



S.A.(MD)No.77 of 2018, 99 of 2019 & 189 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On	20.06.2025
Pronounced On	11.09.2025

CORAM:

THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

S.A.(MD)Nos.77 of 2018, 99 of 2019, 189 of 2025

and

C.M.P.(MD).Nos. 1670 of 2018, 4100 & 4511 of 2021 and
2224, 2227, 6900, 6902, 6906, 6904, 6911, 6912, 6919, 6922, 6923, 6907,
6908, 6909, 6913, 6914, 6915, 6917, 6920, 6921, 6925, 6927, 6924, 6926,
6928 of 2025 & CMP (MD) S.R.Nos. 29564 & 27813 of 2025

S.A.(MD) No. 77 of 2018

1. Thiyagarajan
2. Krishnan
3. T. Elangovan (Since Deceased)
(Cause title accepted vide Court order dated 07.02.2018 made in
CMP(MD)No.1093 of 218 in SA(MD)No.4136 of 2018 by SSRJ)

4. Jayakumar
5. Palaniyammal
6. A.Kilara
7. Nagarajan (Died)
8. Chidambaram
9. Sachidhanandam
10. Selvaraj
11. Indira
12. Kasturi
13. Aranganathan (Died)
14. Ezhilarasi
15. Elamaran
16. K. Lalithambal
17. K. Venkatesan



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18. Kesavakumaran
19. Banumathi
20. Balasubramanian
21. Venkataramani
22. S.R. Gopalakrishnan
23. T. Nehru

-- Appellants/Appellants/
Defendants 1 to 23

24. Amala
25. Dinesh
26. Pavithra

-- Appellants
(LRs of Deceased 3rd Appellant)

- 27.N.Geetha Shanthi
- 28.N.Rajanikanth
- 29.S.Sujatha

-- Appellants

(Respondents 27 to 29 are brought on record as LR's of the deceased 7th Appellant vide Court order dated 11.09.2025 made in CMP(MD)No. 2227 of 2025 in SA(MD)No.77 of 2018 by KKRKJ)

- 30.Mrs.Anusiya
- 31.Mrs.Ezhilarasi
- 32.Elango
- 33.Rajesh

-- Appellants

(Respondents 30 to 33 are brought on record as LR's of the deceased 13th Appellant vide Court order dated 06.02.2024 made in CMP(MD)No. 3364 of 2023 in SA(MD)No.77 of 2018 by KKRKJ)

Vs.

1. V. Ponramu
2. Venkatachala udayar (died)
3. Pavunammal
4. Dhanapakiam
- 5.Pushpavalli
- 6.Tamilarasi
- 7.Kalairasi
- 8.Mangaiyarkarasi



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- 9.Karupukkarasi
- 10.Elavarasi
- 11.Lakshmi
- 12.Annadurai
13. Ramsamy
- 14.Janab Nazeer Ahamed
- 15.Vijaya
- 16.R.Santhanakrishnan
17. Govindasamy (Died)
- 18.K.Ramalingam
- 19.V.Pandian
- 20.K.Kannan
- 21.Kannaiyan
22. Elangovan,
23. Manivannan
- 24.Chandrasekarans
- 25.Krishnamoorthy
- 26.Sakthivel
- 27.Khadar beevi
28. Muniappan
29. Ravichandran
- 30.Thangam
- 31.Usha Rani
32. Swaminathan
33. Subramanian
34. Sridhar
35. Masilamani
36. Panneerselvam
- 37.Subramanian
- 38.Gunaseelan
- 39.Anthonysamy
40. Marimuthu
41. A.Arokiasamy
42. Sambandam (Died)
- 43.Chandramohan (Died)
- 44.Ramanathan
- 45.Kaliyapermal
- 46.Jayabal



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- 47.T.Govindasamy
- 48.Nagarajan (Died)
- 49.Arulamaran
- 50.Narayanaswamy
- 51.Palaniammal
- 52.Boobathy
- 53.Mohan
- 54.Jeeva Jothy
- 55.S.Ravichandran
- 56.Marimuthu
- 57.Bragadeeswaran
- 58.Govindarajan
- 59.Arulanandhan (Died)
- 60.Swaminathan
- 61.Manivannan (Died)
- 62.Swamidurai
- 63.Chinnathambi
- 64.Paramasivam
- 65.Thirumavalavan
- 66.Virutthasanthi
- 67.Irudayaraj
- 68.S.Parthasarathy
- 69.A.Ganesan
- 70.A.Govindarajan
- 71.A.Nagarajan
- 72.A.Manoharan
- 73.P.Muthukrishnan
- 74.Lakshmi
- 75.Gunasekar
- 76.T.Muhilan (Died)
- 77.G.Jayaraman
- 78.S.Rajendran
- 79.R.Anbalagan
- 80.Kousalya
- 81.S.Maheswari
- 82.K.Thangavelu
- 83.C.Chelladurai
- 84.R.Elango



