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A.S.(MD)No.147 of 2019 &
Cross Objection(MD)No.17 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
11.11.2025	26.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

A.S.(MD)No.147 of 2019
and
C.M.P.(MD)No.7476 of 2019
and
Cross Objection (MD)No.17 of 2019

A.S.(MD)No.147 of 2019:-

Smt. Vijaya

... Appellant / 7th Defendant

VS.

Rajkumar (Died)
1.Pichaiyammal
2.Sekar
3.Senthilkumar (Died)
4.Jayakannan
5.Jayamalini
6.Jayalakshmi
7.Subha

... Respondents 1 to 7 /
Plaintiffs

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[R1 to R7 were impleaded as Legal Heirs of deceased
Rajkumar as per order in I.A.No.340 of 2016
dated 09.09.2016]

Balasubramanian (Died)

8.Krishnamoorthy

9.Govindammal

10.Ashok

11.Sulochana

12.Sasi

13.Manogar

14.Gomathi

15.Vimala

... Respondents 8 to 15 /
Defendants 1 to 6 and 8 to 10

16.Jeyanthi

17.Minor Mega

18.Minor Sarwesh

... Respondents 16 to 18

[17th and 18th Respondents are minors Rep. by
their mother and natural guardian 16th Respondent
herein]

[Respondents 16 to 18 are brought on record as LR.s. of
the deceased 3rd Respondent vide Court order dated
03.07.2024 made in C.M.P.(MD)No.8466 of 2023 in
A.S.(MD)No.147 of 2019]

PRAYER : Appeal Suit filed under Section 96 Civil Procedure Code, to set aside
the judgment and decree dated 29.11.2018 passed in O.S.No.45 of 2008, on the
file of II Additional District and Sessions Court, Thanjavur.

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For Appellant	: Mr.T.N.Rajagopalan for Mr.S.Vellaichamy
For R1, R2, R4 to R7 & R16 to R18	: Mr.G.Karnan
For R8	: Mr.S.Anand Chandrasekar for M/s.Sarvabhauman Associates
For R9 to R12	: Mr.M.Dinesh Hari Sundarsan
For R13	: Mr.K.Esakki

Cross Objection (MD)No.17 of 2019:-

Rajkumar (Died)

1.Pichaiyammal

2.Sekar

3.Senthilkumar (Died)

4.Jayakannan

5.Jayamalini

6.Jayalakshmi

7.Subha

... Cross Objectors 1 to 7 /
Respondents 1 to 7 /
Plaintiffs

[R1 to R7 were impleaded as Legal Heirs of deceased
Rajkumar as per order in I.A.No.340 of 2016
dated 09.09.2016]

8.Jeyanthi

9.Minor Mega

10.Minor Sarwesh

... Cross Objectors 8 to 10 /
Respondents 16 to 18



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[9th and 10th Cross Objectors are minors Rep. by
their mother and natural guardian 8th Cross Objector
herein]

[Cross Objectors 8 to 10 are brought on record as LR's. of
the deceased 3rd Cross Objector vide Court order dated
17.09.2025 made in C.M.P.(MD)No.6642 of 2023 in
Cross Objection (MD)No.17 of 2019 in
A.S.(MD)No.147 of 2019]

vs.

1.Smt.Vijaya

... 1st Respondent / Appellant /
7th Defendant

2.Krishnamoorthy

3.Govindammal

4.Ashok

5.Sulochana

6.Sasi

7.Manogar

8.Gomathi

9.Vimala

... Respondents 2 to 9 /
Respondents 8 to 15 /
Defendants 1 to 6 and 8 to 10

PRAYER : Cross Objection filed under Order XLI Rule 22 Civil Procedure
Code, to allow the Cross Objection in A.S.(MD)No.147 of 2019 on the file of this

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Court and set aside the judgment and decree dated 29.11.2018, passed by the learned II Additional District and Sessions Judge, Thanjavur, insofar as excluding Item No.4 in Part – I in 'D' Schedule properties is concerned.

