



AS.(MD)Nos.35 and 43 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON: 28.02.2025
JUDGMENT PRONOUNCED ON: 17.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

AS.(MD)Nos.35 and 43 of 2006

A.S.(MD)No.35 of 2006

K.S.V.Nataraja Nadar (died)

1.N.Parthasarathy

3.M/s.Chitrakala Litho Works,

a Partnership Firm rep. by its

Managing Partner K.S.V.Nataraja Nadar (Died)

rep. by its L.Rs. and succeeding partners

having office at 3/632-A, Sattur Road,

Sivakasi.

4. N.Nagalakshmi (died) Appellants/defendants 1,2,4 & 5

(4th appellant's legal heirs were already
on record)

(Appellants 2,6 to 8 are transposed
as Respondents 4 to 7

5.D.Rajamalliga (Died)

6.D.Rajagopalan

7.Arunmoli Nangai

(Appellants 6 and 7/LRs of the deceased 5th appellant
are suo motu impleaded vide Court order dated 28.02.2025)

Vs.



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1.Tmt.Durga

2.Vairameena

3.Sasikala

..Respondents/plaintiffs

4.Sivaprakasam

5.P.Premavathy

6.C.Kalanidhi

7.P.Umadevi

(Appellants 2, 6 to 8 are transposed as

Respondents 4 to 7 vide common order

dated 18.11.2024)

... Respondents 4 to 7

PRAYER : Appeal is filed under Section 96 of Civil Procedure Code, to set aside the decree and common judgment made in O.S.No.5 of 2004, on the file of the Principal District Court, Virudhunagar District at Srivilliputtur, dated 29.09.2004.

For appellants : Mr.A.Arivuchandran

For R1 to R3 : M/s.P.Malini

For R4 to R7 : Mr.J.Barathan

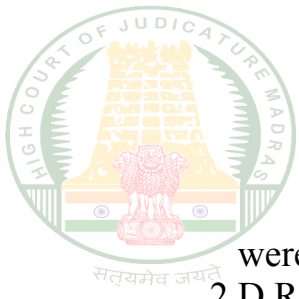
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K.S.V.Nataraja Nadar (died)

1.N.Nagalakshmi (died)

(first appellant's legal heirs

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were already on record)

2.D.Rajamalliga (died)

3.N.Parthasarathy

(Appellants 4 to 7 are transposed as
respondents 7 to 10)

4.D.Rajagopalan

5.Arunmoli Nangai

... Appellants

(Appellants 4 & 5/LRs of the deceased
2nd appellant are suo motu impleaded
vide Court order dated 28.02.2025)

Vs.

1.Tmt.Durga

2.Vairameena

3.Sasikala

..Plaintiffs/Respondents

4.Superintending Engineer,
Tamilnadu Electricity Board
at Mallankinaru Road,
Virudhunagar.

5.Assistant Engineer,
Tamil Nadu Electricity Board,
Sivakasi Town,
Thiruthangal Road,
Sivakasi East.

6.Commissioner,
Sivakasi Municipality,
Sivakasi.

... Respondents/Defendants 1 to 3
and 5 to 7

7.P.Premavathy

8.N.Sivaprakasam

9.C.Kalanidhi

10.P.Umadevi

(Respondents 4 to 7 are transposed as
respondents 7 to 10 vide common order
dated 18.11.2024)



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PRAYER : Appeal is filed under Section 96 of Civil Procedure Code, to set aside the decree and common judgment made in O.S.No.6 of 2004, on the file of the Principal District Court, Virudhunagar District at Srivilliputtur, dated 29.09.2004.

For appellants	: Mr.A.Arivuchandran
For R1 to R3	: M/s.P.Malini
For R4 & R5	: Mr.M.Mohan Babu
For R6	: Mr.N.Dilip Kumar
For R10	: Mr.J.Barathan

JUDGMENT

(Judgment of this Court was delivered by **M.JOTHIRAMAN, J.**)

The unsuccessful defendants in O.S.No.5 of 2004 have preferred the appeal in A.S.(MD)No.35 of 2006. The unsuccessful plaintiff in O.S.No.6 of 2004 has preferred the appeal in A.S.(MD)No.43 of 2006.

