



A.S.Nos.434 of 2002 & 819 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on :19.02.2026

Judgment pronounced on :
10.04.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.Nos.434 of 2002 & 819 of 2023

and

CMP(MD)Nos.15727 & 7821 of 2024 & 29032 of 2023

A.S.Nos.434 of 2002

P.Dhandapani

.. Appellant

Vs.

Dhanalakshmi (Died)

2.Valliammal

3.Udhayagiri (died)

4.Geetha

5.B.Sanths

6.V.Latha

(R3 Died R4 to R6, who are Lrs of R3, already on record)

7.Avinaski Mudaliar(died)

8.Parvathy

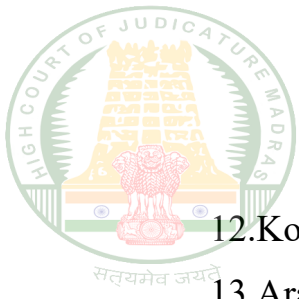
9.Sudha

10.Latha

(R16 Died, R9 &R10, who are Lrs of R16, already on record)

11.T.S.Lakshmi

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12.Kokilambal

13.Aravinda Krishnan

14.K.V.Radha

15.Latha Prabhu

16.V.V.Shankaran (Died)

17.C.S.Nandakumar

18.T.V.Srinivasan

19.K.Shanmugam

(Transposed as second appellant vide Court order dated 14.08.2024)

20.S.Gnanasekar

21.P.Ravichandran

22.Suganthi

23.Kalaiselvi

24.Thirugnanasambantham

25.T.Rajaram

26.T.Saranya

(R1 Died R21 to R26 brought on record as Lrs of deceased R1 vide court order dated 05.04.2024)

... Respondents

Prayer: Appeal Suit filed under Section 96 of CPC and Order 41 Rule 1 CPC, against the fiat and final order passed in O.S.No.1555 of 1993 dated 28.09.2000 on the file of the Third Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.Anirudh Krishnan
Legal aid counsel



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A.S.Nos.434 of 2002 & 819 of 2023

For Respondents : Mr.G.Ananda Kumar for R21
: M/s.M.Vishali
for Mr.K.Govi Ganesan
for R4 to R6
: Mr.V.Radhakrishnan
for Mr.S.Kadarkari, for R24 to 26
: Mr.P.Thangavel for R19

A.S.No.819 of 2023

K.Shanmugam .. Appellant
Vs.

Dhanalakshmi (Died)

1.P.Ravichandran

2.Dhandapani

Valliammal (Died)

3.Saraswathi

4.Vasudevan

Leelavathi (Died)

5.S.Pratap

6.S.Vani

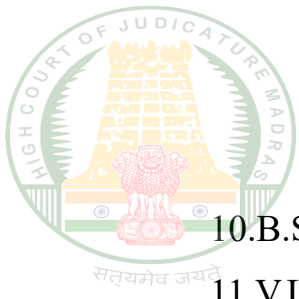
7.Shanmugam

8.Sundaram

Udhayagiri (died) Lrs

9.Geetha

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10.B.Santhi

11.V.Latha

Avinakki Mudaliar(died)

12.Parvathy

13.Sudha

14.Latha

15.T.S.Lakshmi

16.Kokilambal

17.Aravinda Krishnan

18.K.V.Radha

V.V.Shankaran (Died)

19.C.S.Nandakumar

20.T.V.Srinivasan

21.Gnanasekar

Jayanthi (died) Lrs

22.Thirugnanasambantham

23.T.Rajaram

24.T.Saranya

25.Suganthi

26.Kalaiselvi

... Respondents

Prayer: Appeal Suit filed under Section 96 of CPC, *read with* Order 41 Rule 1 CPC, against the fiat and final order passed in I.A.No.4 of 2022 in I.A.No.1 of 2022 in O.S.No.1555 of 1993 dated 10.07.2023 on the file of the Sub Court, Mettupalayam.

For Appellant : Mr.C.Deivasigamani



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A.S.Nos.434 of 2002 & 819 of 2023

For Respondents : Mr.G.Ananda Kumar for R1
: Mr.R.K.Ramaiah
for R2,5,6 &8
: M/s.M.Vishali
for Mr.K.Govi Ganesan
for R9 to R11
: Mr.V.Radhakrishnan
for Mr.S.Kadarkari, for R22 to 24
: Mr.Anirudh Krishnan
Legal aid counsel for R2
: No appearance
for R4,7,12,18,21,25

COMMON JUDGMENT

These appeals are directed against the judgment and decree in O.S.No.1555 of 1993 on the file of the learned III Additional Sub Judge, Coimbatore.

