



S.A.(MD)No.326 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.326 of 2018
and
C.M.P(MD)No.9128 of 2018

M.Sivasamy

... Appellant

-vs-

1.Mokkaiyan @ Indhrajith
2.Rakkammal
3.Jothi
4.Lenin (died)
5.Rajadurai
6.Vasarmin
7.D.Udayakumar

(R7 is impleaded vide court order dated 18.07.2024
made in CMP(MD)No.11495 of 2018 in SA(MD)No.326 of 2018)

8.Lakshmi
9.Eashwari
10.Minor L.Shobika
(Minor R10 represented by her mother
and natural guardian R8)

(RR8 to 10 are brought on record as LR's of the deceased
R4 vide court order dated 02.06.2025 made in CMP(MD)No.
4760, 4761 & 4763 of 2025)

..Respondents



S.A.(MD)No.326 of 2018

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the judgment and decree dated 14.12.2017 made in A.S.No.11 of 2009 on the file of the I Additional District Court, Madurai confirming the Judgment and decree dated 31.12.2008 made in O.S.No.65 of 2007 on the file of the Principal Sub Court, Madurai.

For Appellant ... Mr.T.R.Subramanian

For Respondents ... Mr.V.N.Arjun for
Mr.N.Vallinayagam
(RR1 to 3, 5, 6, 8 to 10)

Mr.M.Thirunavukkarasu (for R7)

JUDGMENT

The plaintiff is before this court on appeal.

2. The second appeal is preferred assailing the judgment and decree dated 14.12.2017 in A.S.No.11 of 2009 on the file of I Additional District Court, Madurai, confirming the judgment and decree dated 31.12.2008 in A.S.No.65 of 2007 on the file of the Principal Sub Court, Madurai.

3. For the sake of convenience, the parties are referred to as per their litigative status before the trial Court.



S.A.(MD)No.326 of 2018

WEB COPY

4. It is the case of the plaintiff that he is the son of the first defendant, Mokkaian, born to the second wife, Panchavarman. It is the further case of the plaintiff that his father, Mokkaian, had three wives. The first wife, Annapoorani, died issueless. His mother, Panchavarman, is the second wife, and the second defendant, Rakkammal, is the third wife. When the plaintiff was born to the second wife, the defendants 3 to 6, who are the two sons and two daughters, were born to the third wife. It is the further case of the plaintiff that the plaintiff, till the age of 25, was carrying on cultivation by joining along with the first defendant, and thereafter, since he got employed in public service, he had joined in the department. Even after joining in service, he had been contributing to the joint family, and also he had contributed to the education, marriage, and other expenses of the defendants 3 to 6. The plaintiff had been incurring the expenditures even without bothering the defendants 3 to 6, who were born to the third wife. Since the plaintiff, being in Government service, he was not able to directly get involved in the cultivation of the first item of the suit property. But, however, he had been making all contributions financially to the first defendant. Further, for the purchase of the third item in the name of the first defendant, he had contributed a sum of Rs.18,000/-, for the purchase of the second

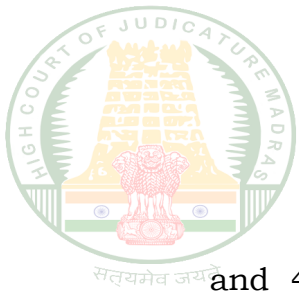


S.A.(MD)No.326 of 2018

WEB COPY

item, in the name of the second defendant, he had contributed another sum of Rs.18,000/- in the year 1983, and for the purchase of the fourth item, in the year 1995, in the name of the defendants 5 and 6, he had contributed a sum of Rs.54,000/-. According to the plaintiff, the plaintiff and the defendants constituted a joint family, and all the properties were treated as joint family properties. On 06.12.2006, the plaintiff asked the accounts, through issuance of a legal notice, for which the first defendant issued a reply notice on 12.12.2006. As such, the plaintiff had come up with a suit for partition, seeking for 1/7th share in items 1 to 5 of the suit schedule property.