2. The suit in O.S.No.5 of 2004 has been filed for seeking partition claiming 1/4th share in the suit schedule property and the suit in O.S.No.6 of 2004 has been filed for partition claiming 1/2 share in the suit schedule property. The trial Court decreed the suit in part in O.S.No.5 of



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2004 and thereby, allotted 1/4th undivided share in the item No.2 to 5 of 'A' schedule and 1/4th undivided share from the 1/3rd share belongs to the 1st defendant's family in the item No.1 of 'A' schedule and the 'B' schedule. The suit in O.S.No.6 of 2004 is dismissed.

3. The brief case of the plaintiff in O.S.No.5 of 2004 is as follows:-

The first plaintiff is the wife of the deceased Manoharan. The defendants 2 & 3 are brothers of the said Manoharan. The first defendant is the father of the deceased Manoharan and the defendants 2 & 3. The plaintiffs 2 & 3 are the children of the deceased Manoharan. The deceased Manoharan and the defendants 1 to 3 are living as Hindu Joint family and the first defendant was acting as a Kartha of the family. As a kartha of the family, the first defendant has purchased the properties out of income derived from the joint family and administered the same. The husband of the first plaintiff is entitled to 1/4th share in the suit schedule properties. Initially, though the first defendant was inclined to give 1/4th share and subsequently, he was evaded to do so. Hence, the suit.

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4. The brief case of the defendants 1 to 3 is as follows:-

(i) The suit schedule properties are not purchased out of the income derived from the joint family. The suit first item of the property i.e., M/s.Chitrakala Litho Works had been started as a partnership firm by the defendants 1 to 3 along with K.S.V.Manickavasaga Nadar, R.Vivekanandhan, R.Janakarajan, Mrs.J.Kalavathi, M.Augustian and M.Rajarathinam, Late.Manoharan and N.Sridharan. The suit schedule machineries mentioned in the plaint schedule are also belonged to the partnership firm and not to the Hindu undivided family of the first defendant. The suit second schedule item was purchased by the first defendant on 09.12.1960 and it is a self acquired property of him. The first defendant alone built constructions and paid property tax also. The first defendant had executed a Will in favour of the second defendant and bequeathed the second item of the suit schedule property. The third item of the suit schedule properties is the ancestral property of the first defendant. The plaintiffs have undivided 1/4th share in the third item of the schedule property. The fourth item of the schedule property is the self acquired property of the first defendant.



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(ii) The first defendant has purchased the same under three documents in the year 1964, 1968 and 1974 respectively. The fifth item of the schedule properties was purchased by the first defendant under document No.693/68, dated 8.3.1968. The second, fourth and fifth items of the suit properties are self acquired properties of the first defendant. At the time of purchasing the above properties, the said late. Manoharan was a minor and there was no family business. The first plaintiff and late Manoharan are lived as a husband and wife in Nelson Compound, Gnanagiri Road, Sivakasi for a period of 14 years and after that in a house behind hotel Balakrishna for a period of 7 years. They were living in the first floor of second item of schedule property for the last four years only. The first plaintiff has constructed a building at a cost of Rs.25,00,000/- in the site owned by her husband and running a school. The defendants and the first plaintiff's husband late N.Manoharan started a family business in the name and style of M/s.Sri Sathyasai Process - K.S.V.Natarajan & Co in the year 1971. On 31.3.1996, the first defendant and the plaintiff's husband N.Manoharan retired from the firm and the first plaintiff's husband Manoharan started his own business in



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the name and style of M/s.Sai Graphics. After his demise, the plaintiffs have succeeded the same. The plaintiffs are out of possession of the suit schedule properties.