2. A.S.No.434 of 2002 is at the instance of the first defendant, challenging the preliminary decree passed in favour of the plaintiff, in a suit for partition.

3. A.S.No.819 of 2023 is at the instance of a third party, who has



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th
purchased the property, 25 respondent in I.A.No.4 of 2022 in I.A.No.1
of 2022 in the said suit O.S.No.1555 of 1993.

4.Pleadings

The plaint in brief:

The plaintiff is the daughter of one, Palaniyappa Mudhaliyar, who died intestate on 27.11.1957. Mother of the plaintiff Nallammal died on 15.02.1992. Schedule A properties are ancestral properties of Palaniyappa Mudhaliar and Schedule B properties are self acquired properties of Palaniyappa Mudhaliyar. The plaintiff has been in joint possession and enjoyment of the said properties along with defendants. The first defendant, who is settled in the United States of America, started behaving in a peculiar way, indicating that he is not willing for a partition and he has also taken steps to alienate the joint properties. Hence, the suit for partition.

5.Written Statement of the first defendant:

The father, Palaniyappa Mudhalidar was an agriculturist and he



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would did have any property of his own and he was only managing his estate by cultivating the lands, left behind by his father Pongali mudhaliyar, who had purchased A schedule as well as B schedule property between 1915-1920. Palaniyappa Mudhalidar died only on 07.01.1954 and not in the year 1957 as claimed by the plaintiff. The plaintiff is not in joint possession of the suit properties as she has settled in Tiruppur. It is further stated that upon the demise of Palaniyappa Mudhaliyar in October 1954, the plaintiff, being a daughter, is not entitled for any share. Schedule B properties are also not the self acquired properties of the father and not a single item of the said properties were purchased by him, out of his own earnings. The first defendant was allotted various items of lands, agricultural in nature, towards his exclusive share during the life time of the mother, after the death of father Palaniyappa Mudhaliyar. The first defendant has been maintaining the properties single handedly, paying taxes to the Panchayat as well as the revenue officials. The suit has been filed solely for the purpose of making an unlawful gain.

6.Written statement of the second defendant:



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The second defendant admits the relationship between the parties as set out in the plaint. Palaniyappa Mudhaliyar died only in the year 1954 and not 27.11.1957, as claimed by the plaintiff. Palaniyappa Mudhaliyar did not have any income of his own and the first defendant is in exclusive possession and enjoyment of the schedule mentioned properties, which are all agricultural lands. The first defendant is settled in USA and hence, he has appointed as caretaker, who resides locally and maintains the properties. The plaintiff as well as the second defendant are permanent residents of Tiruppur and the plaint lacks merit and is liable to be dismissed.

7. Issues:

Based on the pleadings, the trial Court has framed the following issues:

- “1. வாதி அவர் கோரியுள்ளபடி தாவா சொத்துக்களைப் பொறுத்து பாகப்பிரிவினை பரிகாரம் பெற தகுதி உடையவரா?
2. வாதியின் தகப்பனார் 27.11.1957-ம் தேதி இறந்து போனாரா?
3. 1-ம் பிரதிவாதியும், வாதியும் சொத்துக்களைப் பாகப்பிரிவினை செய்து கொண்டதில் பூமிகள் முழுவதும் 1-ம் பிரதிவாதியின் பங்குக்கு பிரித்து கொடுக்கப்பட்டனவா?



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4. வாதிக்கு என்ன பரிகாரம் கிடைக்க வேண்டும்?”

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8. After framing issues initially, the issues were recast by the trial

Court and the same are extracted hereunder:

“1. வாதி அவர் கோரியுள்ளபடி தாவா
சொத்துக்களைப் பொறுத்து பாகப் பிரிவினை பரிகாரம்
பெற தகுதியுள்ளவர்தானா?

2. வாதியின் தகப்பனார் 27.11.1957-ம் தேதி இறந்து
போனாரா? அல்லது 07.01.1954-ம் தேதி இறந்து போனாரா?

3. வாதிக்கு என்ன பரிகாரம் கிடைக்க வேண்டும்?”

