



SA Nos.1406 of 1999 and 2234 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03/04/2025

**CORAM**

The Hon'ble Mr.Justice **G.ILANGO VAN**

**SA Nos.1406 of 1999 and 2234 of 2003**  
**and**  
**CMP No.21039 of 2003**

**(1) SA No.1406 of 1999**

1.Meenal (Died)  
2.P.Arumugam Ammal (Died) : Appellants 1 and 2/  
R1 and R2/Plaintiffs  
3.Govindan  
4.Kala  
5.Vasuki : Appellants 3 to 5/  
LR.s of the deceased A2  
(Appellants 3 to 5  
are brought on record  
as LR.s of the deceased  
second appellant, vide Court  
order, dated 18/01/2005  
made in CMP No.10 of 2005)  
6.Arumugam : 6<sup>th</sup> Appellant/LR of  
the deceased A1  
(6<sup>th</sup> Appellant is brought on  
record as LR of the deceased  
1<sup>st</sup> appellant, vide Court order,  
dated 09/07/2021 made in CMP(MD)  
Nos.3173 to 3175 of 2021 in  
SA No.1406 of 1999)

Vs.

1.Panchammal : 1<sup>st</sup> Respondent/  
Appellant/  
4<sup>th</sup> defendant  
2.Mariyappan  
3.Ramayee (Died)  
4.Ramachandran (Died)  
5.Periyannan



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6. Sivagangai Municipality,  
rep. by its Commissioner,  
Sivagangai.

: Respondents 2 to 6/  
Respondents 3 to 7/  
Defendants 1,2,3, 5 and 7

7. A. Panju

(R7 deleted as per Court  
order, dated 18/02/2022  
made in CMP(MD)No.8091 of 2021  
in SA No.1406 of 1999)

8. V. Murugan

9. N. Chokki

(Respondents 7 to 9 are  
brought on record as LR.s  
of the deceased 3<sup>rd</sup> respondent,  
vide court order, dated 21/04/2022  
made in CMP(MD)Nos.1915, 1917 and  
1919 of 2022 in SA No.1406 of 1999)

10. Tmt. Valli

11. Rojappu (Died)

12. Subramani

(Respondents 10 to 12 are brought  
on record as LR.s of the deceased  
4<sup>th</sup> respondent, vide Court order,  
dated 21/04/2022 made in CMP(MD)  
Nos.9753, 9754 and 9755 of 2018  
in SA No.1406 of 1999)

13. Padma

14. Parameswari

15. Kirupa

16. Marimuthu

: Respondents 7 to 16

Respondents 13 to 16 are brought  
on record as LR.s of the deceased  
11<sup>th</sup> respondent, vide court order,  
dated 21/04/2022 made in CMP(MD)  
Nos.8092, 8094 and 8095 of 2021  
in SA No.1406 of 1999)

**PRAYER:-**Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree made in AS No.47 of 1998 on the file of the Subordinate Judge at Sivagangai, dated 25/01/1999 modifying the judgment and decree made in OS No.451 of 1994 on the file of the Additional District Munsif Court at Sivagangai, dated 03/03/1997, thereby declaring 2/15 share of the plaintiffs for passing preliminary decree.



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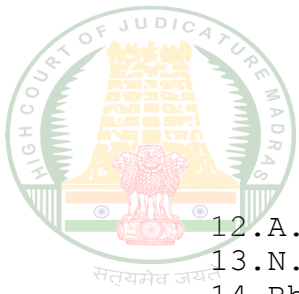
For Appellants : Mr.S.Srinivasa Raghavan  
For 1<sup>st</sup> Respondent : Mr.P.Saravanan  
for Mr.A.Sivaji  
For R2, R5, R6, R13  
to R16 : No appearance  
For R3, R4 and R11 : Died (Steps Taken)  
For R8 to R10 & R12 : Mr.N.Tamil Mani

**2.SA No.2234 of 2003:-**

Panjammal : Appellant/Appellant/  
4<sup>th</sup> defendant

Vs.

