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S.A.No.1007 of 1999

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11/03/2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

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- 1.T.S.Perumal Naidu (Died)
- 2.V.Krishnamurthy
- 3.P.Thirupathi Rajan
- 4.P.Alagammal
- 5.P.Rathinam
- 6.P.Bagavathi
- 7.P.Rajeswari
- 8.P.Chandrakala

: Appellants

(Appellants 3 to 8 are brought on record
as legal representatives of the
deceased 1st appellant vide order
dated 17.12.2021 made in
M.P.(MD)Nos.4 and 5 and 6 of 2012 in
S.A.No.1009 of 1999)

.VS.

- 1.Ramuthay
- 2.The Canara Bank,
Rep. by its Branch Manager,
Vathalagundu.
- 3.The Tamil Nadu Mercantile Bank,
Rep. by its Branch Manager,
Viralipatti, Nilakottai Tk.,
- 4.Kuppammal
- 5.Bodumani

: Respondents



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PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.54 of 1995 on the file of the Principal District Judge, Dindigul -Anna District, dated 12.03.1997, and reversing and confirming Judgment and Decree passed in O.S.No.473 of 1993, on the file of the Principal Sub Judge, Dindigul, dated 31.03.1995.

For Appellants : Mr.J.Alaguram Jothi

For Respondents : Mr.P.Saravanakumar for R1

* * *

J U D G M E N T

The present Second Appeal is filed against the judgment and decree in A.S.No.54 of 1995 on the file of the Principal District Court, Dindigul District, partly reversing and partly confirming the Judgment and Decree in O.S.No.473 of 1993 on the file of the Principal Sub Court, Dindigul.

2. The appellants 1 and 2 in the present second appeal are the Defendants 1 and 2 in the original suit. Upon the demise of the first defendant, his legal heirs (appellants 3 to 8) were brought on record. The first respondent is the plaintiff in the original suit. The plaintiff filed the suit in O.S.No.473 of 1993 before the Principal Sub Court, Dindigul, seeking partition, declaration, and other reliefs.



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3. The brief case of the plaintiff is as follows:-

3.1. The plaintiff is the first daughter of the late T.S.Venkidasamy Naidu.

The fifth defendant is his wife, and the sixth defendant is his second daughter. Late T.S.Venkidasamy Naidu and the first defendant were brothers. The second defendant is the son of the first defendant. Late T.S. Venkidasamy Naidu married the fifth defendant on 11.10.1948, following Hindu religious rites and the customary practices of their community. The fifth defendant and late T.S.Venkidasamy Naidu led a happy married life, and the plaintiff and sixth defendant were born from this union. Both T.S. Venkidasamy Naidu and the first defendant were members of an undivided Hindu joint family and migrated to Lower Camp to make a living. They accumulated significant wealth during their time in Lower Camp and later returned to Viralipatti. After their return, misunderstandings arose between late T.S.Venkidasamy and the fifth defendant. Consequently, T.S. Venkidasamy Naidu primarily lived with the plaintiff, the fifth, and the sixth defendants, occasionally staying with his brother and his family at Viralipatti.



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3.2 The plaint further proceeds to state that the "A" schedule properties mentioned in the suit refer to ancestral properties in Viralipatti, originally belonging to Subba Naidu. After their return, T.S.Venkidasamy Naidu and the first defendant enjoyed the "A" schedule properties jointly. Following their return from Lower Camp, late T.S. Venkidasamy Naidu deposited his self-acquired funds with the third and fourth defendants, while the first defendant deposited his self-acquired money in his name in various banks. Apart from the "A" schedule properties, there are no other ancestral joint family properties. Late T.S.Venkidasamy Naidu was employed at a school, while the first defendant worked with the Tamil Nadu Housing Board (TNHB) during their time in Lower Camp. Both late T.S. Venkidasamy Naidu and the first defendant managed their incomes separately. The "A" schedule properties consist of vacant sites, and there were no issues regarding them. T.S.Venkidasamy Naidu passed away on 26.04.1993 at Viralipatti, leaving behind the plaintiff, the fifth, and the sixth defendants as his only heirs under the Hindu Succession Act. The plaintiff and the fifth and sixth defendants are entitled to inherit both the "A" and "B" schedule properties.



