



S.A.(MD)No.36 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.08.2025

Pronounced on : 18.09.2025

CORAM

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

S.A.(MD)No.36 of 2018

1. Karuppanan,
S/o.Palaniyappan,
Deethaipatti, Rajakkapatti Village,
Dindigul East Taluk, Dindigul District.
2. Palani @ Palaniyappan
S/o.Palaniyappan,
Deethaipatti, Rajakkapatti Village,
Dindigul East Taluk, Dindigul District
3. Kuttiyappan,
S/o.Palaniyappan, Deethaipatti,
Rajakkapatti Village,
Dindigul East Taluk,
Dindigul District.
4. Arumugam,
S/o.Palaniyappan,
Deethaipatti, Rajakkapatti Village,
Dindigul East Taluk,
Dindigul District
5. Perumal,
S/o.Palaniyappan,
Deethaipatti, Rajakkapatti Village,
Dindigul East Taluk,
Dindigul District. ... Appellants/Appellants/Plaintiffs



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Vs.

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Irullappan (Died)

1. Ayyammal,
W/o.Irulappan, Deethaipatti,
Rajakkapatti Village,
Dindigul East Taluk,
Dindigul District.
2. Nagamuthu,
S/o.Ayyamperumal,
Deethaipatti,
Rajakkapatti Village,
Dindigul East Taluk,
Dindigul District.
3. Murugesan,
S/o.Palaniyappan,
Deethaipatti,
Rajakkapatti Village,
Dindigul East Taluk,
Dindigul District.
4. Periyakaalai
S/o.Nagamuthu,
Deethaipatti, Rajakkapatti Village,
Dindigul East Taluk,
Dindigul District.
5. Kesavan,
S/o.Periyakaalai,
Deethaipatti, Rajakkapatti Village,
Dindigul East Taluk, Dindigul District.
6. Thottan
S/o.Muthukkaruppan,
Deethaipatti, Rajakkapatti Village,
Dindigul East Taluk,
Dindigul District.



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7. Chitamparam,
S/o.Irulappan,
Deethaipatti, Rajakkapatti Village,
Dindigul East Taluk,
Dindigul District.

8. Angammal,
W/o.Palaniyappan,
D/o.Irulappan, Deethaipatti,
Rajakkapatti Village,
Dindigul East Taluk,
Dindigul District.

9. Baadalakshmi
W/o.Ganesan
D/o.Irulappan, Deethaipatti,
Rajakkapatti Village,
Dindigul East Taluk,
Dindigul District. ... Respondents / Respondents / Plaintiffs

PRAYER : The Second Appeal filed under Section 100 C.P.C., to set aside the judgment and decree dated 07.07.2017 made in A.S.No. 15 of 2015 on the file of Principal Sub-Court, Dindigul, confirming the judgment and decree dated 19.09.2014 made in O.S.No.125 of 2011 on the file of 2nd Additional District Munsif Court, Dindigul, and to decreed, the suit, with costs and thus render justice.

For Appellants : Mr.V.George Raja, Advocate
for M/s.Ajmal Associates

For Respondents : Mr.S.Sarvagan Prabhu, Advocate
for R1, R2, R3, R5 & R7 to R9



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JUDGMENT

Heard.

2. This Second Appeal has been filed by the plaintiffs in O.S. No. 125 of 2011 on the file of the II Additional District Munsif, Dindigul, aggrieved by the concurrent dismissal of their suit by the Trial Court as well as the First Appellate Court in A.S. No. 15 of 2015 on the file of the Principal Sub Court, Dindigul.

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

4. The brief facts necessary for the disposal of this Second Appeal are as follows:

The plaintiffs instituted a suit for partition, claiming that the suit property, measuring 6 acres and 21 cents together with the right of common usage of the well etc., originally belonged to their maternal grandmother, Kaliasammal. She died intestate, leaving behind her husband, Chidambaram, her son, Irulappan (the 1st defendant), and her daughter,



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Pechiammal, who was the mother of the plaintiffs. Upon the death of Kaliasammal, her husband Chidambaram enjoyed the property and thereafter executed a will dated 15.03.1967 (Ex.A1), bequeathing the suit property in equal shares to his children, namely the plaintiffs' mother and the 1st defendant. As the property continued to remain in the possession of the 1st defendant and he refused to effect partition, the plaintiffs filed the present suit seeking allotment of their half share.

5. The defendants denied that the property originally belonged to Kaliasammal. They contended that the suit property was the ancestral property of Chidambaram. Upon the death of Chidambaram's father, Thandavan, Chidambaram and his only son, the 1st defendant, jointly executed a sale deed dated 16.09.1974 (Ex. B2), conveying the property to Ramasamy. Thereafter, the 2nd defendant purchased the property from the legal heirs of Ramasamy under a sale deed dated 29.04.1982 (Ex. B3). Consequently, the 2nd defendant became the lawful owner, and the plaintiffs were not entitled to any share or partition. Subsequently, the 2nd defendant, along with the 1st defendant, alienated the property under Ex. B4.



