

S.A.No.92 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED :20.02.2025

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.92 of 2025
and
CMP.No.2582 of 2025

1.A.Krishnan
2.A.Rajendran

...Appellants

Vs

1.Kalyani
2.Devi
3.Chinnapappa
4.Vijayalakshmi

... Respondents

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree of the learned Principal District Judge, Krishnagiri dated 12.06.2017 in A.S.No.4 of 2017 partly allowing the first appeal and modifying the judgement and decree of the learned Subordinate Judge of Krishnagiri dated 28.03.2016 in O.S.No.140 of 2012.



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For Appellant : Mr.V.Nicholas

JUDGEMENT

The appellants have filed this Second Appeals against the judgment and decree dated 12.06.2017 passed in A.S.No.4 of 2017 partly allowing the first appeal and modifying the judgement and decree of the learned Subordinate Judge of Krishnagiri dated 28.03.2016 in O.S.No.140 of 2012.

2. Heard, Mr.V.Nicholas, learned counsel for the appellants and perused the material available on record.

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

4. The appellants herein are the defendants 1 & 2 in Suit O.S. No. 140 of 2012 on the file of the Principal Subordinate Court, Krishnagiri, filed by the respondents 1 to 3 / plaintiffs, claiming relief of partition and praying to



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divide and allot one-sixth share in the suit properties against three defendants, who are the appellants herein.

5. The case of the plaintiffs is that the suit properties are joint family properties belonging to one Andiappa Mudaliar, who had four daughters and two sons. There was no partition during his lifetime, and he passed away intestate in the year 1980. The plaintiffs claim that their father enjoyed the properties as the *Karta* of the joint family and, after his demise, they along with the other legal heirs demanded a partition. As the defendants were not inclined to do so, they filed the present suit.

6. The first and second defendants, who are the sons of Andiappa Mudaliar, contested the suit. They admitted the relationship and also that the suit properties are ancestral properties. However, they contended that the properties were already orally partitioned 25 years ago and that patta had also been issued in their names. Therefore, they argued that the properties are no longer joint family properties. They further contended that all the daughters, including the plaintiffs, were married long ago and, hence,



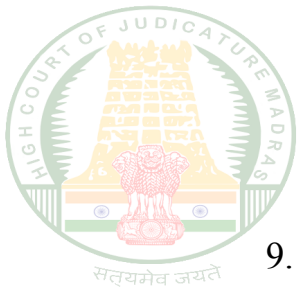
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the Hindu Succession (Amendment) Act, 2005 would not apply to them.

Accordingly, they denied the plaintiffs' right and claim over the suit properties.

7. Before the trial court, both the parties adduced oral and documentary evidence. On the side of the Plaintiffs, 2nd plaintiff was examined as PW-1 and Ex.A1 to ExA3 were marked. On the side of the defendants, 1st defendant was examined as DW-1 and another witnesses was examined as D.W.2 and Patta pass book stands in the name of 1st and 2nd defendants were marked as Ex.B1 & B2.

8. After considering the entire evidence on record, the trial court held that, as per Ex.A2 (legal heir certificate), the plaintiffs and defendants are the legal heirs of Andiappa Mudaliar. However, since the plaintiffs got married long ago, prior to the Tamil Nadu State Amendment Act dated 25.03.1989, they are not entitled to the benefit of the amendment. Only females who got married after 25.03.1989 would be eligible to get an equal share. Therefore, the plaintiffs were held not entitled to an equal share.



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9. The plaintiffs, however, contended that as per the amendment to the Hindu Succession Act (Act 39 of 2005), daughters are equally entitled to a share as that of sons. It was argued that if any partition was effected prior to 20.12.2004, it shall not be affected by the amendment. The trial court, considering this, observed that though Ex.B1 and B2 (revenue records) stand in the names of D1 and D2, these documents only show that after the death of Andiappa Mudaliar on 04.07.1980, mutation of records was effected. The court found that the defendants had not proved the alleged oral partition with any substantial evidence.

10. Since the plaintiffs were married before the 1989 Amendment, they are not entitled to claim an equal share with the sons. However, the court held that the suit properties are ancestral properties in which the first and second defendants and their father were each entitled to 1/3rd share. In the 1/3rd share that belonged to the father, all his legal heirs are entitled to an equal share. As there are six legal heirs in total, the plaintiffs were held entitled to 1/18 th share each in the suit properties. Accordingly, the suit was decreed granting a 1/18th share collectively to the plaintiffs.

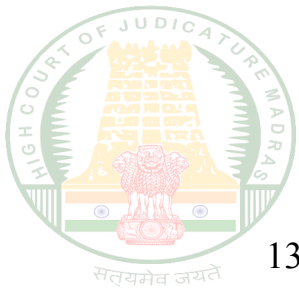


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11. Challenging the said findings, A.S. No. 4 of 2017 was filed, wherein the learned first appellate judge confirmed the findings of the trial court, with a modification in respect of the relief of permanent injunction, which was dismissed. Aggrieved by the concurrent findings, the 1st and 2nd defendants preferred this second appeal.

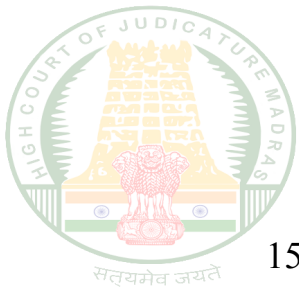
12. The learned counsel for the appellants submitted that the daughters of Andiappa Mudaliar were married long ago and that the properties had already been partitioned after his death between the sons. However, the courts below failed to properly appreciate the documents produced by the defendants and erroneously granted a share to the plaintiffs. It was also argued that as per the oral partition, D1 and D2 alone have been enjoying the properties, and the plaintiffs were out of possession. Therefore, it was contended that the court fee paid by the plaintiffs was incorrect, and on that ground alone, the findings of the courts below ought to be set aside.



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13. Upon a perusal of the records, it is evident that the plaintiffs, being the daughters of Andiappa Mudaliar, filed a suit for partition claiming a share in the joint family properties. The defendants admitted the relationship and the nature of the properties but contended that there was an oral partition. To prove the same, they relied upon revenue records (patta) standing in their names.

14. The courts below rightly held that the plaintiffs got married long before the 1989 Amendment, and thus, they are not entitled to the benefit of the Hindu Succession (Amendment) Act, 2005. However, since the father died intestate and his one-third share devolves equally among his heirs (six in total), each plaintiff is entitled to a 1/18th share. The defendants failed to prove the oral partition with any material evidence other than the revenue records. Therefore, the findings of the courts below in granting the plaintiffs a limited share are correct. However, the relief of permanent injunction against co-sharers is not sustainable and was rightly dismissed by the first appellate court.



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15. Hence, the findings of the courts below do not warrant any interference. Accordingly, the second appeal is dismissed as devoid of merit as no substantial question of law involved. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

16. If any final decree application is filed, the trial court is directed to dispose of the same within five months from the date of receipt of a copy of this order, without granting any unnecessary adjournments.

20.02.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

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

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