5. The defendants resisted the suit by disputing the fact that there was a joint family and the suit properties in items 2 to 5 are joint family properties. The defendants have categorically contended that the plaintiff had not contributed towards any expenses incurred for the defendants 3 to 6, and once the plaintiff got employed in the police department in the year 1985, he had left the family and had been leading a separate family. Further, the defendants have contended that the 5th defendant, who was working in an University, and the 6th defendant, who was working in a Hotel at Madurai, through their independent income, had purchased separate properties. The patta in respect of the suit properties in items 2, 3,



S.A.(MD)No.326 of 2018

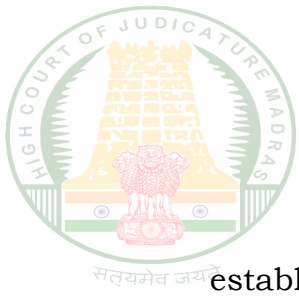
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and 4 stands independently in the name of the defendants, and therefore, the plaintiff does not have any right to seek for partition in the suit properties.

6. During trial, on the side of the plaintiff, the plaintiff examined himself as PW.1 and also one Chinnu and Subramani as P.W.2 and P.W.3 and marked Exs.A1 to A16. On the side of the defendants, the first defendant examined himself as D.W.1 and marked Ex.B1.

7. The trial court, on coming to the conclusion that in respect of the 1st item of the suit property only a leasehold right was with the first defendant, which had been surrendered in Ex.A5, and items 2 to 4 of the suit property had been purchased independently by the defendants, had granted a preliminary decree for 1/7 share only in respect of the 5th item of the suit property. The trial court concluded that since the 5th item of the suit property was purchased by the plaintiff's grandfather, Mayandi, it is an ancestral property in which the plaintiff is entitled to a share and thereby rejected the claim in respect of other items.

8. On appeal, the lower appellate court, on finding that the plaintiff, who had come up with the claim of a joint family, failed to



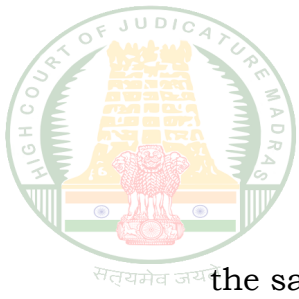
S.A.(MD)No.326 of 2018

WEB COPY

establish that there had been a joint family and also failed to prove that he had contributed towards the purchase of the suit items 2 to 4 of the suit property, concurred with the finding of the trial court and dismissed the appeal. Assailing the concurrent finding of fact, the plaintiff has preferred the above second appeal.

9. The appeal has not been admitted, and on 23.10.2018, notice was ordered to the respondents/defendants.

10. The learned counsel for the appellant/plaintiff argued that admittedly in the receipt issued in Ex.A5, when the leasehold rights of the first item of the suit property were handed over, the plaintiff had signed the receipt and a part of the consideration was paid to him. It is his further contention that the plaintiff's father having received the entire amount as admitted in the evidence, they said that the amount has been used for the purchase of the other items of the suit property. The learned counsel vehemently contended that the plaintiff, being employed in the department, had contributed in cash in favour of the defendants to purchase the suit property, and the purchase of the property in the name of the defendants was only for convenience and therefore, the suit properties are joint family properties, where the plaintiff is entitled to a share. It is his contention that simply because



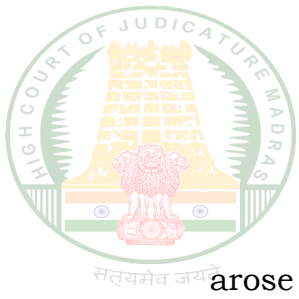
S.A.(MD)No.326 of 2018

WEB COPY

the sale deeds are registered in the name of the defendants, the courts below have erroneously come to the conclusion that they are the absolute properties of the defendants and have rejected the claim in respect of items 2 to 4, which is perverse and sought for interference of this court.

