

S.A.(MD).No.318 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED: 28.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.318 of 2018

and

C.M.P.(MD)Nos.8832 of 2018, 6766 of 2020 and 1176 of 2025

Amalanathan

... Appellant/ Appellant/ Petitioner

/Vs./

- 1.Santhamani Nathan (Died)
- 2.Muthamil Mani
- 3.S.Sridhar
- 4.Amutha
- 5.C.Shanthi
- 6.C.Anand
- 7.Premalatha Jayaraman (Died)
- 8.R.Susibala
- 9.S.Pushpamala
- 10.A.R.Jayaraman
- 11.S.Aruljothi
- 12.S.Anitha
- 13.Vivek Nathan
- 14.Vikram Nathan
- 15.Vishnu Nathan
- 16.Varun Nathan

...Respondents/ Respondent/ Defendants

(R10 is brought on record as LR of the deceased R7, vide Court order, dated 26.02.2021, made in CMP(MD)No.7192 of 2020 in SA(MD)No.318 of 2018)



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(Respondents 11 to 16 are brought on record as LR's of the deceased 1st respondent, vide Court order, dated 05.03.2024, made in CMP(MD)Nos.4678, 4679 and 4680 of 2021 in SA(MD)No.318 of 2018)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree, dated 16.02.2018, made in A.S.No.72 of 2016 on the file of the Principal District Court, Tirunelveli, confirming the Judgment and Decree, dated 24.11.2015, made in O.S.No.58 of 2009 on the file of the Additional Sub Court, Tirunelveli.

For Appellant	: Mr.M.Suresh
R1 and R7	: Died
For R2 to R6, R8 & R9	: Mr.R.Jenifer Bibin
For R10	: Mrs. J. Anandhavalli
R11 to R16	: Batta due

JUDGMENT

The present second appeal is preferred by the plaintiff against the judgment and decree, dated 16.02.2018, passed in A.S.No.72 of 2016 on the file of the Principal District Court, Tirunelveli, confirming the judgment and decree, dated 24.11.2015, passed in O.S.No.58 of 2009 on the file of the Additional Sub Court, Tirunelveli.

2. The plaintiff in the suit is the appellant herein and the defendants in the suit are the respondents 1 to 9 herein. The defendants 1 and 7 died and their legal heirs are impleaded as respondents 10 to 16 herein. For the sake of convenience, the



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parties are referred as plaintiff and defendants, as per the ranking in the suit or as legal heirs as impleaded subsequently.

3. The suit is filed by the plaintiff for partition. Originally, one Subbiah was the owner of the 1st and 2nd schedule of properties. The said Subbiah is having two sons and one daughter namely, Amalanathan, Santhamani Nathan and Muthamil Mani respectively. Santhamani Nathan / 1st defendant died and his legal heirs are impleaded as respondents 11 to 16. The defendants 3 to 6 are the daughters and sons of the 2nd defendant namely Muthamil Mani. The 7th defendant is the purchaser of the property from the 1st defendant. The defendants 8 and 9 are the daughters of the 2nd defendants. The partition is claimed by two sons and one daughter.

4. The suit schedule properties is consisting of two schedules. The 1st schedule of property is consisting of one item of property, whereas the 2nd schedule of property is consisting of two items of property. As far as the first schedule of property is concerned both the Courts had granted partition to divide the same as 1/3 to the said two sons and one daughter. The parties are not aggrieved over the said decree. Hence the same is confirmed.

5. Now the dispute is only regarding two items in the 2nd schedule of property. It is seen that the father has already executed a gift deed as far as 2nd item of the 2nd schedule situated at S.No.348/5 in Thaigaraj Estate Colony in Plot No.41



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admeasuring 10 cents in favour of the 1st defendant namely Santhamani Nathan,
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who in turn has already sold the property to the 7th defendant.

6. As far as the 1st item of in 2nd schedule property situated at S.No.348/5 in Thaigaraj Estate Colony in Plot No.40 admeasuring 10 cents is concerned, it is admitted that the father had executed gift deed to the 2nd defendant Muthamil Mani to an extent of 5.02 cents and she had put up construction and living in the said place. As far as the remaining 4.98 cents vacant site is available. Therefore, this Court is of the considered opinion it the remaining 4.98 cents if allotted to the plaintiff then the equitable distribution of partition can be granted, accordingly the 4.98 cents in S.No.348/5 in Thaigaraj Estate Colony in Plot No.40 shall be allotted to the plaintiff.

7. The defendants had taken a plea that the suit is hit by the principles of partial partition since the property in Mumbai is not shown in the plaint. Pending second appeal the plaintiff had filed C.M.P.(MD)No.1176 of 2025 to include the Mumbai property in the partition. Therefore, the petition in C.M.P.(MD)No.1176 of 2025 is allowed and the petition mentioned property shall be included as 3rd schedule of property in the plaint. Now it has to be seen whether the Mumbai property is available for partition.

