

A.S(MD)No.28 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.03.2025

Pronounced on : 10.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

A.S(MD)No.28 of 2025

and

C.M.P(MD)Nos.3614 and 1410 of 2025

Nischal Ramkumar
represented by his Power of Attorney Agent,
K.Kamalanathan.

... Appellant/Respondent/
Plaintiff

Vs.

1.Ramesh Babu
2.Shanthi

... Respondents/Petitioners/
Defendants 4 & 5

PRAYER :- This Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the judgment and decree dated 28.06.2024 passed in I.A.No.26 of 2024 in O.S.No.52 of 2022 on the file of the Additional District Judge, Tenkasi.

For Appellant : Mr.S.Srinivasa Raghavan
for Mr.S.I.Muthiah

For Respondents : Mr.S.Kadarkarai



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JUDGMENT

WEB COPY This Appeal is directed against the judgment and decree, dated 28.06.2024 passed in I.A.No.26 of 2024 in O.S.No.52 of 2022 on the file of the learned Additional District Judge, Tenkasi.

2. The appellant is the plaintiff in O.S.No.52 of 2022 on the file of the Additional District Court, Tenkasi. The respondents are the defendants 4 and 5 in that suit.

3. For the sake of convenience, the parties are referred to as per their rank in the trial Court.

4. The brief facts are as below:

(i) The plaintiff has filed the main suit to declare that the plaintiff is entitled to 1/8 share in the suit properties and consequential permanent injunction against the defendants 1 to 5. The suit properties are consisting of as many as 16 items in I Schedule and 19 items in II Schedule. It is the case of the plaintiff that the suit I Schedule and some other properties originally belonged to one Venkatasamy, who had two sons Srinivasan, the 1st defendant herein, and Lingava Naciker. The two sons partitioned the properties on 29.08.1972. The 1st defendant is a



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doctor, whose education expenditure were born out from the income of ancestral properties. The 1st defendant is bedridden for the past 10 years as he is suffering memory loss and is not able to move. Taking advantage of his inability, the 4th defendant, who is one of his son, in order to grab the properties, created false documents as if they were executed by the 1st defendant. The plaintiff came to know the fact in December, 2021 and asked his father, the 2nd defendant herein, and the 2nd defendant gave evasive reply. Hence, the plaintiff filed the suit.

(ii) On receipt of summons, the respondents, who are defendants 4 and 5, appeared and filed petition in I.A.No.26 of 2024 in O.S.No.52 of 2022 under Order 7 Rule 11 (a) of CPC, to reject the plaint on the ground that the first defendant was allotted properties on the basis of compromise decree passed by the Hon'ble High Court in A.S.Nos.298 of 1993 and 706 of 1991 on 25.04.2022. The first defendant being doctor by profession purchased properties from out of his own income. Thereafter, the first defendant executed registered settlement deed, dated 13.07.2022 in favour of 4th defendant and his son in respect of first defendant's separate properties. Then, the 4th defendant established power loom factory and thereby earned much. Out of that income, the 4th defendant purchased suit schedule II properties. Thereby, the items 1 to 13 and 18 of suit II Schedule



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are absolute properties of 4th defendant and item No.14 therein absolutely belongs to son of 4th defendant. Knowing the above facts, the plaintiff filed the suit stating as if the suit properties were joint family properties. The plaintiff was neither in joint possession nor having title over the suit properties. Moreover, the plaintiff is the grandson of first defendant and son of second defendant. So, as per Hindu Succession Act the plaintiff cannot file suit against his own grandfather and father during their life time. The suit is also hit by Order 2 Rule 2 of CPC.

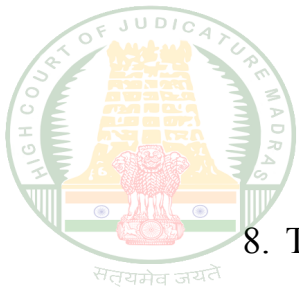
(iii) The plaintiff contested the petition to reject the plaint and filed a counter.

5. After hearing both and after perusal material records, the trial Court has allowed the petition on 28.06.2024 and thereby, rejected the plaint.

6. Aggrieved by the judgment and decree of the trial Court, dated 28.06.2024, the plaintiff has preferred this appeal.

7. The point for consideration in this appeal is;

Whether the trial Court's order in allowing the petition filed under Order 7 Rule 11(a) of CPC, and rejecting the plaint is legally valid?