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3.3. It is further stated in the plaint that T.S. Venkidasamy Naidu deposited approximately Rs. 42,000/- with the third respondent bank and Rs. 4,500/- with the fourth respondent bank. She claims that these amounts exclusively belong to T.S.Venkidasamy Naidu as his self-earned income. After his death, the plaintiff and the fifth and sixth defendants made repeated demands to the first and second defendants for their half-share in the "A" schedule properties, both personally and through mediators. However, the first and second defendants denied the claims of the plaintiff and the fifth and sixth defendants regarding their title to the "A" schedule properties and also asserted that the entire amounts deposited ("B" schedule properties) in the third and fourth respondent banks belonged to them. As a result, the plaintiff filed the suit seeking, a decree for partition of items 1 and 2 in the "A" schedule properties into six equal shares and the allotment of one share to her; To declare that the amounts deposited with the third and fourth defendants exclusively belong to her; To direct the defendants 1 to 4 to pay the costs of the suit to the plaintiff; and any other suitable reliefs in favour of the plaintiff against the defendants 1 to 4, considering the circumstances of the case.

4. Denying the allegations made in the plaint, defendants 1 and 2 filed their written statement, stating inter alia, that the plaintiff and the fifth and sixth



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defendants had been living in Naiyakkanpatti for about 25 years and had not even attended the funeral of T.S. Venkidasamy Naidu. It is further stated that the plaintiff, the fifth and sixth defendants had no share in the properties and denied that the plaintiff had lived jointly with T.S.Venkidasamy Naidu during his lifetime. The first defendant further claimed that the "A" schedule property had been sold to him by T.S.Venkidasamy Naidu on 07.09.1979 and that he had constructed a superstructure on it. It is further stated that T.S.Venkidasamy Naidu had adopted the second defendant in 1977. The defendants asserted that they had been in possession of the "A" schedule property for over 20 years, and the plaintiff had no right to question their ownership. As for the "B" schedule property, the defendants claimed that the deposits made with the third and fourth respondents were under the nomination of the second defendant, and that these deposits were not from T.S. Venkidasamy Naidu's income.

5. The fourth defendant had filed written statement and stated that they were unaware of the relationship between the plaintiff's family and T.S. Venkidasamy Naidu. Upon his death, Rs. 6,959.85 remained in his account, and one Krishnamurthi was nominated to claim it. However, the plaintiff had also made a legal claim to the amount, and the fourth defendant deferred disbursal pending court directions.



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6. The fifth and sixth defendants confirmed their relationship with T.S.Venkidasamy Naidu and denied that the first and second defendants had performed his last rites. They also disputed the adoption of the second defendant, stating that there was no necessity for it while they were alive. They further contended that the savings deposited in the third respondent bank belonged solely to T.S. Venkidasamy Naidu.

7. Before the trial court, the plaintiff examined three witnesses, viz., P.W. 1, P.W.2, and P.W.3, and marked 13 documents as Exs. A1 to A13. On the defendants' side, two witnesses were examined as D.W.1 and D.W.2, and seven documents were marked as Exs.B1 to B7. Additionally, the Commissioner's report (Ex.C1) and a rough sketch (Ex. C2) were also marked.

8. The trial court, after considering the oral and documentary evidence from both sides, decreed the suit filed by the plaintiff. Aggrieved by the judgment and decree of the trial court, defendants 1 and 2 preferred an appeal in A.S.No.54 of 1995 before the Principal District Judge, Dindigul District. The lower appellate court reversed the decision regarding the second item of Schedule 'A' property and confirmed the other findings of the lower court, and allowed the appeal in part. Aggrieved by the judgments and decrees of the same, the appellants/defendants have filed the above second appeal.



