



*S.A.(MD).No.25 of 2016*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 28.01.2025**

**PRONOUNCED ON : 29.07.2025**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**S.A.(MD).No.25 of 2016**

A.Kothai

... Appellant

/Vs./

- 1.Venkataraman (Died)
- 2.Vembu @ Rengasamy (Died)
- 3.K.Janakalakshmi (Died)
- 4.R.Saroja (Died)
- 5.N.Pankajam (Died)
- 6.Krishna Iyengar
- 7.Srinivasan
- 8.K.Vasu Devan
- 9.Ramanujam
- 10.S.Mythili
- 11.V.Jayalakshmi
- 12.Sampath
- 13.G.Subha
- 14.Vijayalakshmi
- 15.N.Renganathan
- 16.R.Kannan
- 17.Rukmani
- 18.Narayanan
- 19.N.Sridharan
- 20.N.Narashiman

...Respondents



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(Respondents 11 to 13 are brought on record as LR's of the deceased 1<sup>st</sup> respondent;  
14<sup>th</sup> respondent is brought on record as LR of the deceased 2<sup>nd</sup> respondent;  
Respondents 15 to 17 are brought on record as LR's of the deceased 4<sup>th</sup> respondent; and  
Respondents 18 to 20 are brought on record as LR's of the deceased 5<sup>th</sup> respondent, vide common order, dated 02.12.2024, made in CMP(MD)Nos.1950, 16711, 16713, 16716, 16687, 16698, 16701, 16706, 16708 and 16710 of 2024 in SA(MD)No.25 of 2016)

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree, dated 01.03.2008, made in A.S.No.328 of 2003 on the file of the 1<sup>st</sup> Additional District Court, Tiruchirapalli, confirming the Judgment and Decree, dated 13.06.2003, made in O.S.No.7 of 1993 on the file of the Sub Court, Tiruchirapalli.

For Appellant : Mr.M.Ashok Kumar  
R1 to R6 : Died  
For R7 to R10 and R14: No appearance  
For R11 to R13 : Mr.R.Sundar  
For R15 to 20 : Mr.M.S.Vinoth

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### **JUDGMENT**

The present second appeal is preferred by the 6<sup>th</sup> defendant against the judgment and decree, dated 01.03.2008, passed in A.S.No.328 of 2003 on the file of the 1<sup>st</sup> Additional District Court, Tiruchirapalli, confirming the Judgment and



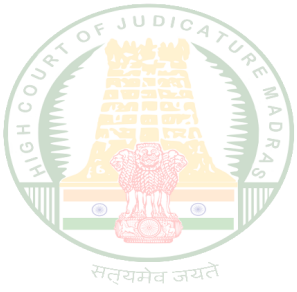
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Decree, dated 13.06.2003, passed in O.S.No.7 of 1993 on the file of the Sub Court, Tiruchirapalli.

2. The plaintiffs in the suit are the respondents 1 and 2 herein and the legal heirs of the deceased respondents 1 and 2 herein / plaintiffs are impleaded as respondents 11 to 14 herein. The defendants 1 to 5 in the suit are the respondents 9, 3, 10, 4 and 5 herein respectively. The legal heirs of the deceased respondents 4 and 5 herein / defendants 4 and 5 are impleaded as respondents 15 to 20 herein. The legal heirs of the deceased 3<sup>rd</sup> respondent herein / 2<sup>nd</sup> defendant were already impleaded as parties in the appellate stage itself. For the sake of convenience, the parties are referred as plaintiffs and defendants, as per the ranking in the suit.

3. The plaintiffs have filed the suit for partition. The averments stated in the plaint are that the 1<sup>st</sup> item of the suit property was purchased in the name of Seethaiammal who is the paternal grandmother of the plaintiffs under registered sale deed dated 29.10.1937. Since the original sale deed was stolen, hence the certified copy of the document is filed. After the death of Seethai Ammal it



