



AS(MD). No.2 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 13.11.2025
Delivered on : 25.11.2025

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE Mr.JUSTICE R.VIJAYAKUMAR

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1. T.Pappa
W/o Thangarasu
No.4 Lourdhumadha Nagar Road
Thanjavur Town.

2. T.Murugesan
S/o Thangarasu
No.4 Lourdhumadha Nagar Road
Thanjavur Town.

3. T.Shakila
W/o R.Devendran
D/o Thangarasu
1-34-b Bharathidasan Colony
K.K. Nagar
Chennai.

4.T.Seethalakshmi
D/o Thangarasu
No.148 Kammajan street
Thiruvancherri Taluk
Chennai.



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A3 & A4 thro power of Attorney
T.Pappa
W/o Thangarasu
No.4 Lourdhumada Nagar Road
Thanjavur

Vs

Appellants

1. G.Thangarasu
S/o Govindasamy Thevar
No.4 Lourdhu Matha Nagar
Mathakkottai Road
Thanjavur Town.

2. T.Manimaran
S/o Thangarasu
No.4 Lourdhu Matha Nagar
Mathakkottai Road
Thanjavur Town.

3. V.Indra
W/o K.Viveki
Adhicherri Vaduvur Post
Mannargudi Taluk.

4. K.Viveki
S/o Kuppusamy
Adhicherri Vaduvur Post
Mannargudi Taluk.

5. S.Thirunavukkarasu
S/o Sinthamani Sendapriyar
No.2149 Venkateswara Nagar
Marial
Nanjikkottai Road
Thanjavur Town.

Respondents/defendants



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PRAYER :-Appeal suits filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 19.09.2016 in OS No. 70/2014 on the file of the 2nd Additional District Judge, Thanjavur.

For Appellant : Mr.M.P.Senthil
For Respondent : Mr.N.Tamilmani for
Mr.C.Gangaiamaran for R2
No appearance for R1, R3 to R5

JUDGMENT

(Judgment of the Court was delivered by C.V.KARTHIKEYAN, J.)

Plaintiffs in OS No.70/2014 on the file of the II Additional District Court, at Thanjavur are the appellants herein. The said suit in OS No. 70/2014 had been filed by the plaintiffs seeking partition and separate possession of the 'A and B' schedule properties as described in the plaint. By judgment dated 19.09.2016, the suit was partly decreed and it was held that the plaintiffs are entitled for partition and separate possession of 'A' schedule property alone. The suit was dismissed with respect to 'B' schedule property. Challenging the dismissal of the suit with respect to 'B' schedule property, the plaintiffs have filed the present appeal.

2. The first plaintiff is the wife of the 2nd defendant. The 2nd - 4th plaintiffs and the 2nd defendant are their children. The 3rd – 5th defendants



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are lessees in the property. It is the contention of the plaintiffs that the suit 'A' schedule properties were ancestral properties and that the 2nd - 4th plaintiffs and 1st - 2nd defendants are co-parceners and therefore, the plaintiffs are entitled to an undivided 3/5th share in the 'A' schedule property.

3. It had been further contended that 'B' schedule property was purchased on 12.03.2004 in the name of the 2nd defendant by contribution made by the plaintiffs. It had been stated that all the four plaintiffs had contributed their income towards the purchase of the property, but, however, it was purchased in the name of the 2nd defendant. It had been further stated that the 2nd defendant had applied for loan of Rs.4,70,000/- by deposit of title deeds on 27.01.2005. It had been further contended that since all the plaintiffs had contributed the amount towards the purchase of the property and towards construction of the property, they are entitled to a share in the said property. It was under those circumstances, they filed the suit. The first defendant remained exparte.



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4. The 2nd defendant filed a written statement contending that he was the absolute owner of the 'B' schedule property. He stated that he was employed and out of the income, which he had received, he had purchased initially the land and later put up construction over the said land. He contended that the 'B' schedule property was his absolute property. He denied the allegations that the plaintiffs had contributed towards purchase of the said property. He stated that he is still repaying the loan which is deducted from his salary every month. He therefore stated that the suit should be dismissed specifically with respect to 'B' schedule property.