5. The brief case of the plaintiff in O.S.No.6 of 2004 is as follows:-

The plaintiff is the father-in-law of first defendant. The second and third defendants are his grand daughters and the fourth defendant is the mother-in-law of the first defendant. The plaintiff along with his three sons N.Parthasarathy, N.Sivaprakasam and N.Manoharan, who is the husband of the first defendant started business in the name and style of M/s.Sri Sathya Sai Process, K.S.V.Natarajan & Co. All the schedule mentioned properties in the plaint belongs to the firm. Item 3 of the schedule mentioned property is assessed in the name of the firm by fourth defendant. On 31.03.1996 a release deed was executed between plaintiff and first defendant's husband thereby, the plaintiff and the first defendant's husband retired from the firm. Thereafter, the plaintiff and the first defendant's husband were running offset printing business in item No.3 of the schedule of the property. The plaintiff have an

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undivided $\frac{1}{2}$ share in the said suit schedule mentioned properties. The plaintiff sent a legal notice to the defendants 1,6 & 7 on 25.09.1999 and on 5.10.1999 the plaintiff has sent a reminder notice to the sixth defendant. The plaintiff came to know that the first defendant had applied for new service connection in item No.3 of the schedule property in her name, where she is having only limited interest. Till date service connection is not disconnected, so the defendants 6 & 7 are impleaded in the suit to restrain them from effecting name transfer. Hence, the plaintiff is entitled for $\frac{1}{2}$ share in the suit schedule property.

6. The second defendant is the daughter of the first defendant has filed the written statement similar to the contentions raised by the first defendant.

7. Based on the above pleadings, the trial Court has framed as many as 8 issues in O.S.No.5 of 2004 and 12 issues in O.S.No.6 of 2004. Thereafter, the trial has recasted the issue in O.S.No.5 of 2004 is as follows:-

(i) Whether the plaintiff is entitled to $\frac{1}{4}$ th share?



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(ii) Whether the suit schedule 2,4 & 5 are the self acquired property of the first defendant.

(iii) Whether the M/s.Chitrakala Litho Works was run by the first defendant as a Kartha?

(iv) Whether the Court fee paid by the plaintiff is correct?

(v) What other relief entitled?

(vi) Whether the partition was effected when the Manoharan is retired from the partnership firm in M/s.Sri Satya Sai Process?

The following issues are framed in O.S.No.6 of 2004

(i) Whether the plaintiff is entitled 1/2 share

(ii) Whether the plaintiff is entitled to other relief sought for?

(iii) Whether the plaintiff has released his share to his son Manoharan after retiring from partnership firm in Sri Satya Sai Process by the plaintiff and the said Manoharan?

(iv) To what other relief?

8. The trial Court has conducted joint trial and recorded the evidence in O.S.No.5 of 2004. On the side of the plaintiff, the first



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plaintiff Tmt.M.Dura herself examined as P.W.1 and one S.Kaliyappa Nadar was examined as P.W.2 and Ex.A1 to Ex.A4 were marked. On the side of the defendants, the second defendant Thiru.N.Parthasarathy himself examined as D.W.1 and Ex.B1 to Ex.B17 were marked.

9. The Findings of the Trial Court:-

The fourth defendant firm belongs to Hindu Undivided Family and it was started out of the funds given by the first defendant's father Thiru.Vairamuthu Nadar. The suit schedule item Nos.2,4 & 5 were purchased out of money derived from the business of the Hindu Undivided Family i.e., in item No.3 of the suit property in 'A' schedule. Item No.3 of the suit property is an ancestral property and the same was obtained by way of partition held in the year 1945.

10. The points for determination arises in this appeal is that:

- i) Whether the plaintiffs are entitled for partition as prayed for in O.S.No.5 of 2004?
- ii) Whether the suit schedule 2,4 & 5 are self acquired properties of the first defendant?



iii) Whether the plaintiff is entitled for partition as prayed for in O.S.No.6 of 2004?