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devolved around her son namely Srinivasa Iyengar who died intestate on 04.06.1977. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, 1<sup>st</sup> defendant are the sons and 2, 3, 4 and 5 are daughters of the said Srinivasa Iyengar. The mother died on 28.10.1982 and she also died intestate. Now the properties are available for partition. The plaintiffs have five sisters but they have no right of partition and they lost their right to partition on account of the plaintiffs having been in possession and enjoyment of the same openly exclusively and adversely for over the statutory period ousting the rights, if any of their sisters. Hence the sisters are not necessary parties and not necessary to implead them based on false contention of 1<sup>st</sup> defendant in his reply notice. The 2<sup>nd</sup> item of house property was also purchased in the name of the Seethaiammal under registered sale deed dated 21.09.1961 and the original sale deed was taken (stolen) away by the 1<sup>st</sup> defendant and the same is with him. Except the aforesaid two properties there are no other immovable properties but through reply notice dated 30.11.1992 1<sup>st</sup> defendant had set out that there is a property at Kulathumedu, Puthur but there is no document available in the name of the plaintiffs' father. The plaintiffs are unable to trace title for which four boundaries are given by the 1<sup>st</sup> defendant. But the plaintiffs are not having



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any objection for partition of the said property if the 1<sup>st</sup> defendant bring the documents. The plaintiffs are entitled to 2/3<sup>rd</sup> and they do not want any division between them interest and may be jointly allotted 2/3<sup>rd</sup>. The 1<sup>st</sup> defendant is entitled to 1/3<sup>rd</sup>. The 3<sup>rd</sup> item of the movable properties are jewels belonging to mother and also vessels worth about Rs.5,000/-. The plaintiffs are entitled to share in 3<sup>rd</sup> item also. The 1<sup>st</sup> defendant had taken away the same along with the documents, but the 1<sup>st</sup> defendant denies the very existence. There is an iron safe with silver vessels belonging to the 2<sup>nd</sup> plaintiff, it remains locked and the key is with the 1<sup>st</sup> defendant and it is available for division and set out as item 3 hereunder. In the 1<sup>st</sup> item of the suit property out of 92 cents 80 cents alone is cultivable portion and out of which 53 cents was demarcated and handed over possession of the plaintiffs and the remaining extent is in the enjoyment of the 1<sup>st</sup> defendant. The arrangement was reached for the sake of convenience four years ago. So far as the 12 cents is concerned it is uncultivated punja lands with thorny bushes. The 1<sup>st</sup> plaintiff at his cost cleared them spending Rs.100/- but during his absence the 1<sup>st</sup> defendant removed all thorny trees committing acts of mischief. It is only the 1<sup>st</sup> plaintiff is paying the kist for the land throughout till date. The 1<sup>st</sup>



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defendant is bound to pay his share of kist so paid before any allotment to him in the properties. There are debts of the father which ought to be discharged and joint debts as well. On 02.07.1975 a registered mortgage deed was executed in favour of one Krishnan by the father of the parties i.e. sons and father have joined in the execution of the mortgage deed. The debt was exclusively discharged in 1983 by the 1<sup>st</sup> plaintiff by paying Rs.12,000/-. The first defendant is bound to pay his share of Rs.4000/- with interest at the rate of 12%. The first defendant borrowed from one Selvaraj by forging the signature of the first plaintiff. The first plaintiff had paid Rs.6000/- in order to keep the reputation of the 1<sup>st</sup> defendant and the discharged note would be produced during the trial. Thus, the first defendant is liable to pay the amount with 12% interest. There is another decree debt in O.S.No.738 of 1989 arising out of joint liability. The 1<sup>st</sup> plaintiff had exclusively discharged it. 1<sup>st</sup> defendant is liable to bear and pay his 1/3<sup>rd</sup> share. On this account the 1<sup>st</sup> defendant is liable to pay Rs.2000/- to the 1<sup>st</sup> plaintiffs. As stated earlier the 1<sup>st</sup> defendant is liable to pay his share of kist of Rs.35/- till date, as Rs. 100/- per year was paid by the 1<sup>st</sup> plaintiff. The 1<sup>st</sup> defendant is not amenable for partition. The 1<sup>st</sup> defendant is in possession of the item 2 of the suit property, a



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room is in exclusive possession of the 1<sup>st</sup> defendant. He retained the key of the room and iron safe in which the silver vessels belonged to the 2<sup>nd</sup> plaintiff is kept. The reply notice was sent by the 1<sup>st</sup> defendant with false contentions. The sisters are added as necessary parties with a view to avoid technical objections. Thus, the plaintiffs are entitled to 2/3<sup>rd</sup> share in the suit properties. Hence the suit is filed.