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- 85.V.Ponnaiyan
- 86.Veeramani
- 87.S.Elangovan
- 88.Bhuvaneswari
- 89.Kalaiselvan
- 90.Renganayaki
- 91.S.Kannan
- 92.Kaliyapermal
- 93.Bhuvaneswari
- 94.Krishnan (Died)
- 95.Chitra
- 96.Vembu ammal
- 97.S.Rajendran
- 98.Kalavathy
- 99.Annasamy mantrayar
100. K.Mallika
101. Shanmugam
102. G.Nagarajan
103. Sundaram
104. Pandian
105. K.Ilayaraja
106. Rethinam
107. K.Nandakumar
108. Mariammal
109. Balasubramanian
110. B.Usharani
111. M.Shankar
112. K.Suseela
113. K.Baskaran
114. Kirubakaran
115. G.Sundarrajan
116. Vallam Town Panchayat
represented by its President,
Vallam, Tanjore District.
117. Thangam
118. Amalraju
119. S.Kala
120. Balaji



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121. Shankar Ganesh

-- Respondents/Respondents/
Defendants

122.Porutselvi

123.Megala

124.Priya

125.Rani

-- Respondents

(Respondents 122 to 125 are brought on record as LR's of the deceased 94th Respondent vide Court order dated 11.09.2025 made in CMP(MD)Nos.6925 & 6927 of 2025 in SA(MD)No.77 of 2018 by KKRKJ)

126.M.Amutha

127.M.Maheswari

128.M.Vishnuvardhan

129.M.Vishnupriya

-- Respondents

(Respondents 126 to 129 are brought on record as LR's of the deceased 76th Respondent vide Court order dated 11.09.2025 made in CMP(MD)Nos.6917, 6920 & 6921 of 2025 in SA(MD)No.77 of 2018 by KKRKJ)

130.A.Armstrong

-- Respondent

(130th Respondent is brought on record as LR's of the deceased 59th Respondent vide Court order dated 11.09.2025 made in CMP(MD)Nos. 6913, 6914 & 6915 of 2025 in SA(MD)No.77 of 2018 by KKRKJ)

131.Anandavalli

132.Kalaiselvi

133.Muthulakshmi

134.Illavarasi

135.G.Jayakumar

-- Respondents

(Respondents 131 to 135 are brought on record as LR's of the deceased 17th Respondent vide Court order dated 11.09.2025 made in CMP(MD)Nos.6904, 6911 & 6912 of 2025 in SA(MD)No.77 of 2018 by KKRKJ)

136.Vijayalakshmi

137.Rajesh

138.Shanmugapriya

-- Respondents

(Respondents 136 to 138 are brought on record as LR's of the deceased 42nd Respondent vide Court order dated 11.09.2025 made in



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CMP(MD)Nos.6924, 6926 & 6928 of 2025 in SA(MD)No.77 of 2018 by KKRKJ)

139.Mahalakshmi

140.Kasturi

-- Respondents

(Respondents 139 & 140 are brought on record as LR's of the deceased 43rd Respondent vide Court order dated 11.09.2025 made in CMP(MD)Nos.6919, 6922 & 6923 of 2025 in SA(MD)No.77 of 2018 by KKRKJ)

141.Akila

-- Respondent

(141th Respondent is brought on record as LR's of the deceased 48th Respondent vide Court order dated 11.09.2025 made in CMP(MD)Nos. 6907, 6908 & 6909 of 2025 in SA(MD)No.77 of 2018 by KKRKJ)

142.Krishnaveni

143.Dinesh Kumar

144.Vedapriya

-- Respondents

(Respondents 142 to 144 are brought on record as LR's of the deceased 61st Respondent vide Court order dated 11.09.2025 made in CMP(MD)Nos.6900, 6902 & 6906 of 2025 in SA(MD)No.77 of 2018 by KKRKJ)

Prayer: The Second Appeal has been filed under Section 100 of C.P.C, to reverse and set aside the Judgment and decree in A.S.No.40 of 2014 on the file of the II Additional District and Sessions Judge, Thanjavur dated 28.08.2017 confirming the judgment and decree in O.S.No.62 of 2005 on the file of the Additional Subordinate Judge at Thanjavur dated 12.08.2013.

For Appellants : Mr.S.Ramesh

For Respondents : Mr.T.A. Ebenezer for R1



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Mr.M.Muthu Manickam for R116
Government Advocate (Civil Side)

R16, R19, R22, R24, R30, R34, R38,
R32, R40, R71, R79, R90, R91, R96,
R97, R98, R109, R118, R119, R120,
R121 – No Appearance

Respondents R17, R42, R43, R48,
R59, R61, R76 and R94 died

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- 1.B. Usharani
2. M. Shankar
3. K. Baskaran
4. C. Kirubakaran
5. Amalraj

-- Appellants /Appellants/

Defendants 132, 133, 135, 136 & 140

Vs.