11. The learned counsel appearing for the appellant would submit that the first defendant in O.S.No.5 of 2004 ie., Nataraja Nadar was working as an Inspector in Customs and Excise Department. The said Nataraja Nadar along with his brothers Seeniyappa Nadar, Rajamanicka Nadar and Manickavasaga Nadar had started a partnership business in the name of M/s.Chitrakala Litho works in Ex.B2 in the year 1949. The said partnership firm i.e., 4th defendant firm has been started by them out of their independent capital. The first defendant and his brothers had some ancestral properties through their father Viramuthu Nadar and the same was partitioned under Ex.B16 partition deed dated 31.03.1945. The first defendant had purchased 'A' schedule item Nos.2,4 and 5 out of his self acquired income. The item No.1 of the 'A' schedule belongs to the fourth defendant's firm and item No.3 is the ancestral property of the first defendant. The plaintiff failed to establish that the fourth defendant's firm was started wholly out of the ancestral nucleus. The fifth defendant, who is the wife of the first defendant was not allotted with any share and the trial Court ought to have decreed the suit as 1/5th share. The



plaintiff is entitled to get share in the third item of the suit 'A' schedule property as the ancestral properties. He would submit that P.W.1 in her evidence admitted that the first defendant has other source of income and therefore, the plaintiff has failed to prove the existence of the joint family nucleus in formation of fourth defendant's firm.

12. The learned counsel appearing for the appellant further would submit that with regard to the suit in O.S.No.6 of 2004, the plaintiff namely K.S.V.Nataraja Nadar and his three sons started a business in the name and style of M/s.Sri Sathya Sai Process, K.S.V.Nataraja Nadar and Co., which was registered firm. Subsequently, a release deed dated 31.03.1996 was executed between the Nataraja Nadar and the first defendant's husband Late.N.Manoharan one part and the remaining two partners on the other. Therefore, K.S.V.Nataraja Nadar and his son Late.Manoharan retired from the firm and the suit schedule properties were given to their share. Thereafter, the Nataraja Nadar and Late. Manoharan started Offset Printing business in item No.3 of the suit schedule property and the above business was started by an oral partnership. He would submit that the first defendant's husband died



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intestate on 14.02.1998, therefore, partnership between the Late.Manoharan and the Nataraja Nadar dissolved. Hence, Nataraja Nadar got 1/2 share in the suit schedule property. The trial Court failed to consider the fact that due to old age of Nataraja Nadar, he was unable to adduce the evidence and dismissing the suit is unsustainable in law. To strengthen his contention, he has relied upon the judgment of Hon'ble Supreme Court of India reported in **(2003) 10 Supreme Court Cases 310, D.S.Lakshmaiah and another vs. L.Balasubramanyam and another** to show that on failure to establish the nucleus, held, burden of proof would remain on the person who asserts the property to be joint family property. He has also relied upon an another judgment of the Hon'ble Supreme Court of India reported in **(2020) 6 Supreme Court Cases 387, Bhagwat Sharan vs. Purushottam and others**, to show that the burden is on person who alleges existence of Hindu Undivided Family to prove the same. Unless, there is a material on record to show that the property is nucleus of joint Hindu family or that it was purchased through funds coming out of this nucleus. He would submit that the existence of Hindu Undivided Family not at all been proved by the plaintiff in O.S.No.5 of 2004.



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13. Heard the learned counsel appearing for the respondents. We have considered the submission made on either side and perused the records.

14. It is an admitted fact that the suit 'A' schedule item No.3 is ancestral property of the first defendant i.e., Nataraja Nadar. It is also not in dispute that suit 'A' schedule, item No.1 and suit 'B' schedule property are belongs to fourth defendant's firm ie., M/s.Chitrakala Litho Works. According to the defendants, the suit schedule item Nos.1,2,4 and 5 in 'A' schedule properties are self acquired properties.

15. According to the plaintiffs, suit 'A' schedule, item No.2 building purchased by obtaining loan and the same has been repaid out of income derived from the fourth defendants firm. 'A' schedule, item No.2 has been purchased out of income derived from 'A' schedule, item No.4 & 5. The first defendant has not purchased any property out of his own income. The first defendant is the Kartha of the joint family and the properties were purchased out of income derived from nucleus of the joint family.