1.Meenal (Died)  
2.Arumugam Ammal (Died) : Respondents 1 and 2/  
Respondents 1 and 2/  
Plaintiffs  
3.Mariappan  
4.Ramayee (Died)  
5.Ramachandran (Died)  
6.Periannan  
7.Sivagangai Municipality,  
by its Commissioner,  
Sivagangai. : Respondents 3 to 7/  
Respondents 3 to 7/  
Defendants 1,2,3,5 and 6  
8.Arumugam  
(8<sup>th</sup> respondent is brought on  
record as LR of the deceased  
1<sup>st</sup> respondent, vide court order,  
dated 04/08/2023 made in CMP(MD)  
Nos.5381 to 5392 of 2023 in  
SA No.2234 of 2023)  
9.Govindan  
10.Kala  
11.Vasuki  
(Respondents 9 to 11 are brought  
on record as LR.s of the deceased  
2<sup>nd</sup> respondent, vide Court order,  
dated 04/08/2023 made in CMP(MD)  
Nos.5381 to 5392 of 2023 in SA  
No.2234 of 2003)



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- 12.A.Panju  
13.N.Chokki  
14.Bhuvaneswari  
15.Manikandan  
16.Selvi

(Respondents 12 to 16 are brought on record as LR.s of the deceased 4<sup>th</sup> respondent, vide Court order, dated 04/08/2023 made in CMP(MD)Nos.5381 to 5392 of 2023 in SA No.2234 of 2003)

- 17.Valli  
18.Subramani  
19.Padma  
20.Parameswari  
21.Kirupa  
22.Marimuthu

: Respondents 8 to 22

(Respondents 17 to 22 are brought on record as LR.s of the deceased 5<sup>th</sup> respondent, vide Court order, dated 04/08/2023 made in CMP(MD)Nos.5381 to 5392 of 2023 in SA No.2234 of 2003)

**PRAYER:-**Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree in AS No.47 of 1998 on the file of the Sub Court, Sivagangai, dated 25/01/1999 modifying the judgment and decree in OS No.451 of 1994 on the file of the Additional District Munsif Court, Sivagangai, dated 03/03/1997.

For Appellant : Mr.P.Saravanan  
for Mr.A.Sivaji

For R1, R2, R4 & R5 : Died (Steps taken)

For R3, R6, R12 to R22 : No appearance

For 7<sup>th</sup> Respondent : Mr.A.Kathiravan  
(No appearance)

For R8 to R11 : Mr.S.Srinivasa Raghavan



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**COMMON JUDGMENT**

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SA No.1406 of 1999 is filed against the judgment and decree passed in AS No.47 of 1998 by the Sub Court, Sivagangai, dated 25/01/1999 modifying the judgment and decree passed in OS No.451 of 1994 by the Additional District Munsif Court, Sivagangai, dated 03/03/1997, thereby declaring 2/15 share of the plaintiffs passed preliminary decree, Whereas SA No.2234 of 2003 has been preferred against the judgment and decree passed in AS No.47 of 1998 by the Sub Court, Sivagangai, dated 26/01/1999 modifying the judgment and decree passed in OS No.451 of 1994 by the Additional District Munsif Court, Sivagangai, dated 03/03/1997.

**2.The plaint averments:-**

The suit property originally belongs to Chinnaiah Konar. He had 4 sons by name Ramasamy, Subramanian, Ramachandran and Alagarsamy and 3 daughters by name Ramayee, Meenal and Arumugam Ammal. The first plaintiff is Meenal. The second plaintiff is Arumugam Ammal. Subramanian died even before the marriage without issues. Ramasamy died leaving behind his wife as his legal-heir. The second defendant is Ramayee. Whose daughter is the 4<sup>th</sup> defendant namely Panjammal. She was married to Alagarsamy, who was examined as PW3 on the side of the



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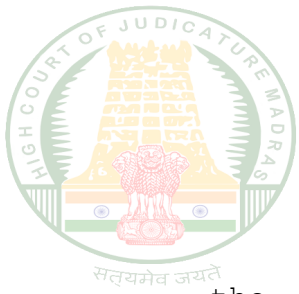
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plaintiffs. Another son Ramachandan is the third defendant. Alagarsamy gone on adoption to Alagu Konar, who was examined on the side of the defendants. So, Alagarsamy had no share in the property.