- 1.V. Ponramu
- 2.Venkatachala Udayar
- 3.Pavunammal
- 4.Dhanapakiam
- 5.Pushpavalli
- 6.Tamilarasi
- 7.Kalaiarasi
- 8.Mangaiyarkarasi
- 9.Karpukkarasi
- 10.Elavarasi
- 11.Lakshmi



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12.Annadurai

13.Ramasamy

14.Janab Nazeer Ahamed

15.Thyagarajan

16.Vijaya

17.Krishnan

18.P. Santhanakrishnan

19.K. Lalithambal

20.T. Elangovan

21.K. Venkatesan

22.S.R. Gopalakrishnan

23.Jayakumar

24.Govindasamy

25.C. Palaniammal

26.A. Kilara

27.Kesavakumaran

28.Nagarajan,

29.K. Ramalingam

30.V. Pandian

31.K. Kannan

32.Chidambaram

33.Kannaiyan

34.Elangovan

35.Manivannan

36.Chandrasekaran,

37.Krishnamoorthy



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38.Sakthivel

39.Khadar Beevi

40.Muniappan

41.Ravichandran

42.Thangam

43.Usha Rani

44.Swaminathan

45.Subramanian

46.Sridhar

47.Sachidhanandam

48.Masilamani

49.Panneerselvam

50.Subramanian

51.Genaseelan

52.Anthonysamy

53.Marimuthu

54.A.Arokiyasamy

55.Sambandam

56.Chandramohan

57.Ramanathan

58.Kaliyaperumal

59.Jayabal

60.T. Govindasamy

61.Nagarajan

62.Arul Amaran

63.Narayanaswamy

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64.Palaniammal

65.Selvaraj

66.Boobathy

67.Mohan

68.Jeeva Jothy

69.S. Ravichandran

70.Marimuthu

71.Venkatramani

72.Bragadeeswaran

73.C. Govindarajan

74.Arulanandhu

75.Swaminathan

76.T. Nehru

77.Manivannan

78.Samidurai

79.Chinnathambi .S

80.M. Paramasivam

81.V. Thirumavalavan

82.Virutthasanthi,

83.Irudayaraj,

84.S. Parthasarathy

85.A.Ganesan

86.Govindarajan .A

87.Nagarajan

88.Indra

89.Banumathy

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90.A.Manoharan

WEB COPY 91.P. Muthukrishnan

92.Kasthuri

93.Lakshmi

94.Balasubramanian

95.Gunasekar

96.T. Muhilan

97.Aranganathan

98.G. Jayaraman

99.S. Rajendran

100.R. Anbalagan

101.Kousalya

102.S. Maheswari

103.K. Thangavelu

104.Chelladurai

105.R. Elango

106.V. Ponnaiyan

107.Veeramani

108.S. Elangovan

109.Bhuvaneswari,

110.Kalaiselvan

111.Renganayaki

112.S. Kannan

113.Ezhilarasi

114.Kaliyaperumal

115.Elamaran,

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116.Bhuvaneswari

117.Krishnan

118.Chitra

119.Vembu ammal

120.S. Rajendran

121.Kalavathy

122.Annasamy mantrayar

123.K. Mallika

124.Shanmugam

125.G. Nagarajan

126.Sundaram

127.Pandian

128.K. Ilayaraja

129.Rethinam

130.K.Nandakumar

131.Mariammal

132.Balasubramanian

133.K. Suseela

134.G. Sundarrajan

135.Vallam Town Panchayat
represented by its President,
Vallam, Tanjore District.

136.Thangam

-- Respondents 2 to136 /

Respondents 2 to 136/
Defendants 1 to 131, 134, 137 to 139

137. S.Kala

138.Balaji

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139.Shankar Ganesh

-- Proposed Respondents 137 to 139/

Respondents 137 to 139/

Defendants Nil

Prayer: The Second Appeal has been filed under Section 100 of C.P.C, to set aside the Judgment and decree dated 28.08.2017 passed in A.S.No.31 of 2014 on the file of II Additional District and Sessions Judge, Thanjavur, confirming the judgment and decree dated 12.08.2013 passed in O.S.No. 62/2005 on the file of the Additional Subordinate Judge, Thanjavur.

For Appellants : Mr.M.P.Senthil

For Respondents : Mr.T.A. Ebenezer for R1

Mr. M.Muthu Manickam for R135
Government Advocate (Civil Side)

: R3, R7, R9, R12, R20, R25, R26, R27,
R31, R32, R34, R44, R49, R51, R53,
R54, R62, R66, R70, R79, R83,
R88, R89, R98, R99, R100, R107,
R111, R112, R113, R114,
R117, R118, R121, R122, R123, R127,
R131, R133, R134,
R137, R138, R139 – No Appearance

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P.Santhankrishnan (died),

1.Chandrasekaran

2. Marimuthu

3. Renganayaki

4. S.Kannan

5. Vembu ammal



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6. Mariammal

7. S.Kala

8. Balaji

9. Shankar Ganesh

-- Appellants 1 to 9/
Appellants 1 to 5 & 8 to 12/
Defendants 17, 35, 52, 110, 111, 120 to 124

