to observe to exclude the pathway in the suit property from partition. The first defendant has not proved the existence of alternative pathway to access the property of second and third defendants. There is no record of any suit or objection raised by the plaintiffs' father Purushothamman or the father of Purushothamman viz. Raju Naidu or Purushothamman's brother Venugopal against the easementary rights of Purushothamman in the pathway in the suit property to access the property measuring 5.431 cents, which abuts on the North of



the suit property.

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12. *Per contra*, the learned counsel appearing for the respondent/first defendant would submit that there is no common pathway in the suit property and as such, question of ingress and egress through the alleged common pathway never arises at all. Even assuming without admitting that there exists a common pathway in the suit property, there is no document to establish that it is the only access to reach the property of the defendants 2 and 3. The plaintiff cannot prefer this appeal to delineate the pathway, as the same could be done only after passing the final decree. The second defendants has got no legal footage to claim any right whatsoever including the alleged common pathway, since she is not entitled for any relief in the capacity of wife of the plaintiff. The first appellant does not fall under Class I legal heir and as such, she cannot make any claim as a matter of right pertaining to the suit property in any manner. The plaintiff ought not to have filed the suit in O.S.No.302 of 2017, since the claim of the second defendant in O.S.No.4 of 2016 are similar in nature and as such, the suit is barred by doctrine of *res judicata*.

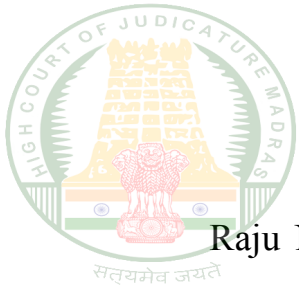


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WEB COPY 13. We have considered the submissions made on either side and perused the materials available on record.

14. The point for determination that arises in these appeals is whether there is a existence of common pathway in the suit property to reach the property settled in favour of the second and third defendants by the plaintiff and whether the common pathway delineated from the preliminary decree of partition?

15. Both appeals have arisen out of the judgment and decree dated 25.09.2023 passed in O.S.No.302 of 2017. The entire gamut of the suit has been emanated out of the suit schedule property mentioned in the plaint measures to an extent of 19.348 cents. The plaintiff and the first defendant are brothers. It is not in dispute that the suit property originally belonged to one Dharman Pillai and Dharman Pillai had one son viz. Raju Naidu and



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Raju Naidu had two sons viz. Purushothamman and Venugopal. Upon the demise of Raju Naidu, his legal heirs Purushothamman and Venugopal inherited the suit property. Venugopal had executed a release deed dated 09.06.1998 giving up his share of property in favour of Purushothamman and therefore, he became the absolute owner of the suit property. The said Purushothamman is the father of the plaintiff and the first defendant, who died on 29.01.2015. Purushothamman had purchased a property to an extent of 5.431 cents under a registered sale deed in the year 1972 and thereafter, the said property was settled in favour of his son Soundarrajan/plaintiff during the year 2008. In turn, the plaintiff/Soundarrajan had settled the property in favour of his wife/Nirmala/second defendant and his son/Ashwathth Krishna/third defendant. In furtherance to the death of Purushothamman, mother of the plaintiff and Durairaj/first defendant died on 20.02.2017.

16. It is the specific case of the plaintiff that the plaintiff's father Purushothaman purchased 5.431 cents under the registered sale deed dated 22.11.1972. Subsequently, Purushothaman settled the said extent of land in



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favour of the plaintiff by registered settlement deed dated 28.01.2008 and the plaintiff in turn settled the said property in favour of his wife and son, second and third defendants, under the registered settlement deed dated 30.08.2014. The second and third defendants are made as formal parties in the suit, as they are entitled for the common pathway in the suit property.

17. It is not in dispute that the plaintiff/Soundarrajan prior to the institution of the suit in O.S.No.302 of 2017, he had filed a suit in O.S.No.1691 of 2014 to declare that there was an oral partition and that he was entitled for particular portion of the property, Subsequently, on the insistence of the first defendant, his father directed the plaintiff to withdraw the suit and the same was withdrawn on 29.04.2021.

18. According to the defendants 2 and 3 to exclude or set apart the area of pathway in the Northern part of the suit property with measurements 16 feet width North-South on West, 83 feet length West-East on North, 30 feet width North-South on East, 90 feet length West-East on South from partition of the suit property, as they are granted rights in the pathway in the suit property by easement of necessity to access their property measuring



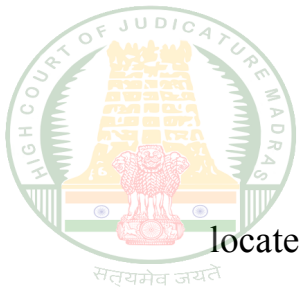
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5.431 sq.ft. When existence of alternative pathway to access the property belongs to second and third defendants has not been proved, the trial Court cannot pass decree to partition the entire area of the suit property including the area of pathway in the suit property, in which, the second and third defendants have easementary rights to access their property. It is their specific case that the pathway in the suit property exists in predecessors in title in the suit property. There is no record in the suit or objection raised by Purushothaman's father Raju Naidu or Purushothaman's brother Venugopal against easementary right of Purushothamman in pathway in the suit property.

19. It is the specific case of the contesting first defendant that there never existed any common pathway in the suit property.

20. On perusal of Ex.A3 settlement deed dated 30.07.2014 executed by Purushothamman in favour of his son Soundararajan/plaintiff, there is a mention about pathway to reach the property of 5.431 cents. As per the recitals mentioned in the settlement deed in 5.431 cents is not



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located on any public road or have direct access from the public road.

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21. It is a well settled principle of law that a wife cannot make any claim in a suit for partition in a coparcenary property and she is entitled only for possessory and enjoyment right.

22. A preliminary decree determines the rights and interests of the parties, but, does not completely dispose of the suit.

23. It is also to be noted that the claim sought by the second and third defendants for partition in O.S.No.302 of 2017 and O.S.No.4 of 2016 are similar in nature. However, the said suit in O.S.No.4 of 2016 on the file of the I Additional District Munsif Court, Coimbatore, is pending.

24. The second defendant is not a coparcener/legal heir of the deceased Purushothaman as per the Hindu Succession Act, 1956. She

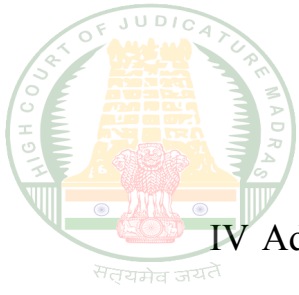


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neither can dispute nor resist any part of the share pertaining to the suit property. Even assuming without admitting that there existed a common pathway in the suit property, the same can be raised only by the plaintiff, who is the brother of the first defendant. The question of demarcating the property and ascertaining the preliminary decree passed and the rights of the parties can be adjudicated only upon passing a final decree. Since the preliminary decree is passed it is left open to the second and third defendants and the plaintiff to raise their objections in final decree proceedings upon obtaining report from an Advocate Commissioner.

25. In light of the above discussions, we do not find any reasons to interfere with the impugned judgment and decree of the Court below. The points are answered accordingly.

In the result, both appeals are dismissed by confirming the judgment and decree dated 25.09.2023 passed in O.S.No.302 of 2017 on the file of the



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IV Additional District Judge, Coimbatore. No costs. Connected C.M.P. is

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(J.N.B., J.)(M.J.R., J.)
01.08.2025

nsd
Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No

To

The IV Additional District Judge,
Coimbatore.

J.NISHA BANU J.
AND



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nsd

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01.08.2025