



A.S.(MD).No.22 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.11.2025

PRONOUNCED ON : 14.11.2025

CORAM:

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

A.S.(MD).No.22 of 2015

1.M.Kalaiselvi

2.K. Vijayakumar (died)

3.K. Venkateshan

....Appellants/Plaintiffs

4.Susila

....LRs of 2nd appellant

(4th appellant is brought on record as legal heir
of deceased 2nd appellant vide Court order
dated 13.10.2022)

Vs

1.K.Kannaiyan (died)

2.M.Kaaliyannan

3.A.Anandha Krishnan

4.Sulochana

5.Nagarajan

6.Muthuselvam

7.Booma Devi

8.Uma Maheswari

9.N.M.Kandhan

10.Krishnaveni



A.S.(MD).No.22 of 2015

- 11.S.Murugan
12.K.Prabakaran
13.R.Selvarani
14.Saradha
15.Anguraj
16.Vasanthamani
17.Nalini
18.Amutha
19.Manivannan
20.Rukmani
21.Sakthivel
22.Abdul Usain Aalam
23.Vadivel
24.T.Rajan
25.Luisraj
26.Anbalagan
27.Gobinath
28.Jeyachandran
29.Thirupathy
30.Meena
31.Saravanan
32.Manoharan
33.Subramanian
34.Gunasekaran
35.Arumugam
36.Muthulakshmi
37.Sambath Kumar



A.S.(MD).No.22 of 2015

38.Senthilkumar

....Respondents/Defendants

(1st respondent died and the appellants who are already on record are recorded as legal heir of the deceased 1st respondent vide Court order dated 13.10.2022)

Prayer: The First Appeal has been filed under Section 96 of C.P.C, to set aside the judgment and decree dated 06.11.2012 made in O.S.No.32 of 2010 on the file of the I Additional District Sessions Judge (PCR), Tiruchirappalli and allow the first appeal as prayed for.

For Appellants : Mr.S.Sureshkumar Isaac Paul
Panel Advocate
Legal Aid Service.

For Respondents :R1-died

:Mr.K.Govindarajan for R2

: R3 & R33 dismissed vide Court order dated 17.09.2025

:Mr.S.C.Herold Singh For R4, R6, R7, R11 to R13, R17 to R20, R22, R23 R26, R30, 35 & 36

:M/s.C.Santhi for R14

:Mr.V.Ilanchezian for R16

:Mr.A.Anandaraj
Legal Aid Counsel for R5,R9, R15, R21, R24, R25, R28 & R37

:R8, R10, R27, R31, R32, R34 & R38
dismissed vide Court order dated 22.08.2024

:R29 unserved.



A.S.(MD).No.22 of 2015

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The plaintiffs in a suit for partition have preferred the present first appeal challenging the dismissal of their suit.

(A).Factual Background:

2.The plaintiffs have contended that one Karuppannan had four sons by name Sanjeevi, Kannaiyan (D1), Balakrishnan and Nalliyannan and they remained as undivided Hindu joint family. In an oral partition of their family business on 01.04.1988, the first defendant Kannaiyan obtained an amount of Rs.2,25,000/- towards his share. Utilising the said amount, he had purchased 'A' and 'B' schedule properties. The first defendant had got married to one Suseela and they are blessed with three children namely Kalaiselvi, Vijayakumar and Venkatesh. Therefore, the said Kannaiyan constitutes a Hindu undivided family along with his three children.

3.In the plaint it is further contended that Kannaiyan had alienated a portion of the property in favour of defendants 2 and 3 claiming it to be his separate property. Hence, the suit for partition by the children of Kannaiyan seeking 1/4th share in the suit schedule property. The first defendant had remained exparte.



A.S.(MD).No.22 of 2015

4.The second defendant had filed a written statement contending that he had purchased a portion of the suit schedule property from the first defendant on 25.07.2003 under a registered sale deed in Doc.No.827/2003. He had further contended that the first defendant had instigated his children to file the suit for partition. The suit schedule properties are the absolute properties of the first defendant. The first defendant made several attempts to trespass into the suit schedule properties which resulted in filing of three F.I.Rs. The second defendant had further contended that he had already filed O.S.No.118 of 2011 seeking permanent injunction. Only as a counterblast, the present suit has been filed. Hence, he prayed for dismissal of the suit.