9.Trial:

At trial, the plaintiff examined herself as P.W.1 and Dhanalakshmi and Lakshmanan were examined as P.W.2 and P.W.3 on the side of the plaintiff, Ex.A1 to Ex.A14 were marked. On the side of the defendants, the first defendant examined himself as D.W.1 and Bagthavathsalam, Sökkannan and Renganathan examined as D.W.2 to D.W.4 and Ex.B1 to Ex.B4 were marked.

10. Decision of the trial Court:

The trial Court, after appreciation of oral and documentary



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evidence adduced before it, found the plaintiff to be entitled to a share in

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the suit properties and granted a preliminary decree, declaring a 1/8th share in favour of the plaintiff in A schedule property and 1/4 share in B schedule properties.

11. A.S.No.434 of 2002:

Aggrieved by the judgment and decree in favour of the plaintiff, the first defendant has preferred the appeal. However, the first defendant has not prosecuted the appeal and hence, this Court has appointed a legal aid counsel to canvass the case of the first defendant, the appellant in A.S.No.434 of 2002.

12. A.S.No. 819 of 2023:

12.1. The appellant, in this appeal, has challenged the order in I.A.No.4 of 2022 in I.A.No.1 of 2022 in the very same suit in O.S.No.1555 of 2023. The appellant is a third party to the suit, however, the 25th respondent in both I.A.Nos.1 and 4 of 2022.



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WEB COPY 12.2. I.A.No. 1 of 2022 has been filed by the first respondent / plaintiff for passing of a final decree and I.A.No.4 of 2022 has been filed for passing of supplementary preliminary decree. The trial Court allowed I.A.No.4 of 2022, as against which, the 25th respondent in the said I.A has preferred the appeal in A.S.No.819 of 2023.

13. I have heard Mr.Anirudh Krishnan, learned counsel for the appellant in A.S.No.432 of 2002 and the second respondent in A.S.No.819 of 2023 (appointed by the Legal Services Authority), Mr.C.Deivasigamani, learned counsel for the appellant in A.S.No.819 of 2023, Mr.V.Radhakrishnan, learned Senior Counsel for Mr.S.Kadarkarai, for the respondents 22 to 24 in A.S.No.434 of 2002 and respondents 22 to 24 in A.S.No.819 of 2023, Ms.Vishali for Mr.K.Govi Ganesan, learned counsel for the respondents 4 to 6 in A.S.No.434 of 2002 and respondents 9 to 11 in A.S.No.819 of 2023, Mr.G.Ananda Kumar, learned counsel for the 21st respondent in A.S.No.434 of 2002 and first respondent in A.S.No.819 of 2023.

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14. Arguments of learned counsel for appellant in A.S.No.434/2002:

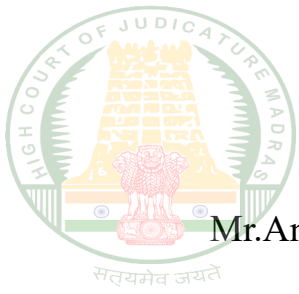
14.1. Mr.Anirudh Krishnan, learned counsel appearing for the appellant / first defendant, challenging the preliminary decree in the suit would take me through the family genealogy tree and contend that the appeals would hinge on the actual date of death of Palaniyappa Mudhaliyar, since if according to the plaintiff, her father Palaniyappa Mudhaliyar died in 1957, then, the Hindu Succession Act, 1956, would apply and after Act 39/2005, and the learned counsel for the appellant has relying on the judgment of the Hon'ble Supreme Court in *Vineeta Sharma v. Rakesh Sharma reported in 2020-9-SCC-1*, would state that the plaintiff would certainly be entitled for a share. He would however bring to my notice that the stand of the appellant / first defendant was definite and specific that his father died prior to 1956, that is in 1954. He would however fairly state that the first defendant in his pleadings has not set out the exact date of death of Palaniyappa Mudhaliyar. He would also take me through the respective versions of the plaintiff and the defendant with regard to the date of death of Palaniyappa Mudhaliyar. He would also contend that the death certificate that has been produced by the



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plaintiff is a forged document and has no evidenciary value. He would further state that in a land acquisition proceedings, the death certificate of Palaniyappa Mudhaliyar has been filed by the first defendant, which evidences the fact that Palaniyappa Mudhaliyar died on 07.01.1954 itself and in such circumstances, the Hindu Succession Act 1956 will not apply to enable the plaintiff to seek partition. He would also state that the plaintiff has conveniently contended that even the schedule B property is a self acquired property of Palaniyappa Mudhaliyar. However, the plaintiff has not been able to demonstrate as to how Palaniyappa Mudhaliyar was possessed of funds to acquire schedule B property. He would further state that B schedule property was also ancestral in nature, having been inherited by Palaniyappa Mudhaliyar, from his father Pongali Mudhaliyar.