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9. Mr.J.Alaguram Jothi, the learned counsel for the appellants, would contend that the Muchalikka (Ex.A12) was not mentioned in the original plaint and was improperly introduced through a reply statement. He claims that the first appellant/first defendant was not part of Ex.A12 and that it was introduced under questionable circumstances and hence, the Courts below should have rejected it. He emphasizes that the plaintiff needs to provide sufficient evidence to support her case rather than relying on the weaknesses of the defense.

10. The learned counsel for the appellants would further contend that the property through Ex.B3 was purchased on 22.04.1948 under a registered sale deed by the first appellant and his brother, Venkatasamy Naidu, making them joint owners. Venkatasamy later sold his share to the first appellant on 07.07.1979 under Ex.B4, making the first appellant the sole owner of item No. 1 of Schedule 'A' and hence, the property cannot be claimed for partition now. He would further states that apart from Ex.A12, there are no other strong documents to support the plaintiff's claims, and Ex.A12 lacks a survey number. He asserts that registered documents like Ex.B3 and Ex.B4 should be prioritized over unregistered documents, and the courts did not interpret this correctly. Therefore, he argues that the first appellant is the absolute owner of item No. 1 of Schedule 'A'.



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11. The learned counsel for the appellants further pointed out that the lower appellate court made an error regarding item No.1 of Schedule 'A'. He states that Ex.B3 and Ex.B4 are relevant to this item, while Ex.A12 does not apply and is vague. Since Ex.A12 lacks a survey number and does not involve the first appellant, it is odd that the courts deemed item No.1 as common property. He emphasizes that the only property available is item No.1 of Schedule 'A', which was disposed of by Venkatasamy, and cannot be partitioned. He also points out that the fourth respondent, who deserted Venkatasamy and is now divorced, cannot claim any share in his estate. Similarly, the first respondent and her sister, the fifth respondent, married long ago and cannot claim any share in the ancestral property, if it exists. Furthermore, he mentions that the courts acknowledged the second appellant's age at the time of adoption (Ex.B1) and should have recognized the adoption since Ex.B1 is a registered document. He would further submit that the fourth respondent did not live with Venkatasamy and instead stayed at her parents' home, which disqualifies her from any claims. Therefore, the learned counsel prays to set aside the the judgments and decrees of the Courts below.

12. Mr.P.Saravanakumar, learned counsel appearing for the first respondent/plaintiff would submit that Ex.A12, the alleged Muchalikka, is



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pertinent to the plaintiff's case and its introduction is justified, and the fact that the first appellant/first defendant was not a party to it does not invalidate the document and the courts below correctly considered its implications. He would further submit that while the plaintiff bears the burden of proof, the defendants must also substantiate their claims. The argument that the plaintiff should not benefit from weaknesses in the defense is misleading. The learned counsel would contend that the appellants' claims of absolute ownership of item No.1 of Schedule 'A' must be supported by clear evidence. He would also argue that while registered documents like Ex.B3 and Ex.B4 hold more weight, unregistered documents such as Ex.A12 remain relevant. The learned counsel would highlight that the claim that Ex.A12 is vague lacks merit, as the plaintiff established a clear connection to the property, warranting its consideration. He would further note that the status of the fourth respondent/fifth defendant does not negate the claims of the plaintiff and that her involvement in the proceedings is relevant. Hence, the learned counsel for the respondent prays for dismissal of the second appeal.

13. Heard the learned counsel on either side and perused the materials available on record.



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14. The appellants have raised the following substantial questions of law

in the grounds of appeal:-

(i) *Whether the right vested in the first appellant/first defendant by virtue of registered sale deeds under Ex.B3 and B4 can be divested by a mere unregistered "Muchalikkaka" Ex.A12 to which he is not a party?*

(ii) *In a conflict between the registered Ex.B3 and Ex.B4 and unregistered Ex.A12 relating to matters, measurements etc., which will prevail over the other?*