3.On the western side of the property, the second plaintiff put up a thatched shed and residing. Because of some issues, the plaintiffs are not willing to possess the property jointly. So, the suit is filed for partition and separate possession of 2/5<sup>th</sup> share.

4.The 4<sup>th</sup> defendant has no independent right or share in the property. She proclaimed that she purchased a portion of the property from the first and third defendants. She put up two shops around January 1999 in the suit property. Prayer is sought for in the plaint to remove the structure in the 4<sup>th</sup> defendant's property. Similarly, the 5<sup>th</sup> defendant, who has no right over the property, encroached a portion of the property around 1993 and put up tiled structure. So, prayer is sought for amending 2/5<sup>th</sup> share, costs.

5.The defendants 1, 2, 3 and 5 remained *ex-parte* before the trial court. Only the 4<sup>th</sup> defendant namely Panjammal contested the case.

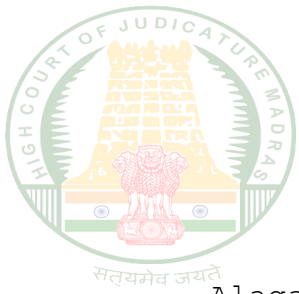


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**6.The statement filed by her:-** It is admitted that the suit property originally belongs to Chinnaiah Konar ancestrally. The relationship between the parties is admitted. Out of the earnings from the ancestral properties, Chinnaiah Konar arranged marriage for the plaintiffs 1 and 2. So, they have no share in the property. After the death of Chinnaiah Konar, the male members namely Ramasamy, Subramanian, Ramachandran and Alagarsamy jointly enjoyed the property. Later, Subramanian died without any marriage and issues, so also Ramasamy. So, the properties of Chinnaiah Konar were divided between Ramachandran, Alagarsamy and Mariappan the first defendant herein, enjoyed the property separately as per separate division.

7.As per the partition, the western portion was allotted to the first defendant Mariappan. Central portion to Ramachandran, eastern portion to Alagarsamy. She purchased the western portion allotted to Mariappan, on 21/03/1985. Similarly, the central portion from Ramachandran, on 22/06/1984. After purchase, she constructed two shops and let out the same to one Periyannan. The portion allotted to Alagarsamy is now in the enjoyment of the 4<sup>th</sup> defendant. It was given to her by Alagarsamy. So, the entire properties belong to the 4<sup>th</sup> defendant.



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8. Adoption pleaded in the plaint is not true.

Alagarsamy is a necessary party and the suit is bad for non-joinder of necessary parties.

9. The second plaintiff's husband was dead. So, she became helpless. On that consideration, the 4<sup>th</sup> defendant permitted the second plaintiff to put up a thatched house on the western portion for her occupation on rent. But the second plaintiff did not pay the rent properly. Later, she executed an undertaking letter, on 14/11/1991 to vacate the premises on or before 15/05/1992. But against that undertaking, the second plaintiff did not vacate the premises.

10. On the basis of the pleadings, the following issues were framed by the trial court:-

*(1) Whether the plaintiffs are entitled to get any share in the suit property?*

*(2) Whether the suit is bad for non-joinder of necessary parties?*

*(3) Whether the plaintiffs are entitled to the relief of partition as prayed for?*



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*(4) Whether the plaintiffs are entitled to the relief of injunction as prayed for?*

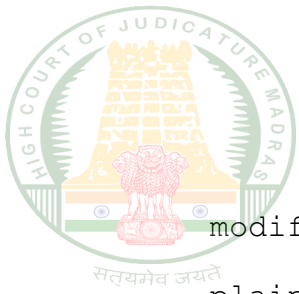
*(5) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?*

*(6) To what other relief, the plaintiffs are entitled to?*

11. On the side of the plaintiffs, 3 witnesses were examined and 4 documents marked. On the side of the defendants, 4 witnesses were examined and 34 documents marked. The Commissioner's report and plan were marked as Exs.C1 and C2.