14.2. Referring to sale deeds (Ex.A3 & Ex.B1) dated 02.07.1933 executed by one Valliyammal in favour of Palaniyappa Mudhaliyar, he would state that it was only a reconveyance, based on an agreement dated 18.07.1932 and not in the strict sense a sale deed. Referring to sale deed pertaining to schedule B properties dated 24.06.1932 (Ex.B2).



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Mr.Anirudh Krishnan, learned counsel would state that these properties are only ancestral properties of Palaniyappa Mudhaliyar and the first defendant has also mutated tax receipts and records in his name.

14.3. Mr.Anirudh Krishnan, learned counsel would bring to my notice that pending the suit, the first defendant alienated few of the subject properties to third parties and even such of the subsequent buyers have been impleaded in the present appeals, vide order dated 16.12.2019, CMP.No.26 of 2012.

14.4. The plaintiff died on 15.04.2015 and the appeal was dismissed as abated on 16.12.2019. Subsequently, the plaintiff's son filed I.A.No.1 of 2022 for passing of final decree and I.A.No.4 of 2022 for amending the preliminary decree, in line with the judgment of the Hon'ble Supreme Court in *Vineeta Sharma's* case. I.A.No.4 of 2022 was allowed by the trial Court and the preliminary decree was amended by order dated 10.07.2023, which according to the learned counsel, is the appeal filed by the third party in A.S.No.819 of 2023. It is the contention of the learned

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counsel that properties in A schedule properties are admittedly ancestral properties and if it is held that Palaniyappa Mudhaliyar died in 1954, then, A schedule property would devolve on the first defendant alone and the plaintiff would not be entitled to stake a claim. However, if this Court come to the conclusion and concurs with the trial Court, that Palaniyappa Mudhaliyar died in 1957, then, the Hindu Succession Act would squarely apply and by birth the plaintiff would also become a co-parcener and be entitled to on share equal along with the first defendant, in view of Act 39/2005.

14.5. As regards Schedule B properties, the learned counsel would state that if schedule B properties are self acquired properties of Palaniyappa Mudhaliyar, then Section 8 of the Hindu Succession Act, would apply and devolution would be in terms of Section 8 of the Hindu Succession Act. However, if they are also held to be an ancestral property, then the same arguments that would apply to Schedule A would also apply to Schedule B as well. Mr.Aniruth Krishnan, in support of his submission relied on the decision of the Hon'ble Supreme Court in *Vineeta Sharma v. Rakesh Sharma*, reported in *2020-9-SCC-1*.



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15. Argument of learned counsel for appellant in A.S.No.819 of 2023

15.1. Mr.C.Deivasigamani, learned counsel appearing for the appellant in A.S.No.819 of 2023 would state that the appellant in the said appeal is admittedly not a party before the trial Court in the original suit proceedings and he was impleaded pursuant to an application filed in the present appeal in A.S.No.434 of 2002, besides also being arrayed as respondent in the final decree application as well as the application to pass the supplementary preliminary decree. He has challenges the decision of the trial Court, granting a supplementary decree in favour of the plaintiff. The learned counsel, Mr.C.Deivasigamani, would state that when the appellant has not been given any opportunity all along, it is just fair and proper and also in line with the principles of natural justice that he is given an audience to canvass his case. He would further state that the appellant though having purchased the property pending the suit, he ought to have been impleaded before the trial Court itself, especially, when the plaintiff is the only sister of the plaintiff, who is well aware of the sale of the properties in favour of the appellant. Mr.C.Deivasigamani, learned counsel for the appellant would also state that even before the



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trial Court an application for interim injunction not to alienate the property had been taken out by the plaintiff and even though an interim injunction was initially granted in favour of the plaintiff', subsequently, the injunction application was dismissed and the said order had become final. It is therefore the submission of Mr.C.Deivasigamani, that it is not open to the respondent to contend that the appellant is a transferee *pendente lite* and he cannot, as a matter of right, seek audience to canvass his case before this Court. He would further state that the first defendant was the absolute owner of the B schedule property and the proceedings of the Special Tahsildar have also become final and the land acquisition compensation has been paid only to the first defendant and the same has also become final and hence, the plaintiff cannot contend that the schedule B properties are self acquired properties of Palaniyappa Mudhaliyar.