(iii) *In as much as the first appellant/first defendant has become the absolute owner of item No.1 of Schedule 'A' property by virtue sale deed vide Ex.B3 and Ex.B4 whether the property disposed of by the deceased Venkatasamy Naidu in favour of the second appellant/second defendant can be questioned by legal heirs of the deceased*

(iv) *Whether the act of co-owner in selling his share to the other co-owner, the first appellant herein, can be questioned by the legal heirs after the death of Venkatasamy Naidu by way of partition suit.*

(v) *Whether "Muchalikka" Ex.A12 which was not shown nor discussed in the plaint can be introduced by way of reply statement to the prejudice of the first appellant/first defendant*

(vi) *Insofar as the fourth respondent/5th defendant deserted her husband Late.Venkatasamy Naidu to adopt a child. Is it mandatory to get the consent of the deserted and subsequently divorced wife? In this context whether the terms "has a wife living"*



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contained in Section 7 of the Hindu Adoption and Maintenance Act, 1956 include a "deserted living wife"?

(vii) Insofar as the second appellant discharged all the obligations adopted soon before and after the death of Venkatsamy Naidu. Is he not entitled to claim Bank deposits against the wife and daughters of the deceased who did not care to live, maintain and participate in the death and ceremony of the deceased Venkatasamy Naidu.

15. There is no substantial question of law framed in this second appeal. A perusal of the records, as well as the substantial questions of law raised by the appellants in the grounds of appeal, along with the entire materials and submissions of the learned counsel, this Court has formulated the following substantial questions of law:

- 1. Whether the appellants are the absolute owners of the 'A' schedule properties, and whether the findings of the courts below are perverse?*
- 2. Whether the second appellant is the adopted son of the late T.S.Venkidasamy Naidu?*



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WEB COPY 16. Substantial question of law No.1

The case of the appellants is that the deceased first appellant was the brother of T.S.Venkidasamy Naidu, and both of them purchased the 'A' schedule property by a registered sale deed dated 22.04.1948 for a sum of Rs.50/-. Subsequently, T.S.Venkidasamy Naidu, the brother of the deceased first appellant, sold his share to the deceased first appellant on 07.09.1979 under Ex.B4. Thereafter, the deceased first appellant enjoyed the property and constructed a building. The appellants assert that, except for the deceased first appellant, no one else has any right over the 'A' schedule property. As for the 'B' schedule amount, the deceased first appellant had only deposited it into the bank account of his brother, T.S. Venkidasamy Naidu, being the elder member of the family. The appellants further contend that the second appellant is the adopted son of T.S.Venkidasamy Naidu, having been adopted under a registered adoption deed dated 05.02.1979. Therefore, the second appellant is the only legal heir. It is further stated that the fourth respondent divorced T.S.Venkidasamy Naidu long ago, and the contesting respondents have not even attended the funeral of T.S.Venkidasamy Naidu. As the suit schedule 'A' property was sold by T.S.Venkidasamy Naidu to the first appellant, the contesting respondents 1, 4, and 5 are not entitled to the suit property for partition.

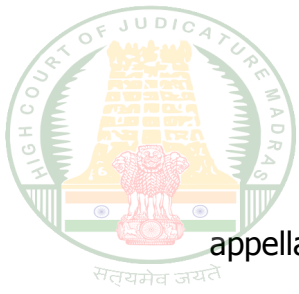


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17. The case of the contesting respondents 1, 4 and 5 is that the suit properties are joint family properties, and T.S.Venkidasamy Naidu never sold the property to the deceased first appellant. The deceased first appellant and T.S.Venkidasamy Naidu were brothers, so the deceased first appellant was entitled to a half share, and the remaining half was entitled to the contesting respondents. They claim that the family members entered into a Muchalika, marked as Ex.A12, which states that T.S.Venkidasamy Naidu, the father of the first and fifth respondents and the husband of the fourth respondent, held a half share in the property. They assert that after his death, the respondents are entitled to 1/6th of the share. The respondents also contend that T.S.Venkidasamy Naidu never adopted the second appellant, and the amount lying with the second and third respondents belongs to T.S.Venkidasamy Naidu, thus entitling the respondents to a 1/3rd share. Therefore, the trial court rightly decreed the suit, and the appellate court confirmed it, asserting there is no merit in the appeal.