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8. The learned counsel for the appellant/plaintiff has argued that the trial court's observation that the plaintiff ought to have prayed for partition, instead the plaintiff filed suit for declaration as a reason to reject the plaint is not sustainable. Even otherwise, the trial Court has inherent power to mould the relief and can grant a lesser relief of partition. As the plaintiff valued the suit for declaration at Rs.14,88,413/- and paid a Court fee of Rs.44,662/-, if he valued the suit for partition, then a Court fee of Rs.5,000/- is sufficient. Since the plaintiff paid more court fee, there is no bar for the Court to grant such lesser relief. The defendant the filed suit for partition in which the plaintiff is not a party and the plaintiff's father had not signed the alleged compromise in A.S.No.706 of 1991. So, the compromise decree would not bind the plaintiff. The plaintiff challenged the Wills and settlement deeds which have been allegedly executed by the first defendant when he was bedridden for the past 10 years. So, these documents should have been proved as per Sections 63 and 68 of the Indian Evidence Act and also evidence need to be adduced. Moreover, the plaintiff's father/the 2nd defendant executed a Will defeating the right of the plaintiff. All these facts can be resolved only after considering the oral and documentary evidences. A plaint can only be dismissed if the plaint averments did not disclose a cause of action or barred by any law and that is not the case herein. But, the trial Court has wrongly interpreted the plaint averments, while observing the suit ought to have been filed for



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partition. The contentions raised by the defendants in the petition for rejection are

all debatable and they are mixed questions involving facts and law. These can be decided only after full fledged trial. The learned counsel concluded the arguments by submitting that the trial court has not considered all these aspects and passed erroneous order and hence, the same has to be set aside by allowing this appeal. In support of his contentions, the learned counsel for the plaintiff relied on the judgment of the Hon'ble Supreme Court reported in **(1999) 3 Supreme Court Cases, 267 (D.Ramachandran /v/ R.V.Janakiraman)**.

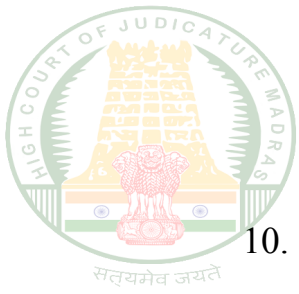
9. Per contra, the learned counsel for the respondents/defendants 4 and 5 has vehemently put forth his argument stating that the suit itself is not maintainable by suppression of real facts. The plaintiff cannot maintain a suit for partition against his father and grandfather who are alive, since the plaintiff is not the class.1 legal heir as per provisions of Section 8 of Hindu Succession Act. The plaintiff himself averred in the plaint that the ancestral properties were partitioned by means of partition deed, dated 29.08.1972 between the first defendant and his brother Lingavanaicker in which the suit items 4 to 9 and 12 to 16 of I schedule were allotted to the first defendant Dr.Srinivasan. The first defendant has purchased some other properties from his income as he is a doctor by profession. While the sons of Lingavanaicker filed a suit in O.S.No.72 of 1986 of Sub Court, Tenkasi,



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the matter settled and a compromise was arrived before the Hon'ble High Court in

A.S.No.298 of 1993 and A.S.No.706 of 1991, accordingly compromise decree was passed on 25.04.2022. As per that compromise decree items 4 to 9 and 12 to 16 of I schedule were allotted to the first defendant. Even though the plaintiff's father, the 2nd defendant herein filed SLP.No.22802 of 2022 before the Hon'ble Supreme Court, the same was dismissed on 29.08.2023. When a partition was effected in respect of ancestral properties, the share allotted to the first defendant became his absolute properties and he has every right to execute registered settlement deed, dated 13.07.2022 in favour of the defendants 4 and 5. The first defendant has also conveyed certain properties to the second defendant, who is the father of the plaintiff. The plaintiff has not included those properties. There is no Will as alleged by the plaintiff, the Wills were cancelled. Moreover, when the plaintiff claims the properties are joint family property he could not maintain a suit against his own father and grandfather during their life time. Hence, there is no cause of action for the suit. Though subsequent to suit, the first defendant died, it has no impact or effect. Moreover, the father of the plaintiff is still alive and hence, the suit is not maintainable as the trial Court rightly rejected the plaint by allowing the petition filed under Order 7 Rule 11(a) of CPC.