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16. According to the defendants, fourth defendant's firm was started by the first defendant and his three brothers in the year 1949 and not belongs to joint family property of first defendant. P.W.2 who was son of the first defendant's brother Seeniyappa Nadar deposed that M/s.Chitrakala Litho Works and Rice Mill were started by the sons' of the Vairamuthu Nadar, namely Seeniyappa Nadar, Rajamanicka Nadar, Manickavasaga Nadar and Nataraja Nadar i.e., first defendant. The aforesaid firm and mill were started out of income derived from grocery and oil business run by the said Vairamuthu Nadar.

17. It is well settled that there is no presumption of a property being a joint family property only on account of existence of a joint Hindu Family. The burden lies on the person, who is asserting joint family nature of the property, to establish use of ancestral nucleus and if he proves that there was nucleus with which a property could be acquired, the burden shifts on the other side to prove that he purchased the property with his own funds and not out of the joint nucleus that was available.



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18. D.W.1-N.Parthasarathy deposed that he did not know how much money invested and who are all invested the amount to start the fourth defendant's firm. Admittedly, in the instant case on hand, the first defendant i.e., Nataraja Nadar did not enter into the witness box to depose evidence to prove as to how the Fourth defendant Firm was established and to speak about other details. D.W.1 has not explained as to why the first defendant has not chosen to enter into the witness box. Therefore, the initial burden lies on the plaintiffs was discharged. Onus shifts on the side of the defendants. D.W.1 has not denied the fact that the first plaintiff's husband as well as D.W.1's brother late Manoharan was one of the partner in the fourth defendant's firm till Manoharan's death. The first defendant and his brothers had some ancestral properties through their father Vairamuthu Nadar and the same was partitioned among themselves by way of a partition deed dated 31.03.1945 in Ex.A16.

19. A perusal of Ex.B16, there is no recitals about the monies were divided among brothers and also no mention about Vairamuthu Nadar's business details. The properties which said Vairamuthu Nadar



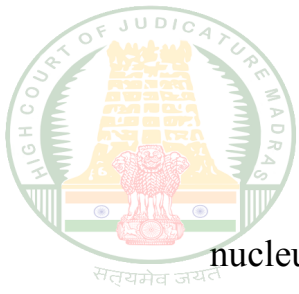
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and his wife Meenammal held life estate were also partitioned among his

sons by way of a supplementary deed dated 23.01.1980 in Ex.B17.

Ex.A2 is the partnership deed dated 26.08.1949, entered between Vairamuthu Nadar and Seeniyappa Nadar Vaigaiyara. In order to establish the fourth defendant firm is running by the first defendant and his two brothers alone, D.W.1 has not produced any document to that effect and not examined any witness in this regard. According to the defendants, the suit 'A' schedule item Nos.2,4,5 are purchased by the first defendant, out of his salary income drawn from fourth defendant firm. To prove the above said facts, D.W.1 has not chosen to produce relevant documents.

20. The first defendant and his three brothers started the fourth defendant firm in the year 1949. P.W.2 who was son of the first defendant's brother Seeniyappa Nadar spoke to the same. The defendants did not lead any evidence and the said fact stands un-rebutted. During cross-examination of P.W.2 not even suggestion put to him that the said statement is false. We are of the view that the first defendant became partner in the firm out of the money received from his father which form



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nucleus of the joint family, gains ancestral character. The fourth defendant firm was started by sons of Vairamuthu Nadar and new partners were inducted among the family members of the brothers of defendant No.1. Whenever one partner either retires or passed away, hence the Firm attain the character of Hindu Undivided Family. It is relevant to refer the judgment of Hon'ble Supreme Court reported in **2019(5) CTC 110** in the case of **Arshnoor Singh vs. Karpal Kaur and others**, wherein it has been held that " If succession opened under the old Hindu law, i.e., prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara Law. The property inherited by a male Hindu from his Paternal male Ancestor shall be Coparcenary property in his hands *vis-a-vis* his male descendants upto three degrees below him. The nature of property will remain as Coparcenary property even after the commencement of the Hindu Succession Act, 1956". In the instant case on hand, the first defendant has not shown any other income except the income derived from the fourth defendant Firm. D.W.1 in his cross-examination admitted that the fourth defendant Firm was started out of the money given by the father of the first defendant. Admittedly, the first defendant has not