--Vs--

1.V. Ponramu

-- Respondent/Respondent/
Plaintiff

Venkatachala Udayar (Died)

2.Pavunammal

3.Dhanapakiam

4.Pushpavalli

5.Tamilarasi

6.Kalairasi

8.Karpukarasi

7.Mangaiyarkarasi

9.Elavarasi

10.Lakshmi

11.Annadurai

12.Ramsamy

13.Janab Nazeer Ahamed

14.Thiyagarajan

15.Vijaya

16.Krishnan

17.K.Lalithampal

T.Elangovan (Died)

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18.Venkatesan

19.S.R.Gopalakrishnan

20.Jeyakumar

21.Govindasamy

22.C.Palaniammal

23.Kilara .A

24.Kesavakumaran

25.Nagarajan

26.K.Ramalingam

27.V.Pandian

28.K.Kannan

29.Chidambram

30.Kannaiyan

31.Elangovan

32.Manivannan

33.Krishnamoorthy

34.Sakthivel

35.Khadar Beevi

36.Munniappan

37.Ravichandran

38.Thangam

39.Usha Rani

40.Swaminathan

41.Subramanian

42.Sridhar

43.Sachidanantham

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44. Masilamani
45. Panneerselvam
46. Subramanian
47. Gunaseelan
48. Anthonysamy
49. A. Arokiasamy
50. Sambandam
51. Chandramohan
52. Ramanathan
53. Kaliyapermal
54. Jayabal
55. T. Govindasamy
56. Nagarajan
57. Arulamaran
58. Narayanaswamy
59. Palanisamy
60. Selvaraj
61. Boopathi
62. Mohan
63. Jeevajothi
64. S. Ravichandran
65. Marimuthu
66. Venkatramani
67. Bragadeeswaran
68. C. Govindarajan
69. Arulananthu



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70.Swaminathan

71.T.Nehru

72.Manivanan

73.Samidurai

74.Chinnathambi

75.Paramasivam

76.Thirumavalavan

77.Viruthashanti

78.Iruthaiyaraj

79.Parthasarathi

80.Ganeshan

81.Govindarajan

82.Nagarajan

83.Indra

84.Banumathi

85.Manoharan

86.Muthukrishnan

87.Kasturi

88.Lakshmi

89.Balasubramanian

90.Gunasekar

91.Mukilan

92.Aranganathan

93.Jeyaraman

94.Rajendran

95.Anbalagan

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96.Kowsalya

97.Maheswari

98.K.Thangavelu

99.Chelladurai

100. Ilango

101. Ponnaiyan

102. Veeramani

103. Elangovan

104. Bhuvaneshwari

105. Kalaiselvan

106. Ezhilarasi

107. Kaliyaperumal

108. Ilamaran

109. Bhuvaneshwari

110. Krishnan

111. Chitra

112. Rajendran

113. Malliga

114. Shanmugam

115. Nagarajan

116. Sundaram

117. Pandiyan

118. Ilayaraja

119. Rethinam

120. Nandakumar

121. Balasubramanian

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122. Usharani

123. Shankar

124. Susila

125. Baskaran

126. Kiribakaran

127. G.Sundarajan

128. Vallam Town Panchayat,
represented by its President,
Having its office at Vallam,
Thanjavur Town and Munsif.

129. Thangam

130. Amalraju

131. Kalavathi

132. Annasami Manthrayar

-- Respondents/Respondents/
Defendants

Prayer: The Second Appeal has been filed under Section 100 of C.P.C, to set aside the Judgment and decree of learned II Additional District and Sessions Judge, Thanjavur dated 28.02.2023 in A.S.No.35 of 2013 confirming the judgment and decree of the learned Additional Subordinate Judge, Thanjavur, dated 12.08.2013, in O.S.No.62 of 2005.

For Appellants : Mr.S.Ramesh

For Respondents : Mr.T.A. Ebenezer for R1

Mr.M.P.Senthil for R 122, R 123, R 125,
R 126 & R 130

: Mr. M.Muthu Manickam for R128
Government Advocate (Civil Side)

COMMON JUDGMENT



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The appellants/defendants 1 to 23 in O.S.No.62 of 2005 on the file of the learned Additional Subordinate Judge, Thanjavur, have filed these appeals, challenging the judgment and decree passed in A.S.Nos.35 of 2013 and 40 & 31 of 2014 on the file of the learned II Additional District and Sessions Judge, Thanjavur, confirming the judgment and decree of the learned Additional Subordinate Judge, Thanjavur, in O.S.No.62 of 2005, which was filed by the first respondent/plaintiff for the relief of partition of $\frac{3}{4}$ share in the suit scheduled property.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking before the trial Court.