For Cross Objectors	: Mr.G.Karnan
For R1	: Mr.T.N.Rajagopalan for Mr.S.Vellaichamy
For R2	: Mr.S.Anand Chandrasekar for M/s.Sarvabhauman Associates
For R3 to R6	: Mr.M.Dinesh Hari Sundarsan
For R7	: Mr.K.Esakki

COMMON JUDGMENT

C.V.KARTHIKEYAN, J.

The seventh defendant in O.S.No.45 of 2008 on the file of the II Additional District and Sessions Court, Thanjavur, is the appellant herein, aggrieved by the judgment and decree dated 29.11.2018, whereby a preliminary decree was passed in the suit for division of all the suit properties except the fourth item in Part–I of Schedule “D” of the suit schedule properties.



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2. The contention of the appellant is that all the properties falling under Schedule “D” ought to have been excluded from partition.

3. The plaintiffs in the said suit have filed a Cross Objection, challenging that portion of the decree by which the fourth item in Part–I of Schedule “D” was exempted from partition.

4. The suit in O.S.No.45 of 2008 had been filed by the plaintiff Rajkumar, seeking partition and separate possession of his 1/4th share in the suit schedule properties, described as A to I Schedule properties. The first defendant Balasubramanian and the second defendant Krishnamoorthy are his brothers. The defendants 3 to 6 are the widow and children of his other brother, Ramamoorthy.

5. In the plaint, it was stated that the plaintiff, the first and second defendants, and the deceased Ramamoorthy were the sons of late Pitchai @ Saminatha Thethu Vandaiyar, who died intestate on 30.06.2000, leaving behind his wife Marudhuambal and three of his sons. The eldest son, Ramamoorthy, had predeceased him on 09.08.1984. The mother, Marudhuambal, died on 01.02.2003.



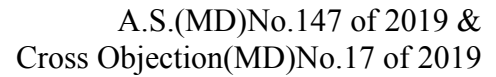
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6. The plaintiff claimed that the properties described in Schedules A to I belonged to the joint family consisting of the father, Pitchai @ Saminatha Thethu Vandaiyar, and his sons. It was further contended that, out of the sale proceeds of ancestral properties, additional properties had been purchased.

7. It was further contended that the father was running a tea shop in which his sons assisted him. Subsequently, the father also started a liquor shop and obtained licences in the names of third parties. He was also running an arrack shop in the name of the first defendant, Balasubramanian. It was contended that all the four sons assisted the father in the running of these businesses.

8. It was additionally stated that, in order to avoid land ceiling laws, urban ceiling laws, and for taxation purposes, the father purchased various properties in the names of each of his sons. It was, however, contended that although the properties stood in the individual names of the sons, they all constituted joint family properties.



10. It was contended that the plaintiff was entitled to an undivided 1/4th share in the suit schedule properties. It was further stated that the plaintiff had demanded partition and, since the defendants did not come forward, the suit came to be filed seeking partition and separate possession. It is to be noted that, during the pendency of the suit, the plaintiff died and his legal representatives were



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brought on record as plaintiffs 2 to 8. The first defendant also died, and his legal representatives were brought on record as defendants 7 to 10.

11. During his lifetime, the first defendant filed a written statement contending primarily that the father, Pitchai @ Saminatha Thethu Vandaiyar, did not possess any ancestral properties, and that the properties described in the plaint schedule had been purchased by him in his own name, in the name of his wife Marudhuambal, and in the names of his sons, out of his self-earned income. He further asserted that the properties listed under the 'D' Schedule had been independently purchased by him. He stated that he had been carrying on business and had also obtained licences for toddy and liquor shops from the Government, and that the income derived therefrom was utilised to purchase the said properties. It was therefore contended that there were no joint family properties.