5.The third defendant in the suit namely Anandhakrishnan had filed a written statement contending that he had purchased the portion of the suit schedule property of the first defendant under a registered sale deed dated 25.07.2012 and when the first defendant made an attempt to trespass into the suit schedule properties, a police complaint had been given on 19.12.2006 and on 01.06.2007. Hence, he prayed for dismissal of the suit.

6.The second defendant in O.S.No.32 of 2010 had preferred O.S.No.118 of 2011 before the same Court seeking permanent injunction. In the said suit, he had contended that he had purchased the property from the first defendant on 25.07.2012 and through his power agent, he has created a layout and sold the property to the defendants 4 to 38. According to him, the



A.S.(MD).No.22 of 2015

suit schedule properties are the absolute properties of the first defendant namely Kannaiyan. Pursuant to the sale deed in his favour, he had taken possession of the property and defendants 4 to 38 have put up construction in the suit schedule properties.

7.It was further contended that since the plaintiffs are not in possession of the suit schedule properties, the Court fee paid by them on the ground that they are in joint possession is not correct. It was further contended that the properties which have been sold by the first defendant have not been included in the suit schedule properties and therefore, the suit is bad for partial partition.

8.The trial Court tagged both the suits together and conducted a joint trial.

9.The evidence was recorded in O.S.No.32 of 2010. The second plaintiff was examined as PW1 and one Kuppusamy was examined as DW1. Exs.A1 to A7 were marked on the side of the plaintiffs and Exs.B1 to B37 were marked on the side of the defendants. The trial Court dismissed O.S.No. 32 of 2010 and decreed O.S.No.118 of 2011.

10.Challenging the decree passed by the trial Court in O.S.No.32 of 2010 (partition suit), the present appeal has been preferred by the plaintiffs in the said suit.



A.S.(MD).No.22 of 2015

(B).Submissions of both counsels:

WEB COPY

11. When the appeal was taken up for hearing, the learned counsel for the respondents raised a preliminary objection with regard to the maintainability of the first appeal. He submitted that when two interconnected suits were tried together and a common judgment was passed, filing of appeal as against only one of the decree is clearly barred under Section 11 of C.P.C. According to him, the findings recorded in O.S.No.118 of 2011 and the decree passed in the said suit has reached finality. As on today, the permanent injunction decree is operating as against the present appeal. In such circumstances, the appeal is not maintainable as against O.S.No.32 of 2010 alone.

12. Per contra, the learned counsel appearing for the appellants had submitted that O.S.No.32 of 2010 was filed seeking partition of 'A' and 'B' schedule properties on the ground that they are Hindu joint family properties. One of the co-sharers namely first defendant (Kannaiyan) had alienated the same in favour of the defendants 2 and 3. Since alienation was not binding upon the plaintiffs, they have preferred the suit for partition.

13. The contention of the plaintiffs in the partition suit that the suit schedule properties were purchased out of the joint family nucleus has not been properly appreciated by the trial Court. He had further submitted that the trial Court has not taken into consideration Exs.A1 to A3 which are the



A.S.(MD).No.22 of 2015

income tax returns for three consecutive assessment years. He had further submitted that the trial Court has not properly appreciated Exs.A4 and A5 which are conditional sale deeds. He had further submitted that O.S.No.118 of 2011 was filed by the second defendant in the present suit claiming that he has purchased the property from the first defendant. When the validity of the said sale was under questioned in the partition suit, the non filing of another first appeal challenging the decree in O.S.No.118 of 2011 would not be fatal. Hence, he requests for considering the present first appeal arising out of partition suit on merits.

14.We have carefully considered the submissions made on either side and perused the material records.

(C).Discussion:

15.A perusal of the pleadings in O.S.Nos.32 of 2010 and 118 of 2011 clearly reveal that they are intertwined. The plaintiffs in O.S.No.32 of 2010 claim that it is a joint family property and therefore, they are entitled to 1/4th share. On the other hand, one M.Kaliannan (second defendant in O.S.No.32 of 2010) claims that it is the absolute property of K.Kannaiyan and he had sold the same in his favour. Based upon the above said sale, he had preferred an independent suit in O.S.No.879 of 2020 (later renumbered as O.S.No.118 of 2011) seeking permanent injunction with regard to the properties which he had purchased.