4. The 1<sup>st</sup> defendant had filed written statement wherein it is stated the entire plaint averments as false. The relationship between the plaintiffs and the defendants are admitted. The availability of the item 1 and 2 of the suit properties for partition is also admitted. The plaintiffs failed to include one item in the partition suit. In spite of reply notice, the plaintiffs did not care to include the left-out properties for partition, hence the suit is bad for partial partition. 1<sup>st</sup> plaintiff is collecting rent from the said item by leasing it to one Durai. Plaintiffs had failed to implead the five sisters namely Janakalakshmi, Mythili, Saroja, Pangajam and Kodhai who are entitled to shares along with the male members. The averment that the said sisters have no right and title and interest in the family properties and have no right for partition and that they lost their right to partition on account of



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the male members having been in possession openly, exclusively and adversely for over statutory period ousting the rights of any of the sisters are stoutly denied. Even if it is true the same ought to be proved to the suit. Hence the suit is bad for non-joinder of necessary parties. Admittedly the division of suit properties by metes and bounds have not taken place. The 1<sup>st</sup> plaintiff is in possession and enjoyment of 50 cents on western side, the same is enjoyment of 1<sup>st</sup> plaintiff on behalf of 2<sup>nd</sup> plaintiff also and the which lies on the eastern side of the item 2 of the suit properties. The first defendant is in possession of 25 cents on the eastern side and is paying his share of kist through 1<sup>st</sup> plaintiff who could have obtained receipts for the entire amount payable by all the sharers. While so the averment in the plaint as though plaintiffs have been paying kist every year at Rs.100/- per annum including this defendant's share is false, hence the 1<sup>st</sup> defendant is not liable to pay his share of kist. The claim that the 1<sup>st</sup> plaintiff had he had cleaned the thorny bush by spending Rs.100/- in 12 cents of the land and that first defendant alone removed that the thorny bush causing mischief is false. On the other hand, the 1<sup>st</sup> plaintiff has been systematically cutting and carrying away the fuel trees for the past three years. Just prior notice the plaintiff was carry out the



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same, when prevented by the 1<sup>st</sup> defendant, enraged at that alone notice was given by the plaintiffs, hence plaintiffs alone are liable to render a true and proper account regarding the value of trees so cut and carried away by them. The house in the 2<sup>nd</sup> item of the suit property is in possession and enjoyment of the plaintiff. In the said house two rooms are in the custody of the 1<sup>st</sup> defendant, wherein the articles belonging to the 1<sup>st</sup> defendant and Bombay sister S.Saroja are kept locked. Rest of the house is with the 2<sup>nd</sup> plaintiff. In item 2 comprises of two coconut trees, two neem trees, one cluster of bamboo trees about 100 in numbers. Plaintiff are alone enjoying the usufructs and are bound to account for the same. The plaintiffs are bound to pay accounts to the defendants. The jewellery and the vessels left by the mother had been sold and the proceeds were spent for celebrating the marriage of the 2<sup>nd</sup> plaintiff and the marriage of sister Kodhai, the 6<sup>th</sup> defendant after the death of mother. So much so there is no jewel or vessels available with the defendant. It is also denied that the defendant had taken the documents. The redemption of mortgage executed in favour of Krishnan was discharged by Kodhai, the 6<sup>th</sup> defendant by paying Rs.10,000/-. The amount was sent by Demand Draft in 1984-1985 by the 6<sup>th</sup> defendant drawn on Canara Bank,



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hence the claim that the plaintiffs have discharged the mortgage is false, hence the plaintiffs cannot claim the same along with interest. The suit in O.S.No.738 of 1979 on the file of the District Munsif Court, Trichy on the basis of pro-note for Rs.2000/- executed in favour of one Thangamma wife of Krishnan, the said suit was filed against the plaintiffs and not against the defendant who was not a borrower, hence the claim in the suit is false. The 1<sup>st</sup> defendant did not borrow Rs. 5000/- from Selvaraj by forging the signature of the first plaintiff as falsely alleged in the plaint. On the other hand, this 1<sup>st</sup> defendant borrowed the amount from Selvaraj for performing the marriage of the sister Kothai, the 6<sup>th</sup> defendant and the same was discharged by the 1<sup>st</sup> defendant. The plaintiff did not discharge the loan as falsely alleged in the plaint. Hence the defendant is not liable to pay any amount much less with interest. It is denied that this defendant is not amenable for partition. On the other hand, the 1<sup>st</sup> defendant expressed his consent for a division amongst all the brothers and sisters as per the reply notice issued by the defendant. The iron safe belongs to the family, but the silver vessels and other articles belonged to the sister Mythili, 3<sup>rd</sup> defendant. Neither the plaintiffs nor the 1<sup>st</sup> defendant has nay share in the said articles. No doubt the key of this defendant

