

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 15.07.2025****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****AND****THE HON'BLE MR.JUSTICE K.RAJASEKAR****A.S.(MD)Nos.90 of 2013 & 65 of 2021 &
M.P.(MD)No.1 of 2013**A.S.(MD)No.90 of 2013

1. Tajunnisa Begum
2. Minor L.Osama
3. Minor K.Abdul

(Minor appellants 2 and 3 rep. by
their mother 1st appellant)

... Appellants / Plaintiffs

Vs.

1. S.Nagore Ghani
2. Rashida Begum
3. N.Fathima
4. N.Muthu
5. Minor N.Nisha
6. Minor N.Shahul Hameed
7. Amir Ghani
8. Mookkammal

9. Life Insurance Corporation of India,
Divisional Office, Jeevan Prakash,
Gandhiji Road, Thanjavur.

10. Life Insurance Corporation of India,
Unit II, Madurai Road,
Tiruchirappalli – 620 001.

11. Indian Overseas Bank,
Vayalur Road Branch,
Tiruchirappalli.



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12. Indian Overseas Bank,
Main Guard Branch,
Tiruchirappalli.

13. Vijaya Bank,
Salai Road Branch,
Tiruchirappalli.

14. Bank of Maharashtra,
Chinnakadai Street Branch,
Tiruchirappalli.

15. John Moses

16. Sumi Colour Galaxy,
No.153, ARV Complex,
Salai Road, Tiruchirappalli.

17. Reliable Gas Services,
No.10E/3, Sastri Road,
Tennur, Trichy-17,
By its Partners
ABK Moorthy and APK Ashok.

18. M/s.T.T.K.Prestige Limited,
K.S.R.Building, Ramamoorthy Nagar,
Chinthamani,
Tiruchirappalli – 620 002.

19. Victor

20. Masi

21. Muthu

22. Pitchaiammal

23. Pattayadar

24. Periyasamy

25. Mayavan

26. Alagesan

27. Prakash

... Respondents/ Defendants



Prayer: Appeal suit filed under Order XVI and Section 96 CPC, to call for the records of the judgment and decree dated 20.12.2012 made in O.S.No.28 of 2008 on the file of the II Additional District and Sessions Judge, Tiruchirappalli and set aside the same and to allow the appeal and decree the suit as prayed for in the plaint with regard to all the properties claimed and in regard to the consequential claim of reliefs and also with cost throughout.

For Appellants : Mr.J.Barathan,
for Mr.N.Sudhagar Nagaraj.

For R-1 to R-8 : Mr.J.Anandkumar

For R-9 & R-10 : Mr.C.Godwin

For R-12,R-13,
R-15,R-16,R-17 &
R-25 : No appearance.

* * *

A.S.(MD)NO.65 of 2021

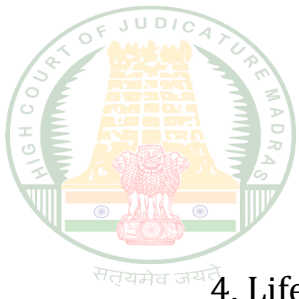
1. S.Nagoor Ghani
2. Rasheetha Begam
3. N.Fathima
4. N.Muthu
5. N.Nisha
6. N.Shahul Hameed
7. Amir Ghani
8. Mookkammal

... Appellants /Defendants 1 to 8
Vs.

1. Tajunnisa Begum
2. Minor K.Osama
3. Minor K.Abdul

(Minor respondents 2 and 3 are rep. By
their mother / first respondent Tajunnisa)

... Respondents 1 to 3 / Plaintiffs



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4. Life Insurance Corporation of India,
Divisional Office,
Thanjavur.
5. Life Insurance Corporation of India,
Unit Branch, Tiruchirappalli.
6. Indian Overseas Bank,
Vayalur Road Branch,
Tiruchirappalli.
7. Indian Overseas Bank,
Main Guard Branch,
Tiruchirappalli.
8. Vijaya Bank,
Salai Road Branch,
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9. Bank of Maharashtra,
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Chinthamani,
Tiruchirappalli.



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15. Masi
16. Muthu
17. Pitchaiammal
18. Pattayathar
19. Periyasamy
20. Mayavan
21. Alagesan
22. Prakash

... Respondents 4 to 22/
Defendants 9 to 27

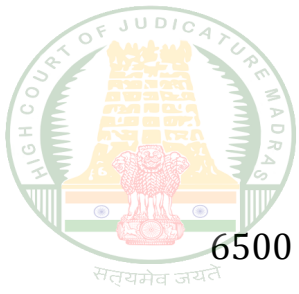
Prayer: Appeal suit filed under Order XVI and Section 96 CPC, to set aside the 1st item of “A” schedule property of the judgment and decree dated 20.12.2012 made in O.S.No.28 of 2008 on the file of the II Additional District and Sessions Judge, Tiruchirappalli and consequently allow the present appeal suit.