3. **The brief averments made in the plaint are as follows:-**

The first defendant is the father and the second defendant is the sister of the plaintiff. The third defendant is the maternal aunt (mother's sister) of the plaintiff'. Since her husband deserted her, she started living with the first defendant and continues to live with



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him till date. The first defendant and his brother namely, Rathinam Udaiyar entered into a partition. In the partition, 'A' schedule property devolved on the first defendant. Further, the first defendant purchased some properties with his income i.e., the remaining properties namely, 'B' to 'E' scheduled properties. Thereafter, he alienated the properties to the defendants 13 to 138. After the demise of Rathinam Udaiyar, the legal heirs of Rathinam Udaiyar were added as parties as defendants 4 to 12 in respect of 'A' schedule property. The second defendant got married on 15.07.1987 and hence, she is not entitled to any partition in the suit scheduled property. Earlier, the plaintiff filed a suit in O.S.No.137 of 1994 before the Sub-Court, Thanjavur, for partition and the same was dismissed for default. Since the subsequent purchasers of the suit scheduled properties threatened him to withdraw the suit, the suit was let it to be dismissed for default. Hence, he filed the present suit for partition of the suit scheduled property.

4.The family members of the defendants 2 to 12 never



appeared and they were set *ex-parte*.

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5. **The brief averments made in the written statement are as follows:-**

Several defendants namely, the subsequent purchasers have filed written statements and contested the suit stating that 'B' to 'E' schedule properties are the self acquired properties of the first defendant. The first defendant and the plaintiff colluded together and filed a suit to defeat the right of the purchasers. The second suit for the same cause of action, is not legally maintainable and the suit is also barred by limitation. The purchasers purchased the property in 'E' schedule property and also some of the properties mentioned in 'D' schedule property.

6.1. Based on the above said pleading, the trial Court has framed the following issues:-

1. Whether the plaintiff is entitled for 1/2 share in partition as prayed for?

2. To what relief the plaintiff is entitled for?

6.2. After hearing the arguments of learned counsels



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appearing on behalf of both sides, the trial court framed the following additional issues :-

1. Whether the suit is hit by Section 11 C.P.C., Order 1 Rule 11 C.P.C., Order 6 Rule 16 C.P.C., Order 7 Rule 3 and 11 C.P.C., and also Order 9 Rule 9 C.P.C.,?

2. Whether the suit is barred by limitation as pointed out by the defendants?

3. Whether the valuation of the suit under Section 37(2) of Court Fees Act, is correct?

4. Whether the defendants are entitled to get equity?

7.1. Before the trial Court on the side of the plaintiff, the plaintiff examined himself as P.W.1 and Ex.A1 to Ex.14 were marked. On the side of the defendants, the defendants 14, 133, 125, 126, 121 & 52 were examined as D.W.1, D.W.3, D.W.4, D.W.5, D.W. 6 & D.W.7 and another witness was examined as D.W.2 and Ex.B.1 to Ex.B.30 were marked.

7.2. During the pendency of the suit, the first defendant died



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and his share in the suit scheduled property was allotted to the plaintiff and he is entitled to $\frac{3}{4}$ share and the sale consideration was also paid by the defendants 13 to 140.

7.3. After analyzing the evidence adduced on both sides, the trial Court has decreed the suit by granting relief of $\frac{3}{4}$ share and the purchasers were directed to get the equity in the final decree proceedings. Aggrieved over the said judgment and decree, the defendants 132, 133, 135, 136 & 140 filed an appeal before the II Additional District & Sessions Judge, Thanjavur, in A.S.No.31 of 2014. The learned First Appellate Judge also gave a finding that the purchasers are not entitled to equity in respect of $\frac{3}{4}$ share allotted to the plaintiff and confirmed the judgment and decree passed by the trial Court. Several subsequent purchasers appeared before this Court.

8. Challenging the same, the present appeal has been preferred by the appellants.



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9.1. The learned counsel for the purchasers would submit that the suit was barred by Order IX Rule 9 CPC., and also the suit was not legally maintainable for the reason that the earlier suit was dismissed for default. Both the Courts below failed to consider that no evidence was adduced to prove that the properties are the joint family properties and that the first defendant purchased the properties from the income of 'A' schedule property. The finding was given without any evidence to prove that the surplus income from 'A' schedule property was utilised for purchasing 'B' to 'E' schedule properties. Therefore, a palpable error was committed by both the Courts below in rendering the finding that the first defendant purchased the property from the income of 'A' scheduled property.

9.2. The learned counsel for the purchasers would also submit that the learned trial Judge is not correct in granting decree in respect of the properties purchased by the purchasers during the life time of the first defendant in 'F' and other schedule properties.



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The plaintiff has right in 'A' schedule property. But, the purchase was made in 'F' schedule property and hence, the purchased properties stand in the name of Venkadachala Udaiyar, the first defendant, is not correct.

9.3. The learned counsel for the purchasers would further submit that the Court below also failed to properly consider the paragraphs Nos.6 and 8 of the judgment of the Hon'ble Supreme Court in *Vineeta Sharma Vs. Rakesh Sharma* reported in *AIR 2020 SC 3717*. Therefore, they seek to set aside the concurrent finding rendered by both the Court below.