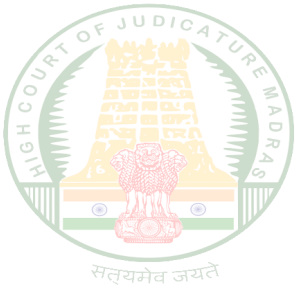


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is with the defendant but the room key is with the plaintiffs. Hence the iron safe alone is available for partition. Even as per the claim in the plaint in so far as the silver vessels, as alleged to be belonging to the 2<sup>nd</sup> plaintiff, the inclusion of the said items being available for partition in this suit concerned is untenable. The plaintiffs are not entitled 2/3<sup>rd</sup> share and not entitled to future profits. The plaintiffs are liable to render accounts and the defendants are not liable to pay share in the debt since the plaintiffs have not discharged any loan. Suit not properly valued, there is no cause of action and prayed to dismiss the suit.

5. The 6<sup>th</sup> defendant has filed a written statement which is adopted by the defendants 3 and 4. The defendants denied the plaint averments. The defendants 2 to 6 are entitled to share in the suit properties. The sisters are equally entitled to equal share in the suit property. The plaintiffs failed to include the other properties owned by the deceased Seethaiammal. Hence, the suit filed by the plaintiffs has to be dismissed for claiming partial partition. The other averments stated in the written statement filed by the 1<sup>st</sup> defendant are adopted.



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6. After considering the pleadings, the Trial Court framed the following issues:

- “1) Whether the suit has been filed without impleading necessary Parties?*
- 2) Whether there was any partial partition of suit properties?*
- 3) Whether the defendants are liable to pay the debts discharged by the plaintiffs?*
- 4) Whether the family debts were cleared by the 6<sup>th</sup> defendant and other defendants?*
- 5) Whether the plaintiffs are entitled to the relief of partition as claimed?*
- 6) Whether the plaintiffs are entitled to future profits and expenses?*
- 7) To what relief the plaintiffs are entitled to in the Joint family properties for partition? ”*

7. In the Trial Court, the plaintiffs examined the 1<sup>st</sup> plaintiff as PW1 and marked Ex.A1 to A16. The defendants examined the 1<sup>st</sup> defendant and 6<sup>th</sup> defendant as DW1 and DW2 and marked Ex.B1 to Ex.B9. After hearing both the plaintiffs and defendants, after perusing the evidences and documents, the Trial Court decreed the suit and granted decree in favour of the plaintiffs with respect



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to items 1, 2 of the suit properties and the other reliefs claimed by the plaintiffs were dismissed.

8. Aggrieved over the same, the defendants 1, 3 and 6 preferred Appeal Suit. The Appellate Court framed the following points for consideration in the Appeal Suit:

- 1) Whether the defendants 2 to 6 are entitled to equal share in the suit properties?
- 2) Whether the claim of the defendants 2 to 6 is ousted?

After considering rival arguments, the Appellate Court dismissed the appeal confirming the judgment and decree passed by the Trial Court.

9. Aggrieved over the same, the 6<sup>th</sup> defendant preferred the present second appeal. The second appeal was admitted on the following substantial questions of law:

- I. Whether the granddaughters are not entitled for share in the



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property of their grandmother who dies intestate?

II. Whether any ouster can be claimed against the co-owner merely because there are not in physical and actual possession of the properties?

III. Whether the Courts below are rights in rejecting share to the appellant after rendering a finding that the plaintiff have not proved that it is they who have paid the kist to the suit property and discharge the family loans with their own funds?

IV. Whether the defendants have no right to claim share in the property of their granddaughter merely because they are married before 1975?

10. It is seen that the father of the plaintiffs and defendants died intestate on 04.06.1977 and the mother died intestate on 28.10.1982. The properties were purchased in the name of the mother during the life time of the father. After the demise of the mother the intestate succession was open. The plaintiffs and the defendants are legal heirs of the deceased parents. To be specific the 1<sup>st</sup> and 2<sup>nd</sup>



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plaintiffs and the 1<sup>st</sup> defendant are the male legal heirs and the defendants 2 to 6 are the female legal heirs of the deceased parents. It is not specifically pleaded by the female legal heirs that they were married after 1989, then it can be safely concluded that the female legal heirs were married prior to 1989. Therefore, the Start amendment in this issue would not come to the aid of the female legal heirs. When the daughters themselves are not entitled to the property, there is no question of granting share to the granddaughters.