12. The trial court, on appreciation of facts decreed the suit in-part and a preliminary decree for partition was passed in respect of 2/6<sup>th</sup> share in the first item; In respect of 2<sup>nd</sup> and 3<sup>rd</sup> items, it was ordered that during the course of the final decree proceedings, that portion must be allotted to the 4<sup>th</sup> defendant; In respect of other prayers, the suit was dismissed.

13. Against which, appeal was preferred by the 4<sup>th</sup> defendant before the Sub Court, Sivagangai, in AS No.47 of 1998. The appellate court allowed the appeal in-part



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modifying the preliminary decree for partition that the plaintiffs are entitled to get 1/15<sup>th</sup> share. In respect of the other prayers, the judgment and decree of the trial court were confirmed.

14.Against which, these two separate appeals are preferred. One by the 4<sup>th</sup> defendant in SA No.2234 of 2003. Aggrieved over the allotment of the shares, the plaintiffs preferred SA No.1406 of 1999.

15.At the time of admitting SA No.1406 of 1999, the following substantial question of law was framed:-

**(1)Whether the judgment and decree of the Lower Appellate Court declaring 2/15<sup>th</sup> share to the plaintiffs without considering the case in terms of provisions contained in Hindu Succession (T.N.Amendment) Act, 1989 (Act 1/90) constitutes error of law and render same as invalid or not?"**

16.In respect of SA No.2234 of 2003, the following substantial question of law was framed at the time admission:-

**"Is not the Lower Appellate Court committed error in law in holding that PW3 the husband of the appellant has gone in adoption and consequently, he is not**



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**entitled to any share in the property in  
view of his release orally as PW3?"**

17.Heard both sides.

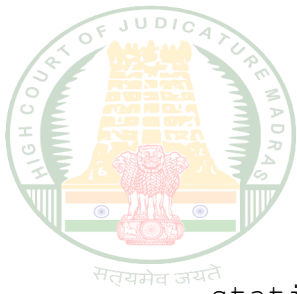
18.For convenience sake, we will take up SA No.2234  
of 2003 for consideration first.

19.A peculiar plea is taken by the parties in  
respect of this substantial question of law.

20.PW3 is one of the sons of Chinnaiah Konar. Now  
he says in his evidence that he went in adoption to his  
Paternal Aunt when he was very young. So, being the  
adopted son, he is not entitled for any share in his  
father's property. In effect, he supported the case of  
the plaintiffs, who are his sisters.

21.Per contra, on the side of the contesting 4<sup>th</sup>  
defendant namely the wife of PW3 Alagarsamy, the adoptive  
father was examined as DW2. He would say that PW3  
Alagarsamy was never taken in adoption by him. The trial  
court recorded a finding that since DW2 has denied the  
taking of adoption, that fact was not established by the  
plaintiffs. But no issues were framed in respect of this  
issue by the trial court.

11/23



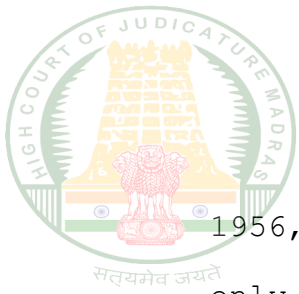
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22. But the appellate court differed from the finding stating that since PW3 himself admits the fact of adoption, nothing more is required to be proved by the plaintiffs. On that ground, it differed from that view.

23. Now on that account, this substantial question of law is framed. No doubt that admission is the best piece of evidence. But at the same time, admission can be proved to be wrong. Only on that basis, it appears that the 4<sup>th</sup> defendant examined DW2 on her side. But reading of the evidence of DW2 does not inspire any confidence at all. On the date of his examination, he admits that he was under the care of the 4<sup>th</sup> defendant's daughter, which means that he was under the custody of the 4<sup>th</sup> defendant. For many of the questions, he answered in the negative. He would admit that funeral rites to his wife namely Valli was performed only by Alagarsamy (PW3). But he has added a rider that since because, PW3 is the son of her wife's sister, it might have been performed by him. So, DW2's evidence was rightly not considered by the appellate court.