12. It was further pointed out that an earlier suit, O.S.No.77 of 2006, had been instituted before the District Munsif Court, Thanjavur, with respect to the fourth item in Part-I of the 'D' Schedule property, seeking an injunction to protect possession. The matter ultimately reached this Court in S.A.(MD)No.32 of 2010,



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wherein it was held that the first defendant was the absolute owner of the fourth item in Part-I of the 'D' Schedule property. The first defendant accordingly contended that the same reasoning should apply to all properties under the 'D' Schedule, rendering them not available for partition.

13. He further stated that the plaintiffs and other defendants had likewise dealt with the properties standing in their individual names. He therefore contended that the suit should be dismissed insofar as the 'D' Schedule properties were concerned, though he claimed partition in respect of the remaining properties.

14. The first defendant also filed an additional written statement contending that the plaintiff had not included certain properties which had been sold by him, and therefore, asserted that the suit was bad for partial partition.

15. The plaintiff filed a reply statement denying and disputing these contentions and reiterating that all the properties described in the plaint schedule were available for partition.

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16. The second defendant filed a written statement claiming that he was in possession and enjoyment of the 'E' Schedule properties and that the said properties were not available for partition, though the other properties mentioned in the plaint schedule were available for partition. He further stated that he had already dealt with the said properties with the consent of all members of the family. He also furnished a list of properties which had been omitted from the schedule and contended that the suit was bad for partial partition.

17. The second defendant also filed an additional written statement asserting that the judgment in S.A.(MD)No.32 of 2010, relied upon by the first defendant, would not apply to the facts and circumstances of the present case.

18. The third defendant filed a written statement, which was adopted by the defendants 4 to 6, wherein it was contended that the properties purchased in the name of Ramamoorthy were his exclusive properties and were therefore not available for partition and separate possession. It was further contended that they were entitled to partition and separate possession of the other properties mentioned in the plaint schedule.



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19. On the basis of the above pleadings, the learned Trial Judge had framed the following issues:-

"(i) Whether the suit properties are the joint family properties of plaintiff and defendant?

(ii) Whether the plaintiff and defendants are entitled to partition of 1/4th share each in the suit properties?

(iii) Whether this suit is bad for claim of partial partition?

(iv) Whether the allegation that the suit properties are the self acquired properties of the father of the plaintiff is true?

(v) To what relief the plaintiffs are entitled?"

20. During the trial, the second plaintiff, Pitchaiammal, examined herself as P.W.1. The second defendant, Krishnamoorthi, examined himself as D.W.1, and the first defendant, Balasubramanian, examined himself as D.W.2. The plaintiffs marked Exs. A1 to A29, while the defendants marked Exs.B1 to B38.

21. While examining the first issue, namely, whether the properties constituted joint family properties of the plaintiff and the defendants, the learned Trial Judge reviewed the documents relating to the title of each property mentioned in the plaint schedule and the evidence of P.W.1. P.W.1 contended that



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her father-in-law, Pitchai @ Saminatha Thethu Vandaiyar, had carried on business in a tea shop and subsequently, in wine and arrack shops, and that, for taxation purposes and to avoid land ceiling restrictions, he had obtained licences and purchased properties in the names of his wife and sons. She further contended that all the properties had been purchased solely out of the income derived from her father-in-law's business.

22. The learned Trial Judge observed that this fact was generally not denied or disputed by the defendants, except by the first defendant, who claimed that the 'D' Schedule properties had been purchased out of the income earned from his own business. The other defendants also claimed rights over the properties standing in their respective names, but relied on the contention that the source of the purchase was the business of the father.

23. On this basis, the learned Trial Judge held that, except for the fourth item in Part-I of the 'D' Schedule properties, which was the subject matter of the second appeal, all other properties were available for partition, and a preliminary decree was granted accordingly.



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24. The seventh defendant, who is the widow of the first defendant, filed the present First Appeal, and the plaintiff filed a Cross Objection. Both the appeal and the cross objection pertain to the inclusion of the entire 'D' Schedule properties for partition and the exclusion of the fourth item in Part-I of the 'D' Schedule from partition.