11. The learned counsel for the respondents/defendants argued that item 5 of the suit property alone had been purchased by the grandfather, Mayandi. Since it is ancestral, the courts below have rightly granted a share in respect of it to the plaintiff. However, since items 2 to 4 of the suit property had been independently purchased by the defendants, who were employed and had their independent income, the courts below had rightly concluded that those are the absolute properties of the defendants. When the plaintiff miserably failed to prove the existence of a joint family, the courts below rightly arrived at the conclusion, which needs no interference, and sought for dismissal of the second appeal.

12. The learned counsel for the 7th respondent contended that the 7th respondent is the purchaser of the first item of the suit property, and since the parties had made disturbances in the property and since it is also one of the items in the suit property, the need



S.A.(MD)No.326 of 2018

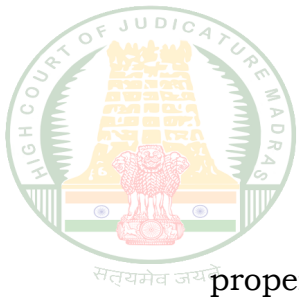
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arose for him to get impleaded in the appeal. He contended that even though nothing adverse is prayed in respect of the first item, for clarity he had been impleaded to make his submissions in the second appeal.

13. Heard the rivals submissions and perused the materials available on record.

14. The plaintiff had come up with the suit for partition in respect of items 1 to 5 of the suit properties. Admittedly, one Mayandi had purchased the fifth item of the suit property on 14.11.1959 in Ex.A1. By purchase, Mayandi is the absolute owner of item 5. Mayandi had one son, the first defendant, Mokkaian. Mokkaian had three wives, namely, Annapurani, Panchavarnam, and Rakkammal. The first wife, Annapurani, admittedly died issueless. The plaintiff is the son born through the second wife, Panchavarnam. The defendants 3 to 6 are the two sons and two daughters born through the third wife, Rakkammal, who is the second defendant. The relationship is admitted between the parties.

15. As it is admitted that the fifth item of the suit property was purchased by the grandfather, Mayandi, and he died intestate, the



S.A.(MD)No.326 of 2018

WEB COPY

property being ancestral in nature, Mokkaian and his legal heirs are entitled to have a share in the fifth item of the suit property as they are the coparceners. The first item of the suit property was 89 cents in [S.No.253/5](#) in which only Mokkaian had cultivating rights. The cultivating rights having been surrendered to the original owner through the document dated 16.02.1995 in Ex.A5, Mokkaian or any of his heirs do not have any right over the first item of the suit property.

16. When the plaintiff makes the further claim in respect of items 2 to 4 of the suit property, admittedly, by a sale deed dated 30.07.1983 in Ex.A2, the second item of the suit property has been purchased by the second defendant, Rakkammal, for valuable consideration. Further, the third item of the suit property has been purchased through a sale deed dated 01.04.1985 in Ex.A3 by the first defendant, Mokkaian. Likewise, the fourth item of the suit property has been purchased by the defendants 5 and 6 through a sale deed dated 29.05.1995 in Ex.A4. From the registered sale deeds in Exs.A2 to A4, which are standing in the names of the defendants 1, 2, 5, and 6, it is seen that the properties belong to the defendants 1, 2, 5, and 6, respectively. The plaintiff makes a claim on these properties on the ground that those properties are joint family properties. The plaintiff contends that even though he joined in service and he left the family



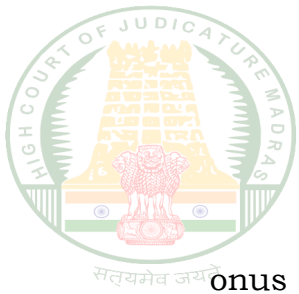
S.A.(MD)No.326 of 2018

WEB COPY

for work, the joint family still continued, and the plaintiff had contributed to the family. It is the further exclusive claim of the plaintiff that, in respect of the purchase of the three items, he had contributed three separate amounts in favour of each of those defendants for the purchases.