For Appellants	: Mr.J.Anandkumar
For R-1	: Mr.J.Barathan, for Mr.N.Sudhagar Nagaraj.
For R-4 & R-5	: Mr.C.Godwin
For R-7,R-20, R-10 to R-14, R-16 & R-19	: No appearance.

COMMON JUDGMENT

(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

These appeals arise out of a suit for partition laid in O.S.No.28 of 2008 on the file of the II Additional District and Sessions Judge, Tiruchirappalli.



6500 sq.ft. of the land together with constructed building thereon. In

the very same year, he executed Ex.B.1 dated 28.07.2004 settling

6500 sq.ft in favour of Nagoor Gani, elder son/D1. The daughters

Ameer Gani and Mookammal executed release deed Ex.B.8 in favour

of Nagoor Gani relinquishing their shares in the remaining extent of

land. Thereby, Nagoor Kani came to have title over 13,922.08 sq.ft. of

land. Nisha Begum passed away in 1993 itself. K.S.Hameed had

passed away on 26.02.2007. Kader Ismail, pre-deceased his father on

03.01.2007. Kadher Ismail's wife and sons are the plaintiffs in the

partition suit. The suit property contained 4 schedules. Schedule "B"

comprises insurance policies. Schedule "C" comprised two insurance

policies, movable items and also 13,922.08 sq.ft extent of land which

was included as item 17. There is no issue regarding the insurance

policies as it has been already settled in Suc.O.P.No.7 of 2007. As

regards, movable properties, there is no dispute. The real contest

revolves only around the landed property in T.S No.2102, Block No.

39, Ward No.2, Trichy Corporation measuring an extent of 20492.8

sq.ft. On the side of the plaintiffs, four witnesses were examined. On

the side of the defendants, three witnesses were examined. The trial

Court passed preliminary decree granting 5/6th share in favour of the

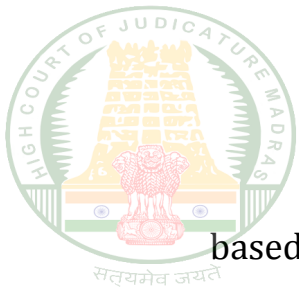


plaintiffs in respect of the first item in schedule “A” based on Ex.A.22

settlement deed. The suit was dismissed other respects. In respect of disallowed portion, the plaintiffs filed A.S.(MD)No.90 of 2013. The contesting defendants question this preliminary decree passed in favour of the plaintiffs by filing A.S.(MD)No.65 of 2021.

4. The point for determination is whether the trial Court was justified in granting 5/6th share in favour of the plaintiffs in respect of the first item schedule “A”.

5. Before we go into the factual aspects, we have to bear in mind the basic principle of Mohammedan Law which states that the grand children of a pre-deceased Mohammedan born through the pre-deceased son will not be entitled to any share in the grandfather's property. It is not in dispute that item No.2 and “A” schedule and items 18, 19, 20 and other landed properties which admittedly stood in the name of K.S.Hameed cannot be claimed by the grand children, namely plaintiffs 2 and 3. To this extent we have to necessarily uphold the judgment and decree of the trial Court. While the trial Court had granted relief in favour of the plaintiffs



based on Ex.A.22 settlement deed which was executed by K.S.Hameed in favour of Kadar Ismail, a bare reading and look at the document would show that what was settled in favour of Kader Ismail was only 6500 sq.ft of land together with the constructed building thereon. However, while describing item No.1, some confusion had crept in. The entire extent of 20,492.8 sq.ft of land had been included. This in our view, was clearly a wrong committed by the plaintiffs while drafting the plaint. This mistake naturally crept in while drafting the decree. This has to be necessarily corrected. Item No.1 of "A" schedule can only be the property covered under Ex.A.22. Therefore, the judgment and decree passed by the trial Court has to be accordingly modified. The first plaintiff is the wife of Kader Ismail. She is therefore entitled to $1/8^{\text{th}}$ share. Kader Ismail passed away, When K.S.Hameed was alive and therefore, $1/6^{\text{th}}$ share in item No.1 schedule "A" devolved on K.S.Hameed. Plaintiffs 2 and 3 are entitled to $17/48^{\text{th}}$ share each. In substance, the plaintiffs will be entitled to $5/6^{\text{th}}$ share in item No.1 in "A" schedule i.e. 6500 sq.ft as covered by Ex.A.22 dated 28.05.2024. In all other respects, the judgment and decree stands confirmed. A.S.(MD)No.90 of 2013 is dismissed and A.S.(MD)No.65 of 2021 is partly allowed.



6. While drafting decree, Registry to substitute the description set out in the Ex.A.22 settlement deed in the place of item No.1 in the suit schedule "A".

No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (K.RAJASEKAR, J.)
15th July 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To:

The II Additional District and Sessions Judge,
Tiruchirappalli



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A.S.(MD)No.90 OF 2013

G.R.SWAMINATHAN,J.

AND

K.RAJASEKAR, J.

PMU

A.S.(MD)Nos.90 of 2013 & 65 of 2021

15.07.2025