15.2. The 25th respondent / appellant in A.S.No.819 of 2023 has filed an application Order 41 Rule 27 CPC to receive additional document to establish the date of death of Palaniyappa Mudhaliyar,



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15.3. As regards the death of Palaniyappa Mudhaliyar, learned

Counsel for the appellant, Mr.C.Deivasigamani, would state that in the appeal in A.S.No.434 of 2002, the appellant in A.S.No.819 of 2023, has taken out an application to receive additional documents. In this regard, he would take me through the death certificate filed by the first defendant / appellant in A.S.No.434 of 2002 to evidence the death of Palaniyappa Mudhaliyar, to be 07.01.1954, which would clinchingly establish that the plaintiff could not claim any share in the suit properties. He would therefore state that the application should be entertained as the petitioner was not even a party before the trial Court and hence, in the interest of justice, the application under Order 41 Rule 27 CPC has to be necessarily allowed. He would further state that the plaintiff has also wilfully suppressed the land acquisition proceedings, where compensation has been paid to the first defendant alone. As the land acquisition proceedings usually prolong for years together and do not get concluded in a day or two, he would therefore state that the decree itself is nullity the plaintiff having suppressed material facts which certainly would have been within her knowledge.



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15.4. The learned counsel would rely on the decision of the Hon'ble

Supreme Court in ***S.P.Chengalvaraya Naidu (Dead) v. Jagannath***

(Dead) by Lrs. and others reported in ***1994-1-SCC-1***. The learned

counsel would therefore state that when there are two probable dates of

death of Palaniyappa Mudhaliyar, and proper enquiry has not been done

in this regard, he would pray for the matter be remitted to the trial Court

to give opportunities to both the parties to establish the correct the date of

death of Palaniyappa Mudhaliyar, which alone would facilitate a correct

decision to be arrived at in the suit for partition and consequently, in the

present appeals.

16.Arguments of learned Senior Counsel for respondents 24 to

26 in A.S.No.434 of 2002 and respondents 22 to 24 in A.S.No.819 of

2023:

16.1. Per contra, Mr.V.Radhakrishnan, learned Senior Counsel

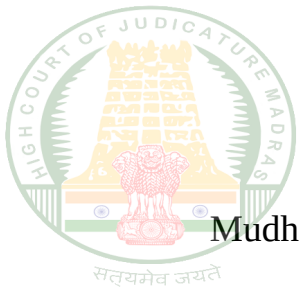
appearing for the plaintiff's legal representatives, would state that the

plaintiff having come to Court with a definite case that her father

Palaniyappa Mudhaliyar, died on 25.11.1957, vide exhibits Ex.A1 and

Ex.A2, has clinchingly established the date of death of Palaniyappa

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Mudhaliyar. The learned Senior Counsel would state that public documents have been brought to the notice of the Court in support of the plaintiff's case and the trial Court has also relied on the said public documents to decide the contentious issues in the suit. The learned Senior Counsel would state that in the absence of any evidence on the side of the appellant, namely, first defendant to establish the contention that Palaniyappa Mudhaliyar, died on 07.01.1954, the trial Court cannot be found fault with for decreeing the suit, based on the available and acceptable documentary evidence.

16.2. As regards the appeal preferred by the third party, Mr.V. Radhakrishnan, learned Senior Counsel, would invite my attention to the order passed by this Court in CMP.Nos.1620 of 2024 dated 14.08.2024 in and whereby an application filed by the appellant in A.S.No.819 of 2023, seeking to substitute himself in the place of the appellant, A.S.No.434 of 2002 invoking order 23 Rule 1A CPC came to be dismissed. The learned Senior Counsel would take me through the observations of this Court, while ultimately dismissing the transpose application. It is therefore the submission of the learned Senior Counsel

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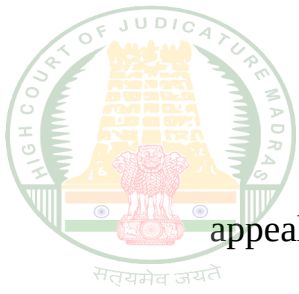


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that having lost in an attempt to get transposed as the second appellant in

A.S.No.434 of 2002, which is the appeal challenging the preliminary decree, it is not open to the appellant in A.S.No.819 of 2023 to even seek an audience before this Court. He would further state that the appellant in A.S.No.819 of 2023 is only a transferee that too *pendente lite* and he cannot claim an independent right to challenge the preliminary decree or the supplementary preliminary decree passed in I.A. No.4 of 2022, being a total stranger to the appeal and claiming right only as a purchaser that too in respect of some items of the property alone.