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6. The Courts below concurrently held that the plaintiffs had not proved that the suit property originally belonged to Kaliasammal. Even in the alleged Will (Ex. A1) executed by Chidambaram, it is recited that the property was his ancestral property. Likewise, in Ex. B2, the recitals also describe the suit property as ancestral in nature. Being ancestral, Chidambaram and his son, the 1st defendant, held equal rights therein. Under Mitakshara law, a son acquires by birth an interest equal to that of his father in ancestral property, and such right is entirely independent of the father. Consequently, Chidambaram, as Karta, together with his son, jointly alienated the property in favour of Ramasamy under Ex. B2. Therefore, although Chidambaram is stated to have executed a Will dated 15.03.1967, the property had already been disposed of during his lifetime, leaving no estate to give effect to the testamentary disposition.

7. Accordingly, Chidambaram left behind no property capable of partition among his children. Consequently, the plaintiffs' claim, through their mother, late Pechiammal, for a share in the suit property does not arise.



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8. In the grounds of appeal, it has been urged that the Courts below ought to have at least granted a lesser relief of $\frac{1}{4}$ share to Pechiammal, the daughter of Chidambaram, under Section 8 of the Hindu Succession Act, since the property was ancestral.

9. It is true that, prior to the 2005 Amendment, daughters were not recognized as coparceners. Nevertheless, under the proviso to Section 6 of the Hindu Succession Act, 1956, where a Hindu male coparcener died intestate leaving female relatives specified in Class I of the Schedule, succession would take place under Section 8 and not by survivorship. Therefore, it is correct that Pechiammal, as a female heir, would have been entitled to a $\frac{1}{4}$ share. However, since Chidambaram, along with his son, had already alienated the entire property during his lifetime, there remained nothing to devolve upon his heirs. Hence, the appellants' claim is devoid of substance, amounting to no more than letters written on water.



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10. The plaintiffs also failed to establish the will (Ex. A1) in accordance with the requirements of Section 63 of the Indian Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872. The appellants sought to rely on Section 90 of the Evidence Act, contending that a Will more than 30 years old is presumed valid. This contention, however, is untenable for two reasons: (i) the testator, having already alienated the property in his lifetime, left no estate upon which the Will could operate; and (ii) it is a well-settled principle that the presumption under Section 90 does not extend to Wills, which must be proved strictly in accordance with Section 63 of the Succession Act and Section 68 (or Section 69) of the Evidence Act. The Supreme Court, in *Ashutosh Samanta (D) by LRs. & Ors. v. Smt. Ranjan Bala Dasi & Ors.*, Civil Appeal No. 7775 of 2021 (decided on 14.03.2023), has recently reiterated this position.

11. Thus, there is no error in the judgments of the Courts below. At the time of admission, this Court framed the following substantial questions of law:

“1. When Chidambaram is the son of one Thandavan and Irulappan, namely, the first defendant, is the son of



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Chidambaram, is not the lower appellate Court wrong in assuming that the said Chidambaram and Irulappan are brothers, and that the said Chidambaram is entitled to only $\frac{1}{2}$ share in the 6 acres 21 cents?

2. When the father of one Petchiyammal and the first defendant sold only an extent of 2 acres and odd and remaining land measuring about an extent of 4 acres and 20 cents is still available with the said Chidambaram, are not the Courts below committed a serious error in dismissing the suit for partition of the of the plaintiffs' $\frac{1}{4}$ share in the suit property?"

12. With regard to the first question, it is correct that the First Appellate Court mistakenly recorded Chidambaram and Irulappan as brothers, whereas, in fact, they were father and son. This relationship is admitted by both parties, and Ex. B2 also records them as father and son. However, neither the Trial Court nor the First Appellate Court proceeded on the basis that Chidambaram held only a half share because they were brothers. Rather, since Ex. B2 was executed in 1974, prior to the 2005 Amendment to Section 6 of the Hindu Succession Act, the governing law was that all male members acquired equal rights by birth in coparcenary property. Accordingly, the First Appellate Court correctly held that Chidambaram and his son each had equal shares.



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13. With regard to the second question, the contention that only 2 acres and odd were sold and that 4 acres and 20 cents remained available for partition is factually untenable. The records reveal that the plaintiffs instituted the suit claiming a half share in the entire extent of 6 acres and 21 cents. Ex. B2 unequivocally establishes that Chidambaram and Irulappan conveyed the whole extent of 6 acres and 21 cents to Ramasamy. Thereafter, under Ex. B3, the 2nd defendant purchased the entire extent from Ramasamy's heirs. Therefore, there is no basis to say that 2 acres and odd alone were sold and 4 acres and 20 cents remained.

14. Accordingly, the substantial questions of law are answered against the appellants. The Second Appeal is devoid of merit and stands dismissed. The judgment and decree of the First Appellate Court are hereby affirmed. There shall be no order as to costs.

18.09.2025

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

LS

10/12



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To

- 1.The Principal Sub Judge,
Dindigul.
- 2.The 2nd Additional District Munsif,
Dindigul.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.A.D. MARIA CLETE,J.

LS

Pre-delivery Judgment made in
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