10. The learned counsel for the respondents relied on the following

WEB citations:

- 1) 1977 AIR 2421 (T.Arivandandam vs. T.V.Satyapal & Anr.)
- 2) 2005 (3) CTC 545 (N.V.Srinivasa Murthy and Ors. vs. Mariyamma (Dead) by Proposed LRs. and Ors.)
- 3) Order passed in CRP (PD) No.1992 of 2012 (N.Babu vs. S.Shanmugam and 2 Ors.)
- 4) 2015 (5) CTC406 (Dhanalakshmi and Ors. vs. Saraswathy and Ors.)
- 5) (2015) 7 MLJ 129 (Dr.L.Ramachandran and Anr. vs, K.Ramesh and Ors,)
- 6) (2018) 4 MLJ 79 (S.Venkatasubramaniam and Ors. vs. Ramani and Ors.)
- 7) (2018) 4 MLJ 428 (K.Vidhya vs. K.Sumithra)
- 8) AIR 2020 Supreme Court 3310 = 2020 SAR (Civ) 793 (Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) (D) Thr LRs & Ors.)
- 9) 2025(1) CTC 631 (M.Vijayaraman vs, Petchiammal @ Jegatha and 2 Ors.)
- 10) 2014(1) CTC 73 (Arunagiri vs. Ayyar Muthuraja and Ors.)
- 11) 2014(1) CTC 188 (Karthik V.R. Thondaiman and Anr. vs. Rajagopala Thondaiman and Ors.)
- 12) (2016) 2 MLJ 536 (SC) (Uttam vs, Saubhag Singh and Ors.)



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13) 2023 (2) CTC 81 (Maheswari and Anr. vs, N.Raman Pillai and 3 Ors.)

14) 2023 SAR (Civ) 283 (Sanjiv Kumar Singh vs. The State of Bihar & Ors.)

15) 2015 3 Curr CC442 (Kusumi Mallik vs. Pirabala Das)

11. From perusal of records and from the arguments, it is clear that the plaintiff has filed the suit for the following reliefs:

(a) To declare that the plaintiff is entitled 1/8 share in the plaint schedule properties and consequently praying for a permanent prohibitory injunction restraining the defendants and their agents, to alienate the share of the plaintiff in the plaint schedule properties;

(b) to order for rendition of accounts of the income of the properties described in the plaint schedule properties from the year 2011 to till disposal of the suit.

12. The case of the plaintiff is that the suit properties are the ancestral properties and as the grandson of the first defendant, he is entitled to 1/8th share in the suit properties. Though the relief claimed seems to be in the nature of declaration infact it is really a suit for partition. Mere clever drafting or camouflage drafting can not hide the nature of the relief. The payment of Court fee



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is secondary thing the real intention behind this suit the plaintiff wanted to ascertain his share in these properties as a right by birth. The defendants 4 and 5 filed the present petition under Order 7 Rule 11(a) of CPC, to reject the plaint on the ground that there is no cause of action as the suit properties are not ancestral properties and they are absolute properties of the defendants 1, 4 and 5. The trial Court allowed the petition on the ground that the plaintiff ought to have sought for the relief of partition and also the plaintiff could not maintain a suit as against the living grandfather and father.

13. Before further deliberation it is necessary to revisit Order 7 Rule 11 of CPC, which is as follows:

11.Rejection of plaint:- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is property valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*



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(f) where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

14. The Hon'ble Supreme Court in catena of judgments has settled that to reject a plaint under Order 7 rule 11 of CPC, the plaint averments alone have to be taken into consideration and this Court also concerned only with the plaint averments. Likewise mere terming, calling or alleging a property as Ancestral Properties will not clothe the property as Ancestral one. The character of a property be it as a self acquired/individual property or Ancestral/joint hindu family property has to be determined only from the way,mode and source they acquired. Equally it is true that when succession opened U/s.8 of the Hindu Succession Act any property acquired by a heir is his individual property. In this case on hand, the plaintiff has clearly averred that the I schedule properties and some other properties originally belonged to one late.Venkatasamy, who had two sons 1st defendant Srinivasan and Lingava Naicker and a daughter Seeniammal through his wife Mangammal. After death of the aforesaid Venkatasamy, the first



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defendant Srinivasan and his brother Lingava Naicker had partitioned the properties by virtue of registered partition deed, dated 29.08.1972.

15. It is relevant to refer the judgment of Hon'ble Supreme Court reported in **2019 (5) CTC 110 in the case of Arshnoor Singh vs. Karpal Kaur and Others**, wherein it has been held that "If succession opened under the old Hindu law, i.e., prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara Law. The property inherited by a male Hindu from his Paternal male Ancestor shall be Coparcenary property in his hands vis-a-vis his male descendants upto three degrees below him. The nature of property will remain as Coparcenary property even after the commencement of the Hindu Succession Act, 1956". On understanding the allegations, the original owner of the properties was one Venkatasamy. When the properties were partitioned and succession was opened after the death of the above said venketasamy that too after 1956 then his class I heirs alone, in this case his children alone entitled to succeed and they acquired, inherited the properties as their individual cum self acquired property. Moreover, the ancestor Venketasamy left a daughter as class I heir. The position being thus, at no stretch of imagination it can be called or termed as Ancestral property. Even if the defendants wrongly mentioned as Ancestral or joint family property, the property can not lose its character. In the instant case on



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hand, the plaintiff has not shown any other income except the income derived by the first defendant. So any properties acquired by the first defendant became his self acquired property.