24. The correct date of adoption is not known. But it is stated by PW1 that when PW3 was very young, he went in adoption. As per the Hindu Adoptions and Maintenance Act,

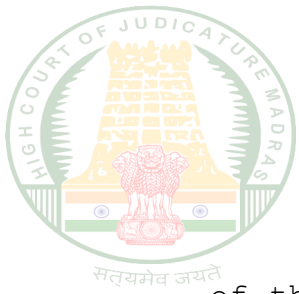


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1956, no particular form of adoption is prescribed. The only condition, which now applies to the present case is that it is admitted by DW2 himself that they had no issues, which means that the Aunt of PW3 and DW2 had no children. So, in all probability, as mentioned by PW3, who was taken adoption by DW2. But for obvious reasons, DW2 wants to support the case of the 4<sup>th</sup> defendant. So, the recording of the finding by the appellate court that PW3 went in adoption in view of the specific admission made by him requires no other evidence, requires no interference.

25. We can go further deeper into the evidence of PW3. During the course of cross examination, a suggestion was made by the 4<sup>th</sup> defendant that since because, DW2 and his wife did not have any male child, he was taken by them, but never adopted. So, this suggestion itself is sufficient enough to show that DW2's evidence is reliable as stated above. Now, the adoption is disputed after 50 years. PW3 would say that he was aged about 50 on the date of his examination. Adoption is challenged by his wife and not by others. So, this itself is sufficient enough to show that presumption can be drawn that actually, he was given in adoption and taken by DW2.



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26.Now coming to the effects of adoption, section 12 of the Hindu Adoptions and Maintenance Act, 1956 reads as follows:-

**"12.Effects of adoption.**-An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that-(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b)any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;



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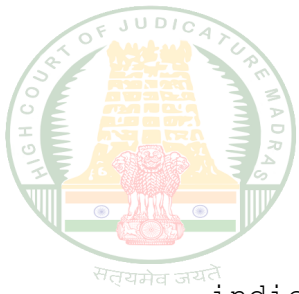


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*(c) the adopted child shall not divest  
any person of any estate which vested in  
him or her before the adoption."*

27.So, for all practical purposes, PW3 is severed from Chinnaiah Konar's family and properties. Only after the death of Chinniah Konar, the succession might have opened, but PW3 went on adoption even before that. So, he is not entitled for any share in the property, as admitted by him. So, the 4<sup>th</sup> defendant cannot take up this plea, more specifically, when PW3 himself has disowned in connection to the suit property. So, this substantial question of law does not arise at all and recording of finding by the appellate court is confirmed.

28.The learned counsel appearing for the appellants in SA No.1406 of 1999 would submit that PW3 Alagarsamy got a share and the suit filed without impleading him as a party is bad for non-joinder of necessary party and for that purpose, he would rely upon the judgment of the Hon'ble Supreme Court reported in **A.Ramachandra Pillai Vs. Valliammal (died) and others (1983 0 Supreme (Mad) 138)**.

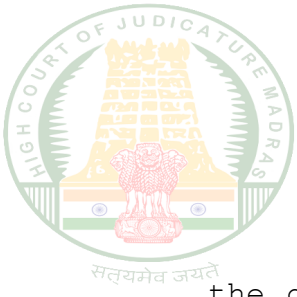


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29. Reading of the evidence of PW3 and DW1 does indicate that some sort of matrimonial issue between them and got separated for several years and living separately. The 4<sup>th</sup> defendant came down to the suit village and started living separately, purchasing the share of others. Here, the contention that PW3's share was given to her in lieu of maintenance is also without any evidence and that has been raised for the sake of defence.