10. The learned counsel for the contesting respondent namely, the plaintiff would submit that the case of *Vineeta Sharma* is not applicable to the facts of the present case since the second defendant namely, his sister got married in the year 1987, i.e., prior to the amendment and she has not filed any appeal to challenge the decree granted in O.S.No.62 of 2005 and also against the other defendants/purchasers. Therefore, this Court has jurisdiction to



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consider the relief of other defendants, who have not preferred the appeal.

11.1.The learned counsel for the remaining respondents would submit that when both the Courts below have concurrently held that the properties were purchased from the income of the 'A' schedule property, the said finding of the fact cannot be set aside by this Court as per provision under Section 100 Cr.P.C.,

11.2.The learned counsel for the remaining respondents would further submit that the Court below correctly granted decree relating to $\frac{3}{4}$ share considering the fact that the defendants 2 & 3 have no right in the suit schedule properties.

11.3.The learned counsel for the remaining respondents would also submit that the police threatened the plaintiff to withdraw the suit and hence, he withdrew the suit and there is no bar to file a fresh suit The said issue was also discussed by this Court in CRP(MD)No.284 of 2008. Therefore, the present suit is



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maintainable and both the Courts below on appreciation of the fact and law, have given such findings and there is no need for interference in the said findings.

12.1. This Court framed the following questions of law at the time of admission of S.A.(MD)No.77 of 2018 and S.A(MD)No.99 of 2019:-

1. Whether the courts below were right in holding that the subsequent suit is maintainable after the earlier suit was dismissed for default, when the subsequent suit was filed under the same cause of action?

2. Whether the courts below were right in not considering the suit for partition that has been filed by the son during the life time of father is maintainable?

*3. Whether the courts below were right in not considering the full bench judgment reported **AIR 2020 SC 3717 (Vineeta Sharma Vs. Rakesh Sharma)** after the Hindu Succession (Amendment) Act, 2005 came into force and granting 3/4 share in favour of the plaintiff?*

4. Whether both the courts below were correct in holding that B, C, D and E scheduled properties will become joint family property since they were said to have



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*been purchased by the 1st defendant from the income of
'A' schedule property?*

12.2. This Court framed the following questions of law at the time of admission of S.A.(MD)No.189 of 2025 :-

i) Whether the courts were right in holding that existence of joint family properties will lead to a conclusion that all the properties purchased were joint family properties, despite there being no proof regarding excess income?

13. To answer the above question of law, following genealogy and dates and events are relevant.

Dates	Events
20.06.1957	1st defendant/Venkatachala Udaiyar entered partition with his brother Rathinamudaiyar and got "A" schedule property.
03.07.1958	1st defendant/Venkatachala Udaiyar purchased the property mentioned in the portion of the "E" schedule property Item Nos.6, 7(Part), 8, 9 of the 'E' Schedule property
15.07.1987	The 2nd defendant got married
17.05.1992	The plaintiff demanded partition by issuing notice to the 1st defendant.



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.1994	O.S.No.137 of 1994 filed by the 1st respondent/V.Ponramu seeking partition and the same was dismissed on 18.09.1997.
03.09.1994	1st defendant/Venkatachala Udaiyar executed a power of attorney in respect of the Item Nos.6, 7(Part), 8, 9 of the "E" Schedule property and layout was formed in the name of "Devaram Nagar" along with remaining property of Thangavellu Moopanar, Sekar, Kaliyamoorthy.
18.09.1997	Suit dismissed for default.
	The defendants Nos. 12 to 135 are purchasers of the various plots in the said Nagar on various dates.
05.07.2005	The present suit in O.S.No. 62 of 2005 seeking the relief of partition is filed by the plaintiff

14. The discussion whether B, C, D & E schedule properties are the joint family properties : -

14.1. It is settled principle that the person, who claims the property as joint family property is duty bound to prove the existence of the joint family nucleus, out of the said joint family nucleus surplus income was derived and the said surplus income was utilized for the purchase of the remaining properties. In this case, according to the plaintiff, the first defendant got "A" schedule property through the partition dated 20.06.1957. There was no evidence adduced to prove that the first defendant generated



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surplus income from the said “A” scheduled properties and the same was used by him to purchase the remaining schedule of properties. All the other properties namely, B, C, D and E schedule properties stood in the name of the first defendant. In the said circumstances, merely because jointly family was existing there is no presumption that all the properties standing in the name of the first defendant are joint family properties. The plaintiff has not even established any circumstance to presume that they were purchased from the joint family nucleus. Both the Courts on assumption and surmise have held that the properties mentioned in B, C, D and E schedule are the joint family properties.

14.2.Further, both Courts below wrongly shifted the burden upon first defendant that he has not proved the purchase of B, C, D, E schedule properties without the aid of income from “A” schedule property as against the principle that the person who claims joint family property has to prove the existence of joint family nucleus and it generated surplus income and the same had been used to purchase the remaining properties.



