

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2025

CORAM:

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

Rev.Aplc(MD) No.88 of 2024

- 1.S.Mohammed Rafi (Died)
- 2.S.Abdul Nazar
- 3.S.Siddick
- 4.S.Sirajudeen
- 5.M.Rahmath Nisha
- 6.M.Reena Fatima
- 7.M.Sona Mariyam
- 8.M.Rahuman Kani

.. Applicants

Vs.

- 1.M.S.S.Jabar
- 2.M.S.S.Ayub Kham
- 3.M.S.S.Kaja Mohamed
- 4.M.S.S.Mohamed Kasim
- 5.S.Sheik Ussain Rawuthar (Died)
- 6.S.Sabi Mohamed (Died)
- 7.S.Mohamed Abupakkar (Died)
- 8.A.Meentchi Ammal
- 9.S.Annamalai
- 10.R.Hentry Bysingar
- 11.S.Prabu
- 12.S.Kasi
- 13.S.Ejir Ahamadkhan
- 14.M.Karuppanna
- 15.D.Sundarajan
- 16.T.Ramakrishnan (Died)
- 17.M.Maheswari
- 18.S.Vennila
- 19.P.Mohan



- 20.P.Suresh Babu
21.R.Rakini
22.R.Sowmiya
23.Sajalija Begum
24.Yasmin
25.Rahila
26.Basheer Ahmed
27.Marian Beevi Anitha
28.Balkis Begum
29.Mahbarathu Nisha
30.Shilana Benasir
31.Shahul Abbas
32.Sahar Nisha (Died)
33.Rasheedha
34.Asif
35.Parveen
36.Nafeesa

.. Respondents

Prayer:- This Review Application is filed Order 47 Rule 1 & 2 of CPC, to review the judgment vide in A.S. (MD) No.46 of 2016 dated 21.03.2024.

For Applicants : Mr.M.R.Radhakrishnan

For Respondents : Mr.H.Lakshmi Shankar for R1 to R4
Mr.J.Thirumalai Venkatesan for R8
Mrs.Lakshmi Gopinathan for
M/s.Polax Legal Solutions for R10
Ms.Mamta for
M/s.Ajmal Associates for R13
Mr.M.Gurudas for R17 & R19
Mr.P.S.Ganesh for R24 to R30
Mr.M.Murugaamannar for R31
R5 to 7, 16 & 32 & 9-Died
No Appearance-R11, 12,14, 18, 20, 23
R15 & 21, 22-Dispense with
Mr.A.R.Sethupathy for R33 to R36

ORDER



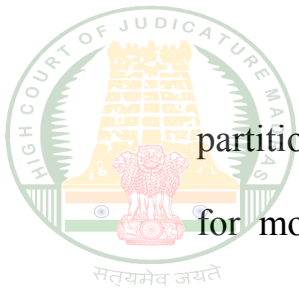
(Order of the Court was made by P.B.BALAJI, J.)

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This Review Application Application is filed Order 47 Rule 1 & 2 of CPC, to review the judgment vide in A.S. (MD) No.46 of 2016 dated 21.03.2024.

2. Heard Mr.M.R.Radhakrishnan, learned counsel for the petitioner and Mr.H.Lakshmi Shankar, learned counsel for R1 to R4, Mr.J.Thirumalai Venkatesan, learned counsel for R8, Mrs.Lakshmi Gopinathan for M/s.Polax Legal Solutions for R10, Ms.Mamta, learned counsel for M/s.Ajmal Associates for R13, Mr.M.Gurudas, learned counsel for R17 & R19, Mr.P.S.Ganesh, learned counsel for R24 to R30, Mr.M.Murugaamannar, learned counsel for R31 and Mr.A.R.Sethupathy, learned counsel for R33 to R36

3. Mr.M.R.Radhakrishnan, learned counsel for the petitioner would seek review of the judgment dated 21.03.2024 on the ground that the Court has allowed the Appeal and thereby dismissed the suit holding that the female heirs have not been impleaded as respondents. The learned counsel would further state that the review petitioner is willing to implead the female heirs and requests for remand of the suit for Trial. That apart learned counsel would also take us through the findings regarding the oral



partition in the year 1967 and the alleged silence of the review petitioner for more than 40 years, allowing the respondents 1 to 4 to enjoy the property. He would also contend that in Ex.A25 dated 24.08.1994, the property has been mortgaged by the appellants and the appellants themselves have shown the southern boundary as a property belonging to the review petitioner and he would therefore state that the same has not been dealt with. There is no discussion in the judgment regarding Ex.A25 and therefore, the judgment calls for being reviewed.

4. We have carefully considered the arguments advanced by the learned counsel for the review petitioners as well as the learned counsel for the respondents.

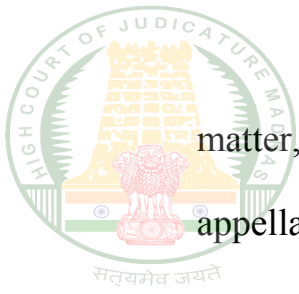
5. After assessing the oral and documentary evidence, this Court found that even though it is a claim of the plaintiffs that as per custom, female heirs are not entitled to any share in the partition, this Court found that in the partition deed dated 1967, the mother of the plaintiffs who was allotted 10 items in the schedule C property out of 29 items and therefore, we have negated the contentions that there is a customary practice that the female heirs are not entitled to any share. A detailed discussion is available at paragraph 19(b) to 19(d). This Court has concluded that the plea of



custom does not stand proved and female heirs being entitled to share in the family property and none of them being impleaded in the suit will have to fail on the ground of non joinder of proper and necessary parties.

6. In so far as the plea of partial partition, in and by deed 21.06.1967, it is seen that 10 items out of 29 items were left in common for enjoyment of all sharers through the partition deed in Ex.A2. In this connection, we have found that the plaintiffs have not objected to any of the sales that have been effected pursuant to Ex.A2 and there is also evidence adduced by the plaintiffs to establish that apart from 10 items, the other items of properties were unavailable, in view of the sales having been effected by various parties to Ex.A2 partition deed and accordingly this Court proceeded to hold that on the ground of partial partition as well, the appellants are entitled to succeed.

7. With regard to the plea of oral partition in 1967, taking note of the stand of the first defendant, we proceeded to confirm that there was an oral partition in the family in 1967 and finding that the appellants and their mother have been in possession for over 40 years without any interference whatsoever including mutation of records in their favour and pursuant to the demise by their mother as well, the plaintiffs having slept over the



matter, are not entitled to attack the allotment of properties in favour of the appellants.

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8. We have dismissed the suit for partition not only on the ground of non joinder of necessary parties but also on the ground of partial partition since the other properties numbering 19 items have not been included in the suit for partition. Further, considering that the appellants and before them their mother were in absolute and continuous possession and enjoyment of the properties, including mutation of revenue records in their names, the family partition in the year 1967 was probable when moreso the first defendant also has admitted the oral partition of the year 1967, wherein one of the properties was allotted to the mother of the appellants.

9. In the light of these findings, the omission to deal with the factum of southern boundary of the property in Ex.A25 mortgage deed as if it belongs to Shahul Hameed and Abu Bakkar, the predecessors in interest of the plaintiffs does not in any way affect the ultimate decision that has been arrived at, finding that the suit is liable to be dismissed.

10. In the light of the above and considering the specific grounds that have been raised by the review applicant, we do not find any error apparent



on the face of the record. Consequently, Review petition is dismissed. No costs.

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[S.M.S., J.] & [P.B.B., J.]
29.07.2025

rkp

S.M.SUBRAMANIAM, J.
AND
and
P.B.BALAJI, J

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