5. The 3rd and 4th defendants have also filed a written statement, wherein, they claimed that the first defendant had sold a portion of the 'A' schedule property to the said defendants. They therefore claimed that under equity the suit should be dismissed with respect to the said portions of the 'A' schedule property.

6. On the basis of the above pleadings, the following issues were framed:



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- (i) whether the plaintiffs 2 to 4 are entitled to a partition of 3/5th share in the suit A schedule properties;*
- (ii) Whether the plaintiffs 1 to 4 are entitled to a partition of 4/6th share in the suit B schedule properties;*
- (iii) Whether the allegation that the property stand in the name of 2nd defendant is joint family property is true? and*
- (iv) To what relief the plaintiffs are entitled to.”*

7. During trial, the first plaintiff examined herself as P.W.1 and the 4th plaintiff was examined as P.W.2 and the 3rd plaintiff was examined as P.W.3. They marked Exs.A1 to A8. Ex.A1 and Ex.A2 are pattas, which stand in the name of the 1st defendant. Ex.A7 was a copy of the notice issued by the first defendant to the plaintiffs. On the side of the defendants, the 2nd defendant was examined as D.W.1 and the 4th defendant was examined as D.W.2. They marked Ex.B1 to B16; Ex.B2 was a series of pay slips of the 2nd defendant; Ex.B4 and B5 were house tax receipts and water tax receipts in the name of the 2nd defendant; Ex.B8 was the patta transfer order in the name of the 2nd defendant; Ex.B9 was the building plan approval with respect to the B schedule property; Ex.B14 was the copy of the memorandum of deposit of title



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deeds. Ex.B15 and Ex.B16 were copies of the sale deeds in the name of the 3rd defendant.

8. On the basis of the oral and documentary evidence adduced, the learned trial Judge had come to the conclusion that 'A' schedule property was even admittedly an ancestral property and that therefore the 2nd - 4th plaintiffs were entitled to a share in the said property. The suit was accordingly decreed with respect to 'A' schedule property.

9. However, with respect to the B schedule property, it was held that the property stood in the name of the 2nd defendant and that he had produced sufficient evidence to show that he was the employee in the Electricity Board and that he had also obtained loan for construction and was also paying the monthly installments even till the date of the trial proceedings. It was held that the plaintiffs, on the other hand, did not produce any evidence to show that they had contributed towards the purchase of the property. Holding as above, the learned trial Judge dismissed the suit with respect to the 'B' schedule property. Challenging that finding, the present appeal had been filed.



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10. The learned counsel for the appellants argued that there are sufficient evidence available that the plaintiffs had contributed their income towards the purchase of the 'B' schedule property. He pointed out that the property was purchased in the name of the 2nd defendant only because the 1st defendant was deaf and dumb. The learned counsel stated that the defendants were also employed and therefore they had given their entire salary income towards purchasing property. The learned counsel, therefore, insisted that it should be construed that though the property stands in the name of the 2nd defendant, since it had been purchased out of the contribution made by the plaintiffs, the suit 'B' schedule property should also be considered as available for partition.

11. The learned counsel for the 2nd respondent however denied and disputed these contentions. According to the learned counsel, the 2nd respondent had produced sufficient evidence to show his salary receipts and that he was paying the property tax, water tax and also the electricity charges for the said property. He further contended that the patta had also been transferred in the name of the 2nd respondent. Further, he had obtained building plan approval from the Panchayat and also obtained



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loan by mortgaging the property for putting up construction. The learned counsel stated that the total loan amount of Rs.4,70,000/- received was spent entirely for the construction of the building. The learned counsel, therefore, stated that the learned trial Judge had correctly held that the 'B' schedule property was not available for partition.

12. We have carefully considered the arguments advanced and perused the materials available on record.

13. The following point arose for determination:

(i) Whether the 'B' schedule property is available for partition or whether the said property is the absolute property of the 2nd respondent?"