25. Heard Mr.T.N.Rajagopalan, learned counsel for the appellants, Mr.G.Karnan, Mr.S.Anand Chandrasekar, Mr.M.Dinesh Hari Sundarsan and Mr.K.Esakki, learned counsels for the respondents and Mr.G.Karnan, who also appeared for the cross objectors.

26. It is the contention of Mr.T.N.Rajagopalan that the properties mentioned in the plaint schedule cannot be termed ancestral properties, as there was no ancestral nucleus remaining in the hands of Pitchai @ Saminatha Thethu Vandaiyar. He had commenced his own business by starting a tea shop, which he later expanded to include a liquor and arrack shop. Out of the income earned from these businesses, he purchased properties in his own name, as well as in the names of his wife and his sons.

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27. The learned counsel contended that, consequently, the properties did not constitute ancestral property, but were self-acquired by the father. When these properties were purchased in the names of his wife and sons, they became the absolute properties of the respective individuals. The other sons could not claim any right, title, or share in the properties standing in the names of their siblings. It was therefore submitted that the sons were absolute owners of the properties standing in their respective names, and only any residual property in the name of the father would be available for partition.

28. The learned counsel further pointed out that the first and second defendants had filed written statements asserting that certain properties had been omitted from the suit schedule, contending that the suit was therefore bad for partial partition. The plaintiff, in reply, raised issues only with respect to the fourth item in Part-I of the 'D' Schedule properties.

29. The learned counsel emphasized that this particular item had already been adjudicated in S.A.(MD)No.32 of 2010 before this Court, wherein a learned Single Judge had categorically held that the property was the absolute property of



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the first defendant, Balasubramanian. He submitted that, accordingly, the Trial Court had correctly excluded this property from partition.

30. He further argued that the same reasoning applies to all other properties standing in the names of the sons, each of whom was entitled to enjoy the properties standing in their name. However, since the suit for partition omitted several properties, as highlighted in the written statements of the first and second defendants, the suit is flawed. The learned counsel therefore contended that the suit should have been dismissed in its entirety, and that each son should be declared the absolute owner of the properties standing in their respective names. On the death of any son, only his legal representatives would be entitled to enjoy the said properties.

31. Mr.G.Karnan, learned counsel for the cross-objectors, however, disputed these contentions and submitted that the second appeal had emanated from a suit for injunction, and therefore, the finding of the learned Single Judge relating to title could not be pressed into service. He supported the reasoning of the Trial Court that the properties were ancestral in nature and were, therefore, available for partition.