17. In this regard, it is trite law that there cannot be a presumption of joint family. A joint family has to be proved by the person who claims about the existence of the joint family. In the instant case and the defendants denied that there had been any joint family, and they had filed the documents, particularly the registered sale deeds in Exs.A2 and A4, there is a presumption value that the defendants had purchased the property for valuable consideration from their own contribution. However, the defendants had also established that the defendants 5 and 6, who were also in service, were generating the income and there had been income to purchase the suit properties.

18. When the plaintiff had come up with the claim asserting that there had been a joint family and he had contributed towards the joint family properties and even though the purchase is in the name of the defendants it ought to be treated as joint family property, then the



S.A.(MD)No.326 of 2018

WEB COPY

onus is on the plaintiff to establish the existence of the joint family and also further that the joint family had many properties and the properties yielded income and out of the income there had been a surplus which was used for the purchase of items 2 to 4 of the suit property. Unless these foundational facts are pleaded and proved by the plaintiff, the existence of the joint family and treating item 2 to 4 of the suit property as joint family property, cannot be presumed.

19. Though the plaintiff had claimed that he had contributed three separate amounts on different dates to enable the defendants to purchase the suit properties, the plaintiff had miserably failed to file any document to the effect that he had made any contribution for the purchase of items 2 to 4. Further, the plaintiff had also failed to discharge his burden of proving the fact that there had been a joint family and the properties were purchased from the income of the joint family nucleus, and in the absence of any such evidence, the courts below have rightly come to the conclusion that the suit properties in items 2 to 4 are the absolute properties belonging to the defendants 1, 2, 5, and 6 in view of the purchase made by them.

20. As referred earlier, item 5 of the suit property alone having been purchased by the grandfather in Ex.A1, the courts below rightly



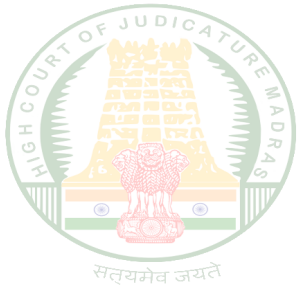
S.A.(MD)No.326 of 2018

WEB COPY

concluded that it is the ancestral property and the plaintiff will be entitled for a share. It is also to be noted that even though the seventh respondent herein had got impleaded in the appeal on the ground that he had purchased the first item of the suit property, there is no dispute or claim between the parties herein in respect of the first item of the suit property. Even according to the plaintiff and the defendants, it is a categorical stand that the leasehold right available to them was surrendered on 16.02.1995 in Ex.A5, and the apprehension of the seventh respondent is baseless. Further, it is clarified that neither the plaintiff nor the defendants has any right over the first item of the suit property, as the property has been purchased by the seventh respondent.

21. The courts below have rightly found and granted a preliminary decree for 1/7 share in favour of the plaintiff only for the 5th item of the suit property, since it is alone an ancestral property. The concurrent findings of fact arrived at by the courts below are based on the materials available on record.

22. This court does not find any illegality or perversity in the finding arrived at. No substantial question of law arises in this second appeal for consideration.



S.A.(MD)No.326 of 2018

WEB COPY

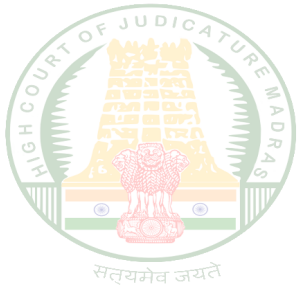
23. In the result, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.07.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes
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To:

- 1.The I Additional District Judge, Madurai.
- 2.The Principal Sub Judge, Madurai.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.326 of 2018

G.ARUL MURUGAN, J.

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Judgment made in

S.A.(MD)No.326 of 2018

and

C.M.P(MD)No.9128 of 2018

18.07.2025