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14.3. The plaintiff has not even filed any joint patta to show the character of the properties. Therefore, this court holds that both the courts below committed error in holding that the first defendant purchased the properties mentioned in B, C, D and E schedule from the income generated out of "A" schedule property without any evidence. Hence this court holds that the properties mentioned in B, C, D and E properties are the self acquired properties of the first defendant.

15. The discussion on the maintainability on filing of the subsequent suit:-

15.1. It is true that before filing the present suit, the plaintiff filed the suit in O.S.No.137 of 1994 seeking partition and subsequently, the said suit was dismissed for default on **18.09.1997**. According to the appellants, without restoring the said suit, the fresh suit is not maintainable. It is well settled principle that where an earlier suit was dismissed for default without adjudication for the entitlement of the share in the suit scheduled properties



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subsequent suit for partition is maintainable. The said issue was already decided by the Hon'ble Division Bench of this Court in the case of *Ramasesha Iyer V. C.V.Ramanujachariar* reported in *AIR 1935 Madras 458* and the Hon'ble Division Bench has held that subsequent suit for partition even after dismissal of the former suit is maintainable. The defendant Nos. 132, 133, 135 & 136 had filed an application in I.A.No.56 of 2006 to reject the present suit in O.S.No. 62 of 2005 under Order VII Rule XI of CPC and the same was entertained by the learned Trial Judge, but the said judgment was reversed by this Court in C.R.P.(MD).No.284 of 2008 and this Court has set aside the order in I.A.No.56 of 2006 with following specific findings:-

“14. The learned counsel for the respondents relied on the judgment of a learned Judge of this Court in Dr.S.Jayakumar & another v. K.Kandasamy Gounder reported in 2006(2) LW 259 in support of his contention that subsequent suit on the very same cause of action is not maintainable. However, in the said judgment, the subsequent suit was found to be barred, in view of large number of earlier litigations between



the parties which has attained finality. In the present case, admittedly, this is the first comprehensive suit after the dismissal of the earlier suit for partition. It is also an undisputed position that the respondents were not parties to the earlier suit and they were all subsequent purchasers. Therefore, they cannot contend for the position that the decree in the earlier suit for partition dis-entitles the revision petitioner from filing a fresh suit for partition."

15. *It is also found from the pleadings that the respondents were aggrieved by the subsequent suit for partition, as they have purchased the property, after the dismissal of the earlier suit. In case the respondents have purchased the share of some other parties, it is always open to them to plead equity by allotment of the property purchased by them to be allotted to the share of their vendor. Such equities could be worked out before the Court below.*

16. *Therefore, I am of the view that the learned trial Judge was not correct in allowing the application filed under Order 7 Rule 11 of C.P.C. and as such, the order is liable to be set aside and the same is accordingly set aside.*

15. In this case, there was no such challenge. Therefore, the



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suit is maintainable and the contention of the appellants that the suit is not maintainable in view of the dismissal of the earlier suit in O.S.No.137 of 1994, deserves to be rejected.

16. Discussion on the entitlement of share of the plaintiff in

“A” Schedule property:-

16.1. Both the courts below granted decree for 3/4 share to the plaintiff in all the suit scheduled properties. The courts below without properly considering the sections 6 and 8 of the Hindu Succession Act, granted the said share. The suit was filed on 05.07.2005. According to the plaintiff, his father was Venkatachala Udaiyar. The said Venkatachala Udaiyar has two wives namely, Dhanapackiyam (D3) and Pappathiyammal. The plaintiff is the son of the Venkatachala Udaiyar through Pappathiyammal and the second defendant is the sister of the plaintiff and she got married on 15.07.1987. Venkatachala Udaiyar, namely, father of the plaintiff got “A” Schedule property through his family partition that took place on 20.06.1957. The said partition has taken place between Venkatachala Udaiyar and Rathinam Udaiyar. Rathina Udaiyar's



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legal heirs were impleaded as D4 to D12. They have no right in the

“A” schedule properties and other schedule of properties purchased by the first defendant/Venkatacha Udaiyar. It is admitted fact that “A” Schedule property devolved upon the Venkatachala Udaiyar through his family partition dated 20.06.1957. The same was not partitioned till the filing of the suit. Therefore, as per the amendment Act, 2005, and as per the decision of the Hon'ble Supreme Court in *Vineeta Sharma Vs. Rakesh Sharma* reported in *AIR 2020 SC 3717*, the second defendant also is entitled to equal share as that of plaintiff. But, the courts below failed to consider the same. Hence, this court holds that the decree for 3/4 share to the plaintiff is not correct in “A” schedule property. The second defendant has the same right as a coparcener as that of the plaintiff as per the Amendment Act, 2005. Therefore, the plaintiff, the second defendant and their father, namely, Venkatachala Udaiyar are all coparceners and each one is entitled to equal 1/3 share in “A” schedule coparcener property. Since Venkatachala Udaiyar died intestate during the pendency of the



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suit, his $\frac{1}{3}$ share devolved on the plaintiff and the second defendant. Therefore, each one is entitled to $\frac{1}{2}$ share in "A" schedule property.