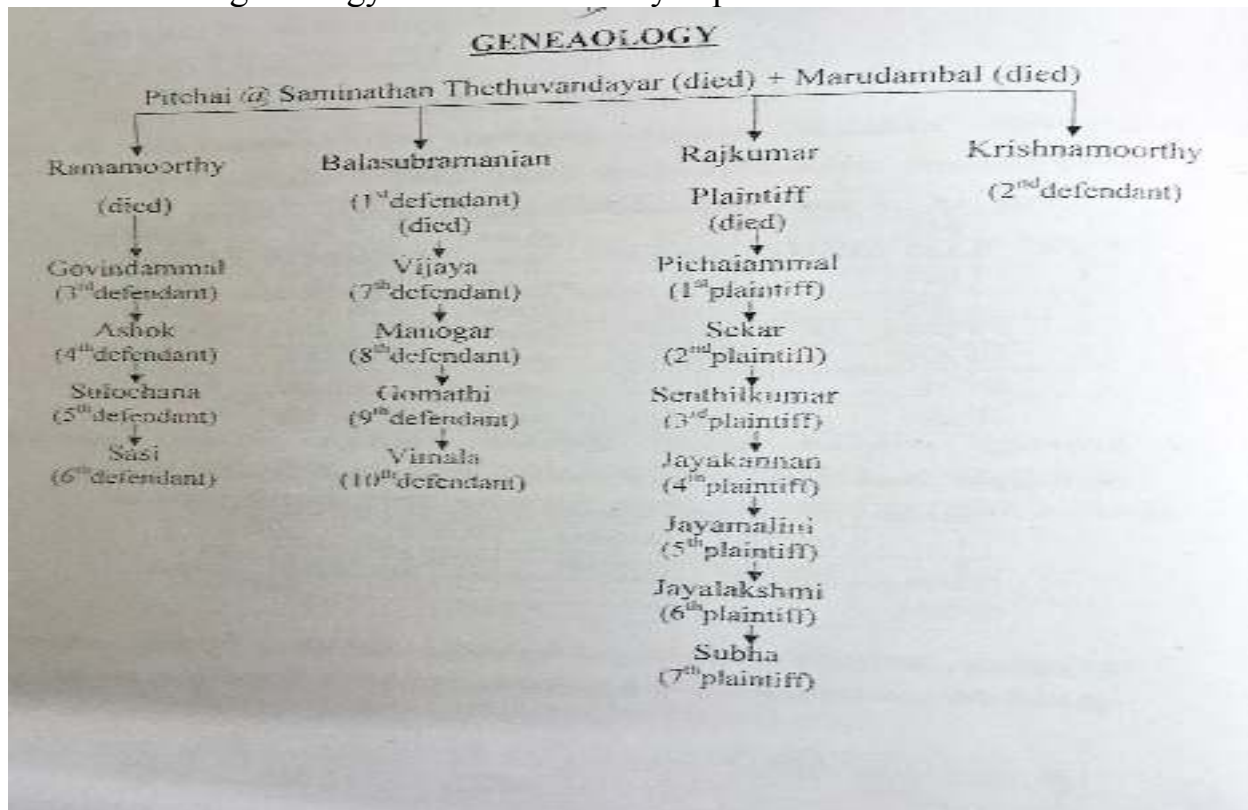


32. The learned counsel for the other respondents also contended that the properties listed in the plaint schedule were all available for partition, except those standing in the individual names of the sons of Pitchai @ Saminatha Thethu Vandaiyar.

33. The following point arises for determination:

Whether the properties listed in the schedule to the plaint were joint family properties?

34. The genealogy table of the family is presented below:-





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35. It is not in dispute that Pitchai @ Saminatha Thethu Vandaiyar was an enterprising person who commenced business by running a tea shop and subsequently expanded his business to include liquor and arrack shops. He also began purchasing properties in his own name, in the name of his wife, and in the names of his four sons, Ramamoorthy, Balasubramanian, Rajkumar, and Krishnamoorthy. Ramamoorthy predeceased him.

36. After the death of their father and mother, the third son, Rajkumar, filed the suit seeking partition and separate possession against his two brothers, Balasubramanian and Krishnamoorthy, and against the legal representatives of his deceased elder brother, Ramamoorthy. Initially, the plaint listed the properties in Schedules A to E. Thereafter, by way of an amended plaint, the schedule was expanded to include properties described in Schedules F to I.

37. During the pendency of the suit, both the plaintiff and the first defendant died, and their legal representatives were brought on record. The evidence on record shows that the licence for the liquor business was in the name of the first defendant. However, the suit was not filed for division of the business



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or profits therefrom. It was filed solely seeking partition and separate possession of the properties said to have been purchased by the father in the names of his sons.

38. Admittedly, when the plaint was initially filed, not all properties were included. Subsequently, by amendment, additional properties were incorporated, since in their written statements, the first and second defendants also highlighted certain properties which had been omitted from the schedule to the plaint.

39. The learned Trial Judge held that since the properties had been purchased by the father, they assumed the character of ancestral properties. This reasoning, however, is not correct. The properties were purchased from the self-earned income of the father. They were purchased in the name of his wife and his sons and did not constitute ancestral property. They were also not purchased from any ancestral nucleus or surplus thereof. The father had not inherited any property. He started with a small business and gradually expanded.