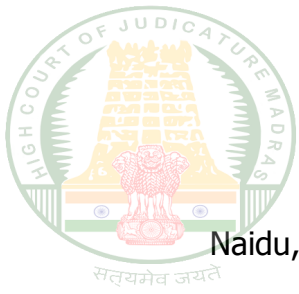
18. Though the appellants initially denied the relationship in their written statement, they later admitted it during the appeal. Furthermore, the documents filed by them substantiate that T.S.Venkidasamy Naidu and the deceased first



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appellant were brothers. The first and fifth respondents are the daughters of T.S. Venkidasamy Naidu, and the fourth respondent is his wife. Ex.A8, the legal heir certificate, also confirmed the same, which was not contested or denied by the appellants. Therefore, from the evidence of P.W.1 to P.W.3, along with Ex.A1, A2, A5, A6, A7, A8, A9, and A10, establishes the relationship that the first and fifth respondents are the daughters, and the fourth respondent is the wife of T.S. Venkidasamy Naidu, which the appellants have not disputed in the present appeal.

19. Admittedly, the deceased T.S.Venkidasamy Naidu and the deceased first appellant purchased the 'A' schedule property under Ex.A3 dated 22.04.1948, which the appellants also marked as Ex.B3. The document marked by the plaintiff and the document marked by the defendants Exs.A3/Ex.B3 clearly shows that the deceased first appellant and the deceased T.S.Venkidasamy Naidu purchased the 'A' schedule property on 22.04.1948. Although the contesting respondents claim that the property is ancestral and that they are entitled to a share, as they are legal heirs of T.S.Venkidasamy Naidu, in the reply statement, the first respondent introduced Ex.A12-Muchalika, stating that it is ancestral property and that the first appellant and T.S. Venkidasamy Naidu are the joint owners. Therefore, after the death of T.S.Venkidasamy



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Naidu, they are entitled to half share of T.S. Venkidasamy Naidu's property.

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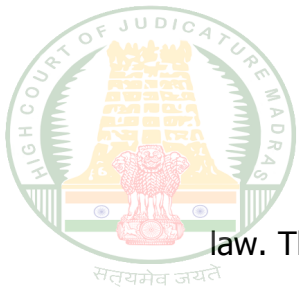
20. A reading of Muchalika (Ex.A12) reveals that there is no survey number mentioned, and the said document, the Muchalika, is also not admissible in evidence, as it was not proved in the manner known to law. Even both the courts failed to consider that there is no survey number in Ex.A12. Though both the courts acknowledged that T.S. Venkidasamy Naidu and the first appellant purchased the 'A' schedule property under Ex.B3/A3, they did not give much weight to the documents produced by the appellants (Ex.B4), which show that T.S. Venkidasamy Naidu, during his lifetime, sold his half share to the deceased first appellant under a registered sale deed dated 07.09.1979. Although the contesting respondents denied this, they failed to provide any proof to the contrary, while the appellants remained in possession of the property. Upon perusal the entire evidence, including the evidence of P.W.1 , DW1 , and others, it is evident that while they have discussed the relationship, they have not clearly addressed the 'A' schedule property.

21. Though it is a settled proposition of law that the plaintiff has to prove their case on their own strength and cannot take advantage of loopholes left by the defendant, this proposition does not apply to a partition suit, as both the



