

A.S.(MD)No.170 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

and

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

A.S(MD)No.170 of 2019

and

C.M.P.(MD)No.8687 of 2019

and

C.M.P.(MD)No.945 of 2021

R.S.Nagarajan (died)

1.N.Rajasekaran

2.N.Ramesh

3.N.Devaki

.... Appellants / Plaintiffs

Vs.

1.R.S.Gopalan

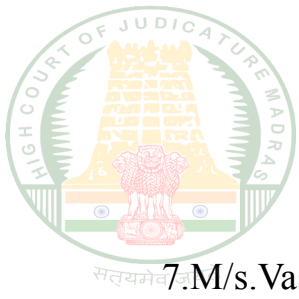
2.R.S.Baskaran

3.M.Hariharan

4.S.Rathinadevi

5.M.Dhanalakshmi

**6.M/s.Lakshmi Traders,
Regd. Partnership Firm,
By its Managing Partner,
M.Hariharan,
No.58, Needamangalam Road,
Sakkottai,
Kumbakonam Town and Munsif.**



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7.M/s.Vasavi Traders,
Regd.Partnership Firm,
By its Managing Partner S.Rethina Devi,
Orathanadu to Vallam Road,
Marungulam,
Thanjavur Taluk and Munsif.

8.Indian Bank
Kumbakonam Main Branch,
By its Branch Manager,
Besant Road,
Kumbakonam Town and Munsif.

... Respondents/Defendants

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, against the Judgment and decree dated 31.08.2018 made in counter claim in O.S.No.86 of 2009 on the file of the II Additional District and Sessions Judge, Thanjavur.

For Appellants : Mr.T.Antony Arul Raj

For Respondents : Mrs.Chitra Sampath
Senior Counsel
for Mr.V.Nandha Kumar
for R4

: No appearance
for R1 to R3, R5 to R8



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JUDGEMENT

(Judgment of the Court was made by **G.R.SWAMINATHAN, J.**)

Heard both sides.

2. The suit property belonged to one Nacharammal. Seetharama Chettiyar was the husband of Nacharammal. They were blessed with four sons and three daughters. Nacharammal passed away on 13.10.2006. R.S.Nagarajan / plaintiff who filed O.S.No.86 of 2009 was the third son. The other legal heirs of Nacharammal executed power of attorney (Ex.A77) in favour of R.S.Nagarajan on 22.09.2006. Based on the said power of attorney, R.S.Nagarajan sold the property in favour of one Dhanalakshmi vide sale deed dated 17.09.2009 (Ex.A78). By then, the eldest son of Seetharama Chettiyar and Nacharammal, namely Munirajan, had passed away on 22.05.2007. The legal heirs of Seetharama Chettiyar were locked in a host of suits. R.S.Nagarajan for his part filed O.S.No.86 of 2009 on the file of the II Additional District and Sessions Judge, Thanjavur for partition. The daughters of Munirajan namely Rethina Devi and Dhanalakshmi who were shown as D4 & D5 in O.S.No.86 of 2009 filed counter claim. Their stand was that Nagarajan / power agent did not render accounts properly. He was obliged to divide the



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sale consideration and disburse the same to the respective legal heirs and since he had not done so, D4 & D5 had to file a counter claim. During the pendency of the suit, R.S.Nagarajan passed away and the appellants herein came on record. They decided not to pursue the claim for partition. Since the counter claim has to be independently tried and dealt with, it was accordingly taken up. Even though in his reply statement to the counter claim, R.S.Nagarajan had claimed that an advance amount of Rs.3,00,000/- was received by R.S.Munirajan, no evidence was adduced in support of the said claim. As a result, the counter claim filed by Rethina Devi and Dhanalakshmi / daughters of R.S.Munirajan came to be decreed as follows:-

“(1) The counter claim is hereby decreed in favour of the defendants 4 & 5 for a sum of Rs.3,25,000/- with 6% interest from the date of plaint till the date of realization and the same is recoverable from the plaintiffs 2 to 4 from the assets derived by them from the estate of the deceased first plaintiff.

(2) The third defendant is also hereby entitled to the right to recover his 1/3rd share in the above sum from the defendants 4 & 5 by way of separate proceedings.

(3) There is no order as to costs in this counter claim. (Plaintiff's side cost of Rs.Nil and 1st defendant's side cost of Rs.Nil and 2nd defendant's side cost of Rs.Nil and 3rd defendant's side cost of Rs.20,505.00 and 4th defendant's side cost of Rs.33154.00).”

Aggrieved by the same, this appeal has been filed.



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3. The Judgment and decree passed by the trial court suffers from arithmetic error. R.S.Munirajan was one of the legal heirs of late Nacharammal. Therefore, he could have been entitled to only 1/7th of the sale consideration. The court below erred in decreeing a sum of Rs.3,25,000/- which represents 1/4th share. Even though the learned counsel for the appellant made a valiant attempt to substantiate the defence by seeking to adduce additional evidence, we are not impressed with the said attempt. The appellants want us to believe that R.S.Munirajan had received a sum of Rs.3,00,000/- on the strength of the declaration given by Hariharan S/o.Munirajan and the brother of the counter claimants. The counter claimants drew our attention to the deposition of Hariharan. He had feigned ignorance if his father Muniraj had received the advance amount of Rs.3,00,000/-. Even if the declaration said to have been given by Hariharan marked as exhibit in some other suit is brought on record in these proceedings, that would still not advance the case of the appellants. It is seen that Hariharan and the counter claimants are at logger heads. Therefore, declaration given by Hariharan in favour of the appellants would not in any way bind the counter claimants.



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4. In this view of the matter, this Appeal Suit is partly allowed by modifying the decree passed by the court below. The counter claim is decreed in favour of D3, D4 & D5 each for a sum of Rs.61,904/- with 6% interest from the date of the plaint till the date of realization and the same is recoverable from the estate of the deceased first plaintiff. The Appeal Suit is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S., J.] [M.J.R., J.]
12.03.2025

Index : Yes / No
Internet : Yes/ No
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To:

The II Additional District and Sessions Judge, Thanjavur.

Copy to:

The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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