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40. The properties purchased in the names of the sons became the absolute properties of those sons and cannot acquire the character of ancestral property. Each son had full right, title, and interest over the properties standing in his name, and on the death of a son, his legal representatives would continue to enjoy such properties.

41. In **S.A.(MD)No.32 of 2010 [Balasubramanian vs. Vairavel and others]**, decided on **14.06.2013**], which arose from a suit instituted by the first defendant in O.S.No.77 of 2006 on the file of the District Munsif Court, Thanjavur, a learned Single Judge of this Court, while dealing with the fourth item of Part-I of the 'D' Schedule property, held as follows:-

"20. In fact, this Court has perused the entire Judgment rendered by the trial Court. In paragraph No.12 of the Judgment rendered by the trial Court, an elaborate discussion has been made with regard to character of suit 'A' schedule property and ultimately found that suit 'A' schedule property is the separate property of the plaintiff. Even though no issue has been framed with regard to character of the suit 'A' schedule property, the trial Court has discussed the same in extenso and ultimately found that the suit 'A' schedule property is the separate property of the plaintiff."

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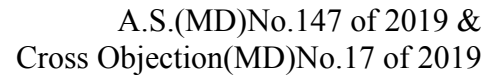
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42. There has been no further appeal from the aforementioned judgment. It was, however, contended on behalf of the first respondent/cross-objector that this finding could not be pressed into service, as it was rendered in a suit for injunction where title was not the core issue.

43. In this connection, the learned counsel for the respondents 1, 2, 4 to 7 and 16 to 18 relied on the following observations of a learned Single Judge of this Court in a case reported in **2011 (1) CTC 801 [E.Sathidass vs. C.Ponnuswamy and another]**.

"17. I am of the considered view that any incidental findings in an injunction suit as it has been done in this case, would not operate as res judicata in the subsequent suit, if any that would be filed by the plaintiff for establishing his alleged title over the suit property."

44. We however hold that the evidence has to be analysed on a case to case basis. Even in a suit for injunction, a corollary discussion on title is necessary. In the earlier suit, the Court had to examine the title to grant the relief. In that context, the Court emphatically held that the properties standing in the name of



45. We hold that the same reasoning applies to each of the properties standing in the respective names of the sons.

"17. Therefore, on survey of the aforesaid decisions what emerges is that there is no presumption of a joint Hindu family but on the evidence if it is established that the property was joint Hindu family property and the other properties were acquired out of that nucleus, if the initial burden is discharged by the person who claims joint Hindu family, then the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property by cogent and necessary evidence."



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47. The premise that in the present suit, the properties were ancestral in nature, is however, without any evidence. The properties cannot, by any stretch, be described as ancestral properties merely because, they were purchased by the father. They were acquired from the father's self-earned income and not from any ancestral income, residual ancestral nucleus, or surplus thereof. For convenience, they had been purchased in the names of the mother and each of the sons, who were entitled to enjoy the properties standing in their respective names. The parties must continue to enjoy the properties standing in their respective names.

48. There is no evidence that Pitchai @ Saminatha Thethu Vandaiyar had inherited ancestral properties or started his business with the funds available from an ancestral nucleus.

49. In view of the foregoing reasons, we are of the opinion that the learned Trial Judge misdirected himself in holding that the properties were joint family properties of Pitchai @ Saminatha Thethu Vandaiyar and that they were available for partition. We hold that each branch of the four families must, therefore, continue to enjoy the properties standing in their respective names.



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50. We accordingly hold that the judgment of the Trial Court requires interference and that the Suit should be dismissed with respect to all the items of the suit properties in 'D' Schedule.

51. The Appeal Suit is allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

52. In view of the above reasons, the Cross Objection stands dismissed. No order as to costs.

Index : Yes
NCC : Yes
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[C.V.K., J.] & [R.V., J.]
26.11.2025



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To

- 1.The II Additional District and Sessions Judge,
Thanjavur.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
A.S.(MD)No.147 of 2019

26.11.2025