16.3. As regards Schedule B property, Mr. Radhakrishnan, learned Senior Counsel would state that Palaniyappa Mudhaliyar, had sold the property in 1932 and he has re-purchased the same property in 1933 from Valliyammal. Taking me through the contents of the various documents, Mr. Radhakrishnan, learned Senior Counsel, would state that there is no evidence that the property was repurchased from and out of any ancestral nucleus and in such circumstances, the presumption to be drawn is that the property is a self acquired property of Palaniyappa Mudhaliyar, and was not ancestral in nature, as contended by the appellants in both the

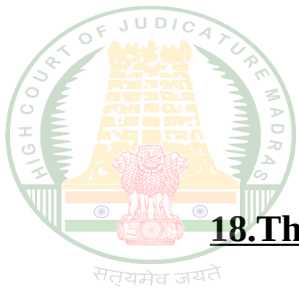


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appeals. As regards the orders passed by this Court, dated 14.08.2024, in GMP.No.1620 of 2024, he would submit that the said order become final and the appellant in A.S.No.819 of 2023 did not challenge the same before the Hon'ble Supreme Court and further, only in 1994, that too after filing of the suit, the appellant in A.S.No.819 of 2023 has even purchased the property and therefore, in a suit for partition amongst the family members, the role of the appellant in A.S.No.819 of 2023 is very narrow and it is not open to the petitioner / appellant to take out an application under Order 41 Rule 2 C.P.C.

16.4. In support of his submission, the learned Senior Counsel would rely on the decisions of the Hon'ble Supreme Court in ***Ravinder Singh Gorkhi v. State of U.P.*** reported in ***2006-5-SCC-584*** and ***CIDCO v. Vasudha Gorakhnath Mandevlekar*** reported in ***2009-7-SCC-283***.

17. I have carefully considered the submissions advanced by the learned counsel for the parties.



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18.The following points arise for consideration:

WEB COPY I. Whether the respondent No.19/ appellant in A.S.No.819 of 2023 is entitled to an order for receipt of additional documents?

II. Whether Palaniyappa Mudhaliyar died prior to the coming into force of Hindu Succession Act, 1956 or after?

III. Whether schedule B properties are self acquired properties of Palaniyappa Mudhaliyar, or ancestral properties?

19.Point No.I :

19.1. The appellant in A.S.No.819 of 2023 has taken out an application in A.S.No.434 of 2002 for receipt of additional evidence, invoking Order 41 Rule 27 CPC. It is contended that the first defendant, the vendor of the petitioner, has contested the partition suit and though his vendor also prosecuted the appeal in A.S.No.819 of 2023, the appeal was dismissed as abated and subsequently, the petitioner has filed CMP.No.384 of 2010 and C.M.P.No.26 of 2012 pursuant to which, he has been arrayed as 19th respondent in A.S.No.434 of 2002.



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WEB COPY 19.2. It is the premodial submission of Mr. C.Deivasigamani, that when the petitioner is not a party to the suit admittedly, he should be given an opportunity to file the documents to rely on, as the documents which are now sought to be produced, would not only establish the correct date of death of Palaniyappa Mudhaliyar, that is, on 07.01.1954, but also the factum of the properties being the absolute properties of the first defendant from whom the petitioner has purchased some of the items. The application is resisted by the contesting respondents.

19.3. As a purchaser from the first defendant, the petitioner, at best can step into shoes of his vendor. In this context, Order 41 Rule 27 CPC has to be interpreted and applied to the facts of the present case. The vendor of the petitioner took a definite stand by way of written statement in the suit that his father did not die on 27.11.1957, but he died only on 07.01.1954. The plaintiff filed public records to evidence that Palaniyappa Mudhaliyar, died 07.01.1954. Despite being a party to the land acquisition proceedings and having filed the death certificate in the said proceedings, the petitioner's vendor did not choose it necessary to

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file the said death certificate before the trial Court. The first defendant was conscious of the fact that the date of death of his father, Palaniyappa Mudhaliyar, would affect to the result of the suit. In such circumstances, when the petitioner's vendor was in possession of documentary evidence to establish the date of death of Palaniyappa Mudhaliyar, and did not choose to produce the document during trial, I am afraid his purchaser cannot now seek to produce it to reflect the date of death of Palaniyappa Mudhaliyar as 07.01.1954 by seeking to produce additional evidence invoking Order 41 Rule 27 CPC.