11. The DW2 who is the 6<sup>th</sup> defendant and the present appellant had deposed that the three brothers were enjoying the property and the income was received by the brothers only. Further the appellant had deposed that she and the other sisters had never sought for the share in the income and had never sought any accounts for the income. Further the 1<sup>st</sup> defendant had stated in the written statement that as far as the 1<sup>st</sup> item is concerned the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are enjoying 50 cents on the western side and the 1<sup>st</sup> defendant is enjoying 25 cents on the eastern side. And the 1<sup>st</sup> plaintiff is paying kist for 1<sup>st</sup> defendant also. As far as the 2<sup>nd</sup> item is concerned two rooms are in the possession of the 1<sup>st</sup> defendant and



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rest of the house is in the possession of the two plaintiffs and this has been admitted by the 1<sup>st</sup> defendant in his written statement. Which would clearly indicate that the male legal heirs had already divided the property orally and are in enjoyment of the same. It is pertinent to state that the suit is filed in the year 1993 which is prior to the amendment. Further the division of properties was already effected, it is only to recognise their rights of division the present suit is filed and the said fact is admitted by both the plaintiff and the defendants. Hence the Hindu Succession (Amendment) Act, 2005 would not come to the aid of the female legal heirs, since the division of the property among the male legal heirs is prior to the said amendment, which is saved under the proviso to section 6 of Hindu Succession Act, 1956.

12. The Court below had held that the plaintiffs had not proved that the loan were discharged by the plaintiffs, hence the Court below declined to grant future profits. But the Court below had held that the kist is paid by the plaintiffs but the plaintiffs had not proved that the same is paid for the 1<sup>st</sup> defendant also. Therefore, the claim of the 6<sup>th</sup> defendant / appellant that the plaintiffs had not proved the



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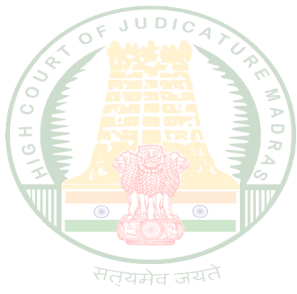
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payment of kist is incorrect plea.

13. Since this Court had held that the female legal heirs are not entitled to share in the property for the reasons stated supra, therefore there is no question of considering the female legal heirs as co-sharer, consequently there is no question of ouster at all. Therefore, this Court is of the considered opinion that the plea of ouster may not be applicable to the facts of the case.

14. Even it is taken as applicable for the sake of the argument, it is seen after the death of the father, the plaintiffs and the 1<sup>st</sup> defendant had reached an arrangement and are in separate enjoyment of the property. But no evidence was produced by the defendants to prove otherwise. The issue is rightly considered by both the Trial Court and the Appellate Court and had held that no evidence was produced by the defendants for the plea of ouster. Therefore, as held supra the female legal heirs claim is not supported by any provisions of law, nor supported by any evidence.

15. Based on the above discussions, the substantial questions of law are



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held against the 6<sup>th</sup> defendant / appellant. The Judgment and Decree, dated 01.03.2008, passed in A.S.No.328 of 2003 on the file of the 1<sup>st</sup> Additional District Court, Tiruchirapalli and the Judgment and Decree, dated 13.06.2003, passed in O.S.No.7 of 1993 on the file of the Sub Court, Tiruchirapalli are hereby confirmed.

16.Even though this Court has confirmed the judgment and decree, this Court is inclined to grant a lump sum amount to the five daughters, since they are fighting from 1993 onwards. The three brothers are directed to pay Rs. 2,00,000/- to each daughter.

17.With the above said direction, the second appeal is disposed of.

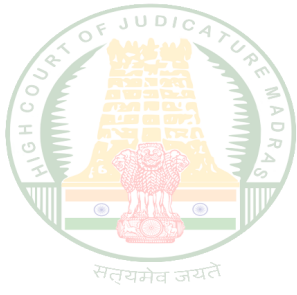
No costs.

**29.07.2025**

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NCC : Yes / No

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**S.SRIMATHY, J.**

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**TO:**

1. 1<sup>st</sup> Additional District Court, Tiruchirapalli.
2. Sub Court, Tiruchirapalli.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.

Judgment made in  
**S.A.(MD)No.25 of 2016**

Dated:  
**29.07.2025**