8. The Learned Counsel appearing for the 2nd respondent vehemently



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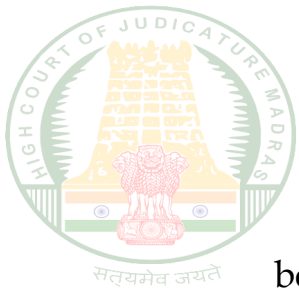
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contended that the father had supported to purchase the property and today the value of the property is "One Crore", hence the property ought to be valued in Crores. The contention of the plaintiff is that the Mumbai property is purchased by the plaintiff from his own income, the property is consisting of old municipal building and it is situated in Tharavi and the property would not fetch more than Rs.15,00,000/- (Rupees Fifteen Lakh only).

9. After considering the rival submissions this court had given its anxious consideration. It is seen in the written statement filed by the 1st defendant that the father has directed the plaintiff to pay Rs.2,00,000/- (Rupees Two Lakh only) to the 1st defendant in lieu of the Mumbai property. Further it is seen that the Mumbai property is municipal building and the age of the building is more than 50 years, it would suffice if money is paid to the 1st defendant and 2nd defendant in lieu of the Mumbai property. Therefore, this Court is of the considered opinion if the plaintiff pays Rs.2,00,000/- to the 1st and 2nd defendants each, the same would suffice to allot the entire Mumbai property to the plaintiff.

10. Therefore, this Court is passing the following orders:

- i. The plaintiff shall pay Rs.2,00,000/- (Rupees Two Lakhs only) to the 1st defendant and Rs.2,00,000/- (Rupees Two Lakhs only) 2nd defendant. On such payment the Mumbai property / 3rd schedule of property shall



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belong to the plaintiff and the said property shall be transferred in the name of the plaintiff and the plaintiff is entitled to mutate the revenue records in his name.

ii. As far as the 1st schedule of property is concerned, this judgment shall be treated as a final decree. The parties are entitled to divide the 1st schedule properties in metes and bounds and they are entitled to divide by filing an execution petition.

iii. As far as 2nd item of the 2nd schedule of property situated at S.No. 348/5 in Thaigaraj Estate Colony in Plot No.41 admeasuring 10 cents shall be allotted to the 1st defendant namely Santhamani Nathan based on the gift deed executed by the father in favour of the 1st defendant. Since the said property already sold the property to the 7th defendant and the said sale is confirmed.

iv. As far as the 1st item of in 2nd schedule property situated at S.No. 348/5 in Thaigaraj Estate Colony in Plot No.40 is concerned, the 2nd defendant Muthamil Mani shall be allotted an extent of 5.02 cents alone.

v. As far as the remaining 4.98 cents vacant site available in 1st item of in 2nd schedule property situated at S.No.348/5 in Thaigaraj Estate Colony in Plot No.40 is concerned the same shall be allotted to the plaintiff.



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11. The C.M.P.(MD)No.6766 of 2020 is filed to return the original documents marked as Exhibit B1 to the 2nd respondent herein. Accordingly, this petition is ordered. The Registry is directed to return the original documents after replacing the same with certified copies of the said document.

(*) 12. With the above said observations, the second appeal is disposed of. As far as item No.2 of the 2nd Schedule of properties is concerned, the second appeal is dismissed confirming the orders passed by both Courts. No costs. C.M.P. (MD) No.1176 of 2025 is allowed, C.M.P. (MD) No.6766 of 2020 is ordered and C.M.P. (MD) No.8832 of 2016 is closed. No costs.

Sd/-

28/01/2025

(*) Corrected as per the order dated 17/04/2025 in SA (MD)No.318 of 2018. Para 12th insert here order dated 06/06/2025 in SA.(MD)No. 318 of 2018 Para 12th Rechange.

Sd/-

ASSISTANT REGISTRAR (CS - III)

// True Copy //

/ /2025

Sub Assistant Registrar
(CS- I/ II / III / IV)

Tmg



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TO:

(*)To be substituted to the order already despatched on 19/03/2025 and 25/04/2025

1. The Principal District Judge, Tirunelveli.
2. The Additional Subordinate Judge, Tirunelveli.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)
(To return the Original Document)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-5714[F] dated 29/01/2025)

+1 CC to M/s.R.JENIFAR BIBIN, Advocate (SR-5329[F] dated 28/01/2025)

+1 CC to M/s.M.SURESH, Advocate (SR-5854[F] dated 29/01/2025)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-25870[F] dated 22/04/2025)

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-32424[F] dated 06/06/2025)



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Dated:
28.01.2025

AS - (06 .06.2025) 9P/ 10C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.