19.4. In a pending first appeal, additional evidence cannot be permitted in a liberal manner. Conditions set out in Rule 27 CPC have to be strictly complied with. Though the argument of Mr.C.Deivasigamani that the petitioner is not a party to the suit and therefore, there was no occasion for him to produce the documents appears to be attracted the first blush, considering the fact that the petitioner is a third party to the family and his vendor himself lost his right to produce any additional documents by not making any attempts, during the trial of the suit to file



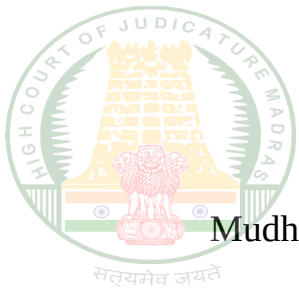
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the same, having stepped into the shoes of the defendant, the petitioner is not entitled to independently canvass that since he was not a party to the suit, he should be permitted to rely on the additional documents that are pertaining only to the first defendant. In such view of the matter, I do not see any merit in application to adduce evidence. Hence, **the Civil Miscellaneous Petition is dismissed.**

20. Point No.II :

22.1. This brings us to the date of death of Palaniyappa Mudhaliyar. In the plaint, the plaintiff has asserted that the father Palaniyappa Mudhaliyar died on 27.11.1957, after the coming into force of the Hindu Succession Act 1956. In order to establish the plaint averments, the plaintiff also exhibited Ex.A1 and Ex.A2, which are public documents, viz., death certificate and legal heir certificate. Both these documents reflect the death of Palaniyappa Mudhaliyar as 27.11.1957. Though the defendants vaguely contended that the father Palaniyappa Mudhaliyar died in 1954, there was no specific date provided by the defendants in the written statement. No attempt has been made by the first defendant to establish the correct date of death of Palaniyappa

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Mudhaliyar to be only in 1954 and not after coming into force of the Hindu Succession Act. In such circumstances, the trial Court had rightly gone by Ex.A1 and Ex.A2 in coming to the conclusion that Palaniyappa Mudhaliyar died only on 27.11.1957 and consequently, the provision of Hindu Succession Act, 1956 would apply.

22.2. Therefore, insofar as Schedule A property, initially a preliminary decree in favour of the plaintiff was passed and an amended preliminary decree was passed in I.A.No.4 of 2022 in line with the provisions of the Act, amended by Act 39 of 2005 and the ratio in *Vineeta Sharma's* case. In such circumstances, I do not find any merit in the contention raised by the first defendant and the third party purchaser from the first defendant.

21. Point No.III:

21.1. Coming to schedule B property, it is the case of the plaintiff that schedule B properties were self acquired properties of Palaniyappa Mudhaliyar. Admittedly, these properties have been purchased in the name of Palaniyappa Mudhaliyar in the year 1933 from one Valliammal It 27/34

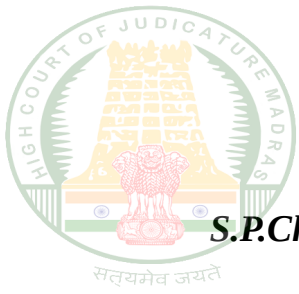


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is seen that in 1932 Palaniyappa Mudhaliyar had alienated the schedule B properties and the same had been re-purchased by him in the year 1933.

In such circumstances, I do not see how the properties which were standing in the name of Palaniyappa Mudhaliyar, having been gone out of the family and again purchased by Palaniyappa Mudhaliyar in 1933 can be treated as ancestral property. The property, once having gone out of the family, loses the character of being an ancestral property or joint property, especially, when it is brought back into the family by purchase made by one of the family members. Therefore, the burden was on the first defendant to establish that the purchase by father of Palaniyappa Mudhaliyar in 1933 from Valliyammal was only out of surplus ancestral funds available with the joint family. There is no evidence let in by the first defendant to establish such contentions. Therefore, Schedule B property is only a self acquired property of Palaniyappa Mudhaliyar and succession will have to necessarily go by Section 8 of the Hindu Succession Act, 1956, and all the children of Palaniyappa Mudhaliyar would become entitled to 1/4 share in his property.

