



S.A.(MD) No.390 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.08.2025

CORAM:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

**S.A.(MD) No.390 of 2025
and
CMP(MD)No.13284 of 2025**

Mohan Raj
S/o.Daniel, Chempakacheri,
Thottavaram,
Puthukkadai Post,
Kunnathoor Village,
Vilavancode Taluk,
Kanyakumari District. ... Appellant/2nd Appellant/2nd Defendant

Vs.

1. Sudharsanan Nair
S/o.Prabhakaran Nair,
Kuttikadu,
Munchirai, Puthukkadai Post,
Kunnathoor Village,
Vilavancode Taluk,
Kanyakumari District. ... 1st Respondent/Respondent/plaintiff

2. Sreekandan Nair
S/o.Prabhakaran Nair, Vechur Veedu,
Munchirai, Puthukkadai Post,
Kunnathoor Village, Vilavancode Taluk,
Kanyakumari District. ... 2nd Respondent/1st Appellant/
1st Defendant



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PRAYER in SA: Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 20.12.2024 passed in A.S.No.40 of 2019 on the file of the Sub Court Kuzhithurai, confirming the Judgment and Decree dated 21.02.2019 passed in O.S.No.110 of 2016 on the file of the I Additional District Munsif, Kuzhithurai and allow the Second Appeal and thus render justice.

PRAYER in CMP:

To stay all further proceedings in O.S.No. 110 of 2016 on the file of the I Additional District Munsif, Kuzhithurai as confirmed in A.S.No.40 of 2019 on the file of the Sub Court Kuzhithurai, pending disposal of the above second appeal and thus render justice.

For Appellant : Mr.R.Sreenivasan, Advocate
for Mr.Nandakumar, Advocate

For Respondents : Mr. K.N.Thambi, Advocate for R1

JUDGMENT

Heard.

2. This Second Appeal is directed against the concurrent findings recorded by the Trial Court as well as the First Appellate Court in a suit for partition.



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3. For the sake of convenience, the parties would be referred to as per their ranks before the trial Court.

4. The appellant herein was arrayed as the second defendant in the suit. The first respondent, as plaintiff, instituted the suit for partition in respect of six items of properties. The first defendant was impleaded as the plaintiff's brother, while the present appellant, as second defendant, is the purchaser of certain items of the suit properties from the first defendant and their father.

5. Out of the six items of properties, the first five belonged to the father of the plaintiff and the first defendant, late Mr. Prabhakaran Nair, while the sixth item belonged to their mother, late Mrs. Vishnumathi. The parties are governed by Marumakkathayam law of succession.

6. Under a family partition deed dated 11.10.1951 (Exs.A1/A2), Mr. Prabakaran Nair was allotted ten items of property,



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which included the first five items of the present suit schedule. In the same partition, item No.6 was allotted to his sister, Mrs. Lalitha Bai, who subsequently sold the property to one Mr. Prabhakaran Nadar. Thereafter, Mr. Prabhakaran Nadar conveyed the said property to Mrs. Vishnumathi under a registered sale deed dated 07.09.1972 (Exs.A3/A4). In this manner, the parents of the plaintiff and the first defendant became the absolute owners of all the suit properties.

7. Mrs. Vishnumathi died intestate sometime after 1972, leaving behind her husband, Mr. Prabakaran Nair, and three sons, namely: (i) Satheesh Nair, (ii) Sudharshan Nair (the plaintiff), and (iii) Sreekandan Nair (the first defendant). In terms of Section 15 read with Section 17 of the Hindu Succession Act, 1956, as applicable to Marumakkathayam succession, the husband of the deceased is not entitled to inherit the property of his wife, and the succession opens only in favour of her children. Consequently, the sixth item of the suit schedule devolved in equal shares upon the three sons.



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8. The sixth item of property was thereafter conveyed by Mr. Prabakaran Nair, the plaintiff, and late Satheesh Nair in favour of the second defendant. However, the first defendant, being a co-sharer, was not a party to the said sale deed. Consequently, his one-third share in item No.6 remained unaffected by the alienation. Both the Trial Court as well as the First Appellate Court declared that the plaintiff is entitled to one-third share in item No.6 of the suit properties and granted a preliminary decree to that effect.

9. With regard to the remaining five items, there is no dispute that they had been allotted to Mr. Prabhakaran Nair under the partition deed dated 11.10.1951. Upon his demise, those properties devolved upon his heirs, namely, the plaintiff, the first defendant, and his three sons through his first wife, Mrs. Leela Bai — Sasidharan Nair, Sreedharan Nair, and Raghuvaran Nair — as well as his daughter, Radha. Inasmuch as these heirs, who are necessary parties to a suit for partition, were not impleaded, both the Trial Court and the First Appellate Court rightly dismissed the claim for partition in respect of items 1 to 5 on the ground of non-joinder of necessary parties.



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10. It is a settled principle of law that in a suit for partition, all co-sharers are necessary parties and the absence of any one of them renders the suit defective. In the present case, both the Trial Court and the First Appellate Court have concurrently applied this principle, and their findings are legally sound and do not call for interference.

11. This Court finds no error in the concurrent conclusions arrived at by the Courts below. The grounds raised in the memorandum of Second Appeal, though projected as substantial questions of law, are in reality nothing more than a reiteration of issues already considered and answered by both the Trial Court and the First Appellate Court.

12. Hence, no substantial question of law, as contemplated under Section 100 of the Code of Civil Procedure, arises for consideration in this Second Appeal.



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13. Accordingly, the Second Appeal stands dismissed at the admission stage. In consequence, the connected miscellaneous petition is closed. There shall be no order as to costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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Copy to:

- 1.The Sub Court,
Kuzhithurai,
- 2.The I Additional District Munsif,
Kuzhithurai.
- 3.The Section Officer
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.A.D.MARIA CLETE, J.

LS

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