30. Equally, it is seen that after the cordial relationship between the plaintiffs and the 4<sup>th</sup> defendant broke down and having allowed the 4<sup>th</sup> defendant to put up a construction in the properties, the suit is filed. So, rightly the trial court observed that during the final decree proceedings items No.2 and 3, which form part of the first item must be allotted to the share of the 4<sup>th</sup> defendant, since she purchased the same from the first defendant and Ramachandran. But the appellate court has not touched that point. So, in view of the above said, that observation must also be restored to file. During the final decree proceedings, the final decree Court must take note of the observation and pass orders accordingly.



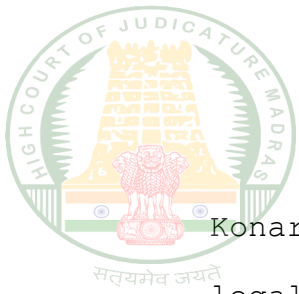
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31.Now coming to the issue in SA No.1406 of 1999, in the grounds of appeal, the invocation of Hindu Succession (Tamil Nadu Amendment) Act, 1985 (Act 1/90) is invoked. But in the plaint, the plaintiffs have stated that they are entitled to get 1/5<sup>th</sup> share equally.

32.It is admitted by both sides that the suit property originally belongs to them. It is stated in the plaint that the property belongs to Chinnaiah Konar. But it is not stated whether it belongs to him ancestrally or it is self-acquired property.

33.The statement reads that the property originally belongs to Chinnaiah Konar ancestrally. In view of the fact that there is no evidence on record to show that the property belongs to Chinnaiah Konar as self-acquired property, the appellate court has drawn a presumption that it is an ancestral property. In view of the above said, the court has recalculated the share, since there is no evidence on record to show the Chinnaiah Konar's correct date of death. But one of the sons namely Subramanian reported to be dead in 1976. The appellate court has stated that the property by notional partition will come around 1/3<sup>rd</sup> share each to Chinnaiah Konar, Ramasamy and the third defendant Ramachandran. Chinnaiah



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Konar's  $1/3^{\text{rd}}$  share must be divided among his Class-I legal heirs. By that way, each is entitled for  $1/15^{\text{th}}$  share. So, the plaintiffs are entitled for  $1/15^{\text{th}}$  share each. Now in the grounds of appeal, the benefit under Tamil Nadu Amendment Act is claimed. For claiming the benefit under the provision of the Tamil Nadu Amendment Act, the following conditions must be satisfied. The daughter, who is married before the commencement of the Act, she is not entitled. Similarly, if the partition is effected before commencement of the Act, the daughter is not entitled to equal share with that of the son. The trial court has taken the share as  $1/6^{\text{th}}$  share equally to sons and daughters.

34. We will take up the second condition. According to the 4<sup>th</sup> defendant, after the death of Chinnaiah Konar, the property was divided orally between the sons and by which, allotment of the portions were taken place as mentioned in the written statement. To prove the same, she has produced the sale deeds obtained from the first defendant Mariappan and Ramachandran under Exs.B1 and B2. Wherein we find that reference is made to the partition and allotment of portions. But to prove the same, except the recitals in Exs.B1 and B2, no other evidence was produced by the 4<sup>th</sup> defendant. On her side, DW1 was



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examined to say that there was oral partition. But the evidence of DW2 is rejected by me, since it does not inspire any confidence. On the side of the plaintiffs, it is stated that no partition took place, as mentioned in Exs.B1 and B2. No steps were taken by the 4<sup>th</sup> defendant to summon the first defendant and Ramachandran to show the execution. Mere production of Exs.B1 and B2 will not show that partition was made orally. So, the second condition mentioned in the above said Act is not satisfied.

35.Regarding the first aspect of marriage before the introduction of the Act, absolutely there is no evidence. PW1, the second plaintiff has not stated anything about her marriage by mentioning the year. But stated that her husband died 30 years back. She was examined as a witness in 1996. If calculated 30 years, it will come around 1966. So, she would have been married before 1966, which means that her marriage took place before the introduction of the Act. So, without proper pleadings, it appears that this ground has been raised in the second appeal.