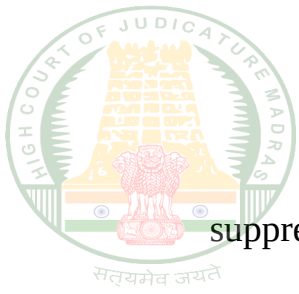
21.2. Though Mr.C.Deivasigamni, learned counsel relied on



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S.P.Chengalvaray Naidu's case for the proposition that when a party is guilty of fraud, who secured an unfair advantage over another, by suppressing material facts in filing the suit for partition then, it tantamounts to playing fraud on the Court and the decree obtained by the plaintiff by fraud is a nullity in the eye of law, I am unable to see how this decision can be applied to the facts of the present case. That was a case where the plaintiff himself had sold the properties and thereafter, suppressing the sale, filed a suit for partition as if he was entitled to share in the property. Material particulars within the acknowledge of the plaintiff were suppressed in order to make unlawful gain and in such circumstances, this Court held the plaintiff's act to be fraud on Court and the decree obtained by suppression to be a nullity. Here, the allegation made by the appellant is merely that the plaintiff was aware of the land acquisition proceedings, where compensation has been paid to the first defendant, her brother and therefore, the suit for partition has been filed by suppressing the said proceedings and it would amount to fraud.

21.3. Admittedly, the plaintiff was not even a party to the land acquisition proceedings, which was only between the authority and the first defendant. Therefore, the plaintiff cannot be held to be guilty of any



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suppression. As a daughter, the plaintiff filed a suit for partition for declaring her share in the property. In the land acquisition proceedings, the first defendant set up a case that he is the sole owner since the property is an ancestral property and he was given compensation for the lands acquired. Therefore, I do not see any fraud committed by the plaintiff in order to render the decree a nullity.

21.4. In ***Ravinder Singh Gorkhi's*** case, the Hon'ble Supreme Court held that entries in public records / Registers are relevant and admissible under Section 35 of Indian Evidence Act. Here, Ex.A1 and Ex.A2 are admittedly public records and the same had rightly relied on by the trial Court and in the absence of any contra evidence, on the side of the first defendant, the findings of the trial Court cannot be said to be improper.

21.5. In ***CIDCO v. Vasudha Gorakhnath Mandevlekar's*** case the Hon'ble Supreme Court held that the Deaths and Births Register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in

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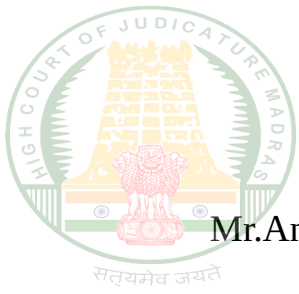


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evidence in terms of Section 35 of the Indian Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the respondent. In the present case, contending that the father Palaniyappa Mudhaliyar did not die in 1957, the first defendant has not been able to substantiate the date of death of his father to be prior to coming into force of the 1956 Act. In such circumstances, these two decisions would certainly apply in all fours to justify the findings of the trial Court.

22. For all the above reasons, I do not see any error committed by the trial Court, in initially granted a preliminary decree and thereafter in passing a supplementary decree in I.A.No.4 of 2022 warranting interference in these appeals.

23. Before parting, I would like to place on record the assistance rendered by Mr.Anirudh Krishnan, learned counsel, appointed by Legal Aid Services Authority. Though the first defendant had filed the appeal challenging the decree for partition, he subsequently abandoned the appeal suit and despite there being no assistance from the appellant,



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Mr.Anirudh Krishnan, learned counsel has taken pains to place all materials, oral and documentary evidence, for the purpose of better appreciation and to effectively adjudicate the points that arose for consideration.

24.Result:

Both the Appeal Suits are dismissed. C.M.P.No.15757 of 2024 is also dismissed. However, there shall be no order as to costs. C.M.P.Nos.29032 of 2023 and 7821 of 2024 are closed.

10.04.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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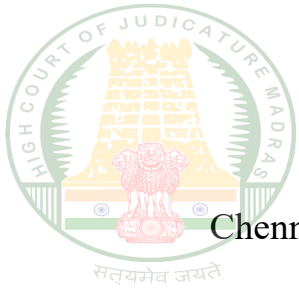
To

1.The III Additional Sub Judge,
Coimbatore.

2.The Sub Court,
Mettypalayam.

3.The Section Officer,
VR Section,
Madras High Court,

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Chennai.

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P.B.BALAJI.J.

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Pre-delivery Judgments made in
A.S.Nos.434 of 2002 & 819 of 2023
and
CMP(MD)Nos.15727 & 7821 of 2024 & 29032 of 2023



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