A.S.(MD).No.22 of 2015

16.A perusal of the judgment of the trial Court reveals that O.S.No.32 of 2010 and O.S.No.118 of 2011 have been tagged together and a joint trial has been conducted. Common evidence have been recorded in both the suits and a common judgment has been delivered on 06.11.2012. However, two separate decrees have been drafted.

17.The plaintiffs in O.S.No.32 of 2010 have preferred this appeal only as against the dismissal of their suit for partition. Though the plaintiffs in the partition suit were not parties to O.S.No.118 of 2011, they could very well challenged the same by seeking the leave of this Court as a party aggrieved over the decree. However, they have not chosen to do so. As on today, the judgment as against their father namely Kannaiyan for a permanent injunction not to disturb possession has reached its finality over the properties covered in O.S.No.32 of 2010 also. Therefore, the facts and the source of title in both the suits are so interconnected that the common judgment rendered by the trial Court cannot be segregated. That apart, two the separate decrees have been drafted for each of the suits.

18.The Hon'ble Supreme Court in a judgment reported in **1993 Supp(2) Supreme Court Cases 146 (Premier Tyres Limited Vs.Kerala State Road Transport Corporation)** in paragraph No.4 has held as follows:

“4.Although none of these decisions were concerned with a situation where no appeal was filed against the decision in



A.S.(MD).No.22 of 2015

connected suit but it appears that where an appeal arising out of connected suits is dismissed on merits the other cannot be heard, and has to be dismissed. The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non-filing of appeal against a judgment or decree is that it become final. This finality can be taken away only in accordance with law. Same consequences follows when a judgment or decree in a connected suit is not appealed from.

19.The Hon'ble Supreme Court in a judgment reported in **(2015) 3 SCC 624 (Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others)** in paragraph No.27 has held as follows:

*“27.Procedural norms, technicalities and processal law evolve after years of empirical experience, and to ignore them or give them short shrift inevitably defeats justice. Where a common judgment has been delivered in cases in which consolidation orders have specifically been passed, we think it irresistible that the filing of a single appeal leads to the entire dispute becoming sub judice once again. Consolidation orders are passed by virtue of the bestowal of inherent powers on the Courts by Section 151 of the CPC, as clarified by this Court in *Chitivalasa Jute Mills vs. Jaypee Rewa Cement*. In the instance of suits in which common Issues have been framed and a common Trial has been conducted, the losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments. While so opining, we do not intend to whittle down the principle that appeals are not expected to be filed against every inconvenient or disagreeable or*



A.S.(MD).No.22 of 2015

unpropitious or unfavourable finding or observation contained in a judgment, but that this can be done by way of cross-objections if the occasion arises. The decree not assailed thereupon metamorphoses into the character of a “former suit”. If this is not to be so viewed, it would be possible to set at naught a decree passed in Suit A by only challenging the decree in Suit B. Law considers it an anathema to allow a party to achieve a result indirectly when it has deliberately or negligently failed to directly initiate proceedings towards this purpose....”

20.The judgments of the Hon'ble Supreme Court cited supra are squarely applicable to the facts of the present case. Any consideration of the present appeal on merits would clearly result in conflicting judgments between the same parties with regard to the same suit schedule properties. Therefore, we are of the considered opinion that the present appeal is clearly barred under Section 11 of C.P.C.

(D).Conclusion:

21.In view of the above said deliberations, the first appeal stands dismissed. No cost.

(C.V.K.J.,)

(R.V.J.,)

14.11.2025.

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



A.S.(MD).No.22 of 2015

To

WEB COPY

1.The I Additional District Judge
Tiruchirappalli

2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



WEB COPY



A.S.(MD).No.22 of 2015

**C.V.KARTHIKEYAN,J.
AND
R.VIJAYAKUMAR,J.**

msa

Pre-delivery Judgment made in
A.S.(MD).No.22 of 2015

14.11.2025