17. Discussion on the entitlement of share of the plaintiff in "B" to "E" Schedule property :-

This court already has held that 'B' to 'E' schedule properties are the self acquired properties of the first defendant/Venkatachala Udaiyar. Therefore, neither the plaintiff nor the second defendant has any right over "B" to "E" scheduled properties during his life period ie., Venkatachala Udaiyar died on 04.01.2009 intestate. During his life period, he made a several alienations of "B" to "E" schedule property in favour of defendants No.13 to 140 vide different transactions. The plaintiff and the second defendant have no right to question the same. Venkatachala Udaiyar during his life time had not challenged the same as a fraudulent transactions despite he also was arrayed as a party to the proceedings. Therefore, the said transactions to the defendants 13 to 140 are valid



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and the plaintiff and the second defendant have no right over the said properties. But, they have right to divide the property equally in the remaining available "B" to "E" schedule properties. Therefore, the plaintiff and the second defendant have equal share in "B" to "E" schedule available properties except the properties purchased by the defendants 13 to 140.

18. Even though many of the defendants have not filed any appeal, considering the plea of the appellants herein, this Court is inclined to set aside the finding of the both the Courts below that 'B' to 'E' schedule properties are the joint family properties of the Venkatachala Udaiyar and the said items of properties are hereby found to be self acquired properties of Vankatachala Udaiyar and that his sales in favour of the defendants Nos.13 to 140 are valid. Further, in the interest of justice and also exercising power under Order 41 Rule 4 of C.P.C., this Court is inclined to modify the decree holding that the properties of all the defendants No.13 to 140 are not liable to be partitioned.



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19.In result, the Substantial Questions of Law are answered as follows:-

Substantial Questions of Law	Findings of this Court
1. Whether the courts below were right in holding that the subsequent suit is maintainable after the earlier suit was dismissed for default, when the subsequent suit was filed under the same cause of action?	Answered against the appellant holding that the subsequent partition suit is maintainable.
2. Whether the courts below were right in not considering the suit for partition that has been filed by the son during the life time of father is maintainable?	Partly answered in favour of the appellant in respect of the properties purchased by them holding that the suit is maintainable in respect of the 'A' schedule coparcenary property and not maintainable in respect of 'B' to 'E' schedule self acquired properties of father.
3. Whether the courts below is right in not considering the full bench judgment reported AIR 2020 SC 3717 (Vineeta Sharma Vs. Rakesh Sharma) after the Hindu Succession (Amendment) Act, 2005 and granted 3/4 shares in favour of the plaintiff?	Answered in such a way that the plaintiff and his sister are entitled to equal share in the 'A' schedule coparcenary property.



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4. Whether the both the courts below were correct in holding that B, C, D and E scheduled properties are the joint family property which are said to have been purchased by the 1st defendant from the income of the 'A' schedule property?	Answered in favour of the appellant that 'B' to 'E' schedule properties are the self acquired properties of the first defendant and the plaintiff has no right to claim the partition during his life time and hence, the purchase made by the appellants and the defendants 13 to 140 from the first defendant during his life time are valid and not liable to be partitioned.
i) Whether the courts were right in holding that existence of joint family properties will lead to a conclusion that all the properties purchased are joint family properties, despite there being no proof regarding excess income?	

20. Accordingly the second appeals are partly allowed on the following terms:-

i) *The decree in O.S.No. 62 of 2005 on the file of the Additional Sub Judge, Thanjavur so far as the properties purchased by the defendant Nos. 13 to 140 are not partiable and the same is hereby set aside.*

ii) *The plaintiff in O.S.No. 62 of 2005 on the file of the Additional Sub Judge, Thanjavur is entitled to ½ share in "A" schedule property.*

iii). *The plaintiff in O.S.No. 62 of 2005 on the file of the Additional Sub Judge, Thanjavur is entitled to ½ share in remaining available "B"*



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to “E” scheduled properties i.e., excluding the properties purchased by the defendant Nos.13 to 140.

- Consequently, connected miscellaneous petitions are closed.

11.09.2025

2/2

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

To:

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

K.K. RAMAKRISHNAN,J.



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S.A.(MD)Nos.77 of 2018, 99 of 2019, 189 of 2025
and
CMP (MD)Nos. 1670 of 2018, 4100 & 4511 of 2021 and
2224, 2227, 6900, 6902, 6906, 6904, 6911, 6912, 6919, 6922, 6923, 6907,
6908, 6909, 6913, 6914, 6915, 6917, 6920, 6921, 6925, 6927, 6924, 6926,
6928 of 2025 & CMP(MD) S.R.Nos. 29564 & 27813 of 2025

11.09.2025