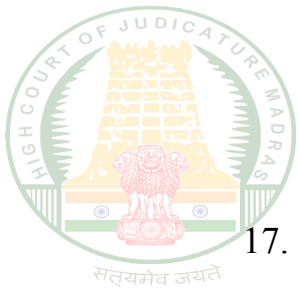
16. The Hon'ble Supreme Court in numerous cases held that once property is partitioned under Section 8 of the Hindu Succession Act, then the property lost its coparcenary character and the shares acquired by the parties become their absolute and self acquired properties. Recently in a case, the Hon'ble Supreme Court has reiterated the same view in its judgement, dated 22.04.2025 rendered in **CIVIL APPEAL No.5401 of 2025 between Angadi Chandranna /v/ Shankar & Others : 2025 INSC 532**, wherein it is held in paragraph Nos.17, 18 and 19 as follows:

“17. It cannot be disputed that the properties divided among Defendant No.1 and his brothers through partition deed dated 09.05.1986, are joint family properties. However, as per Hindu law, after partition, each party gets a separate and distinct share and this share becomes their self-acquired property and they have absolute rights over it and they can sell, transfer, or bequeath it as they wish. Accordingly, the properties bequeathed through partition, become the self acquired properties of the respective sharers.



18. Apparently, the plaintiffs did not question the partition deed (Ex.P1) effected among the brothers. It states that the respective parties shall hereinafter enjoy the properties allotted to their share with a right to sell, lease, gift, encumber, etc. The partition deed further reveals that the suit property was allotted to C.Thippeswamy, one of the brothers of Defendant No.1; and Defendant No.1 was allotted 10 acres of land, which was different from the suit property measuring 7 acres 20 Guntas allotted to the said C.Thippeswamy. It also proceeds to state that after the death of the father Channappa, the joint family became unmanageable due to difference of opinion among the members and therefore, they decided that it was not good to stay together and partitioned the lands allotted to them. Thus, the intention of the parties and the recitals in the partition deed establish that the parties wanted to go their separate ways and did not want the property to remain as joint family property.

19. As reiterated above, after the joint family property has been distributed in accordance with law, it ceases to be joint family properties and the shares of the respective parties become their self-acquired properties. Hence, the suit property acquired by Defendant No.1 became his self-acquired property, on being sold by his brother Thippeswamy to him, vide sale deed dated 16.10.1989.....”.



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17. In the instant case, the plaintiff himself averred that the first defendant Srinivasan and his brother Lingava Naicker had partitioned the ancestral properties by virtue of registered partition deed dated 29.08.1972 and the above partition was not challenged by the plaintiff rather it was confirmed by this Court in A.S.No.298 of 1993 and A.S.No.706 of 1991. Therefore, as per plaintiff averments, the first defendant became absolute owner of the properties allotted to him in the partition deed dated 29.08.1972.

18. Thus being the position the plaintiff being the son of 2nd defendant Ramkumar who is none other than one of the sons of 1st defendant Dr. Srinivasan, and the plaintiff has filed the suit against his own grandfather and father during their life time in respect of properties of the first defendant, as such the trial court, has correctly come to the conclusion that the plaintiff cannot maintain a suit against his own grandfather and father during their life time, as the plaintiff would not come to class. I hear as per Section 8 of the Hindu Succession Act. Even for the sake of argument, even if the 1st defendant dies intestate, his son namely the 2nd defendant and other sons and daughter would alone inherit his properties. Even the death of the first defendant during pendency of suit has no impact or effect in the above conclusion. In such circumstances, the trial Court has correctly come to the decision that the plaintiff has no cause of action for the suit and the



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same is liable to be rejected, and the judgment and decree of the trial Court is

sustainable in law and the same need not be interfered by way of this appeal. Thus,

the appeal fails.

19. In the result,

(i) This appeal is dismissed.

(ii) The judgment and decree, dated 28.06.2024 passed in I.A.No.26 of 2024 in O.S.No.52 of 2022 on the file of the learned Additional District Judge, Tenkasi, is confirmed.

(iii) No costs.

(iv) Consequently, connected Civil Miscellaneous Petitions are closed.

10.06.2025

NCC : Yes / No
Internet : Yes / No
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To

- 1.The Additional District Judge,
Tenkasi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
A.S(MD)No.28 of 2025
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10.06.2025