36.Perusal of the records shows that Exs.B29 and B30 the house tax receipts were standing in the name of the Chinnaiah Konar, which means that Chinnaiah Konar was



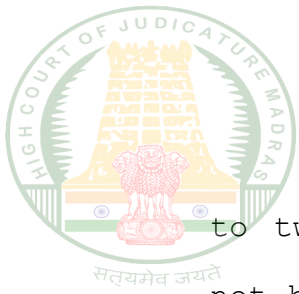
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alive during 1989-1990 and died later. Naturally, even though, there is no clear evidence on both sides with regard to the correct date of death of Chinnaiah Konar, as per section 6 of the Hindu Succession Act, 1956, national partition must be deemed to have been effected. So, the Tamil Nadu Amendment Act will not apply, only Central Act will apply. PW3 Alagarsamy also went in adoption. On the date of the death of Chinnaiah Konar, 3 female legal-heirs namely Ramayee, Meenal and Arumuga Ammal were alive. So, as indicated by the appellate court, Ramasamy, Ramachandran and Chinnaiah Konar each entitled to get  $1/3^{\text{rd}}$  share.  $1/3^{\text{rd}}$  share left by Chinniaah Konar again to be divided equally by Ramasamy, Ramayee, Ramachandran, Meenal and Arumuga Ammal, which means that all are entitled to get  $1/15^{\text{th}}$  share equally.

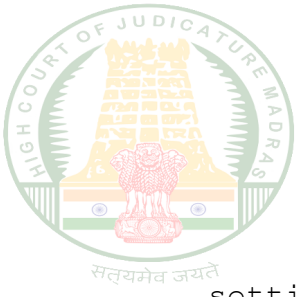
37. Even though, the appellate court has made calculation as per law prevailing then, now in view of the Amendment of Succession Act, 2005, the entire scenario has changed. In view of the judgment of the Hon'ble Supreme Court in VINEETA SHARMA Vs. Rakesh Sharma & Others (AIR 2020 SUPREME COURT 3717), the daughter become the coparcener on the date of her birth. The date of death of the coparcener does not assume importance. So, she is entitled to get equal share along with the son subjected



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to two conditions. One condition is that the right will not be available if the partition was already effected in the coparcener. Second, it will not affect the alienation made. Here, as mentioned above, absolutely, there is no evidence on record to show that either at the time of Chinnaiah Konar alive or after his death, there was partition between the members. The oral partition mentioned in the sale deed effected in favour of the 4<sup>th</sup> defendant is not proved by any independent witness. The evidence of DW2 was already rejected by me. So, for all practical purpose, it must be construed that there was no partition before the Amendment Act came into force. Similarly, the sale made by the defendants 1 and 3 in favour of the 4<sup>th</sup> defendant will not affect the right of the plaintiffs to get their due share. Since the plaintiffs are entitled equal share along with the son, then, as mentioned above, in the plaint, they are entitled for 1/6<sup>th</sup> share independently. Totally, they are entitled to 2/6<sup>th</sup> share. So, the judgment and decree of the appellate court is set aside and the judgment and decree passed by the trial court declaring that the plaintiffs are entitled to 2/6<sup>th</sup> share jointly is restored, of course, subject to the above observations.



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38.In the result, **SA No.1406 of 1999 is allowed**, by setting aside the judgment and decree of the appellate court and the decree and judgment passed by the trial court declaring that the plaintiffs are entitled for 2/6<sup>th</sup> share jointly is restored, of course subject to the above said observation. **SA No.2234 of 2003** filed by the 4<sup>th</sup> defendant **Panjammal** is **dismissed**. No costs. Consequently connected CMP is closed.

Index:Yes/No  
Internet:Yes/No  
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03/04/2025

To,

- 1.The Additional District Munsif,  
Sivagangai,
- 2.The Sub Judge,  
Sivagangai.
- 3.The Section Officer,  
VR/ER Section,  
Madurai Bench of Madras High Court,  
Madurai.



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G.ILANGO VAN, J

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