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purchased any property before 1945 i.e., before starting of fourth defendant firm. The item Nos.2,4 & 5 though stands in the name of the first defendant, he had purchased out of the income from the fourth defendant firm. The first defendant failed to prove the other source of income if any in purchasing the said properties. The plaintiffs in O.S.No. 5/2004 have proved that there existed joint family with the first defendant as Kartha and he purchased the property out of the income derived from the fourth defendant firm, which started out of the ancestral nucleus.

21. The first defendant Nataraja Nadar died on 22.06.2005 and the daughters of the first defendant were impleaded as the appellants 5 to 8 in the appeals. The written arguments submitted by the plaintiffs/respondent 1 to 3 stated that the wife of the first defendant, the fourth appellant ie.,Nagalakshmi passed away pending appeal. The legal heirs of deceased Nataraja Nadar and deceased Nagalakshmi are already on record. The death of the Nagalakshmi has to be recorded in the cause title in these appeals.



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22. It is pertinent to mention that the original appellants namely P.Premavathy, N.Sivaprakasam, C.Kalanidhi and P.Umadevi have filed a petitions in C.M.P(MD)No.16395 of 2004 and 16396 of 2024 seeking to transpose them as respondents 4 to 7 in A.S(MD)No.35 of 2006 and respondents 7 to 10 in A.S(MD)No.43 of 2006. This Court by order dated 18.11.2024 allowed these petitions as prayed for. In the affidavit they have been stated that they were accepting the decree dated 29.09.2004 passed in O.S.Nos.5 & 6 of 2004, on the file of the Principal District Court, Virudhunagar since they do not want to prosecute the appeal and withdraw the same. We are of the view that since the daughters were accepted the decree and they are entitled share only on the 1/4th share of the father K.S.V.Nataraja Nadar along with sons. Hence, the plaintiffs, who being the wife and children of the deceased Manoharan entitled to undivided 1/4th share in the 'A' schedule items Nos.2 to 5. In respect of Item No.1 in 'A' schedule and 'B' schedule property belonged to the fourth defendant firm consisting of larger Hindu Undivided Family. Therefore, the plaintiffs are entitled to undivided 1/4th share in 1/3 share of the first defendant i.e., deceased K.S.V.Nataraja Nadar. Accordingly, it is necessary to modify the



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preliminary decree passed by the Court below. The points are answered accordingly.

23. In the result,

- a) Appeal in A.S(MD)No.35 of 2006 is dismissed.
- b) Appeal in A.S(MD)No.43 of 2006 is dismissed.

24. The preliminary decree passed by the Court below is modified in the following terms:-

i) The plaintiffs in O.S.No.5 of 2004 are entitled to 1/4th undivided share in the suit 'A' schedule item Nos.2 to 5 and they are entitled to 1/4th undivided share in 1/3rd of the deceased first defendant i.e., K.S.V.Nataraja Nadar in respect of item No.1 in 'A' schedule and 'B' schedule property belong to the fourth defendant firm.

iii) The sons and daughter of deceased Nataraja Nadar and deceased Nagalakshmi (including the legal heirs of deceased son Manoharan and deceased daughter Rajamalliga) are entitled share only on the 1/4th share of the deceased father K.S.V.Nataraja Nadar.



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iv) All other aspects the decree and judgment dated 29.09.2004 of
the Court below is confirmed. No costs.

(G.R.S., J.) & (M.J.R., J.)
17.04.2025

Index : Yes / No
Internet : Yes / No
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To
The Principal District Court,
Virudhunagar District at Srivilliputtur.



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G.R.SWAMINATHAN, J.
AND
M.JOTHIRAMAN, J.

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