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plaintiff and the defendants are treated as *vice versa*. Therefore, in the absence of proof of Ex.A12, which is an unregistered document, and since the contesting respondents have not produced any other documents like patta, adangal, or kist to prove that the 'A' schedule properties are ancestral property of the deceased T.S. Venkidasamy Naidu and the first appellant, the only available documents are Ex.B3/Ex.A3. These documents clearly show that T.S. Venkidasamy Naidu and the late first appellant jointly purchased the 'A' schedule property, and as per Ex.B4, T.S. Venkidasamy Naidu sold his half share to the deceased first appellant. Though the contesting respondents denied this, they have not established the facts, and they also admitted that the appellants are in possession of the said property. Both the courts below failed to consider that the contesting respondents have not proved that the 'A' schedule properties are ancestral property of the family, and that T.S. Venkidasamy Naidu derived title from Ex.B3, selling his share to the deceased first appellant under Ex.B4. Further, the evidence of P.W.1, the first respondent, also shows that she does not know anything about the case. In response to most questions, she stated that she does not know and did not only fail to examine any independent witnesses but also failed to produce any other documents to support her claims. Ex.A12 is inadmissible in evidence and will not bind the appellants, as they are not parties to the Muchalika, and Ex.A12 was not proved in the manner known to



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law. Therefore, upon appreciating the oral and documentary evidence, this Court finds that both the courts below erred in their judgments. From Exs.B3 and B4, it is clear that the first appellant is the rightful owner of the property, and even during the lifetime of T.S. Venkidasamy Naidu, he sold his share to the deceased first appellant. As a result, the contesting respondents are not entitled to any share in the 'A' schedule property. Accordingly, this substantial question of law is answered in favour of the appellants.

22. Substantial Question of law No.2:

The appellants claim that the second appellant was adopted by T.S. Venkidasamy Naidu, and to prove this, they submitted Ex.B1, the registered adoption deed dated 05.12.1977. However, the contesting respondents denied the adoption, and a perusal of the oral and documentary evidence reveals that the appellants did not establish a valid adoption. Although Ex.A1 (adoption deed) was registered, there is a contradiction regarding the second appellant's age at the time of adoption, raising doubts about its validity. Ex.A7, the school certificate, states that the second appellant was only 15 years old, and Ex.B7 was not proved in accordance with the law. The appellants have not established the adoption as valid. Further, the appellants have failed to prove the divorce between T.S.Venkidasamy Naidu and the fourth respondent in the manner



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known to law. It is not the case of the appellants that the customary divorce prevail over in their caste. Therefore, the divorce has not been proved in the manner known to law. Further, the adoption was not proved in the manner known to law. The divorce was also not proved legally. Therefore, the divorce and adoption are both invalid. Since the appellants failed to prove the valid adoption of the second appellant by the deceased T.S.Venkidasamy Naidu, and although the deceased had designated the second appellant as a nominee, the settled proposition of law is that payments made to nominees by the bank or institution constitute a valid discharge. However, this does not imply that the nominees are the only ones entitled to the property. As stated above, the contesting respondents, who are the daughters and wife of the deceased Venkidasamy Naidu, are, as such, entitled to a 1/3rd share of the 'B' schedule amount held in the banks of the second and third respondents. The contesting respondents already sent notice to the bank, withholding the amount, and they have not disbursed it to the nominee. When a dispute arises between the nominee and the actual owners, normally the bank/institution will not disburse to the nominee. In this case, the respondents 2 and 3 have stated that they have received notice from the first respondent. Since the bank has not disbursed the amount, it has already been held that the contesting respondents are the only legal heirs of the deceased T.S. Venkidasamy Naidu and are entitled to the



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amount lying in the second and third respondents' banks in the name of T.S.Venkidasamy Naidu. The appellants are not entitled, and the contesting respondents are entitled only to a 1/3rd share in the 'B' schedule property. Accordingly, this substantial question of law is answered against the appellants.

23. In the result, the second appeal is partly allowed, and the appellants are entitled to the 'A' schedule property, while the contesting respondents are entitled to the 'B' schedule property. However, there shall be no order as to costs.

11/03/2025

Index: Yes/No.
Speaking Order : Yes/No.
Neutral Citation Case : Yes/No.

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WEB COPY To

1. The Principal District Judge, Didigul -Anna District,
2. The Principal Sub Judge, Dindigul.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court.



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P.VELMURUGAN, J.

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Pre-Delivery Judgment made in
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