14. The first appellant is the wife of the first defendant. The 2nd, 3rd, 4th appellants and the 2nd respondent are their children. The suit had been filed seeking partition and separate possession over two items of the property described as 'A' schedule and 'B' schedule in the plaint. The learned trial Judge had granted the relief of partition with respect to the 'A' schedule property. The suit was however dismissed with respect to

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the 'B' schedule property. It is the contention of the appellants herein that the 1st appellant was doing Milk vending business and that the 2nd appellant was also the employee in Government and the 3rd and 4th appellants were working as Teachers. It is contended that they had all contributed their income earned by them towards the purchase of the 'B' schedule property. However, a perusal of the documents filed on behalf of the appellants show that they had not produced any documentary evidence to show either the income generated by them or contribution of income towards the purchase of the 'B' schedule property. Even though it is contended that the 2nd - 4th appellants were employed, the salary receipts were not produced before the Court.

15. The Court can never rely solely on the oral evidence to hold that the property, which stands in the name of the 2nd respondent also belongs to the appellants. On the other hand, the 2nd respondent in his evidence had produced the pay slips as Ex.B2. He also produced electricity receipts/Ex.B1, gas receipts/Ex.B2, house tax receipts/Ex.B4 and water tax receipts/B5 to show that he had mutated all records in his name, perfected title and was enjoying the 'B' schedule property. He had



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also produced the receipt issued by the panchayat as Ex.B6 and the proceedings of the Tahsildar relating to patta transfer/Ex.B8, the building plan approval issued by the panchayat/Ex.B9 and the estimate for construction of building/Ex.B10. All these documents clearly show that 'B' schedule property is under the exclusive possession of the 2nd respondent. The title deed also stands in his name. This document had been produced as Ex.B13. In his evidence, the 2nd respondent had very clearly stated that he had also obtained loan for putting up construction to a sum of Rs.4,70,000/- and in this connection also, he had produced Ex.B14 dated 27.01.2005, which is the copy of the memorandum of deposit of title deeds. In the estimate, it is seen that the cost of construction was Rs.4,80,000/-. It is thus seen that while analyzing the evidence on the side of the appellants and the 2nd respondent, it is evident that the 2nd respondent had produced documentary evidence to show the 'B' schedule property stands in his name, had been purchased in his name and the building plan approval stands in his name and he had also applied for loan by mortgaging the property for putting up construction. Subsequently the patta had been transferred in his name. The property tax is in his name, water tax is in his name and the electricity charges are



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also in his name. The appellants have unfortunately not produced any documentary evidence. Though the 2nd, 3rd and 4th appellants are employed, they have not produced any documents to show that they had surplus income to contribute towards purchase of the property. The learned trial Judge had appreciated all the evidence adduced in their correct perspective and we hold that he had come to a correct decision that the 'B' schedule property was the absolute property of the 2nd respondent.

16. The learned counsel for the appellants had placed reliance on the judgment reported in *2025 (4) Law Weekly 56 B.Janakiammal (died) and others v. R.Srinivasan and others*. In that particular case, the property stood in the name of the first defendant-the mother and it was held that it was joint family property. But, however, the wife is exempted under the Benami Transaction Act. The Division Bench had proceeded on that particular basis to hold that all family members would be entitled to a share in the property. The ratio laid down would not be directly applicable to the facts of this case, which are certainly distinguishable. In the present case, there are ample documentary



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evidence produced by the 2nd respondent to show source for purchase of the property, to show source for construction of building and to show mutation of revenue and other records in his name. There had been no protest raised by the appellants for such mutation. They had accepted the same. The only conclusion that could be reached is that the 'B' schedule property is the absolute property of the 2nd respondent.

17. In view of these reasons, we hold that the appeal suit necessarily has to fail and accordingly the same is dismissed. However, there shall be no order as to costs.

[C.V.K,J]

[R.V,J]

25.11.2025

NCC : Yes

Index : Yes

RR

To

1.The II Additional District Judge, Thanjavur.

2.VR Section

Madurai Bench of Madras High Court, Madurai.



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

RR

Pre-delivery judgment
made in
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Date : 25.11.2025