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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.04.2026

Pronounced on : 12.06.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.S.Nos.1008 & 1009 of 2005

A.S.No.1008 of 2005

1.Mrs.Anusuya

2.Indumathi

3.Prasanna

4.Mr.Ellappan

5.Sakthi

(A1 discharged from guardianship of
A5, vide order of Court dated 18.10.2023
made in CMP.Nos.6857& 6861/2022
in A.S.Nos.1008 & 1009 of 2005)

(A5 declared as Major, vide order of Court
dated 18.10.2023 made in CMP.Nos.6858 &
6859/2022 in A.S.Nos.1008 & 1009 of 2005)

..Appellant(s)

Vs

1. Vasantha

2. Ravi

3. Anbazhagan

4. Saravanan

5. Dhatchayani

6. Branch Manager,
Canara Bank, College Road,
Pazhavanthangal,
Chennai – 600 114.

7. Branch Manager, I.O.B.
Meenambakkam Branch,
Chennai – 600 114.

8. R.Seethalakshmi (Died)
(R8 impleaded vide order of Court dated
23.12.2020 made in CMP.NO.342 of 2012)



in A.S.No.1008 of 2005)

9. N.Kathirvelu

(R9 impleaded vide order of Court dated
23.12.2020 made in CMP.NO.21873 of 2018
in A.S.No.1008 of 2005)

10.S.Bagavath Subramonian

11.B.Shriraam Bhagavath

12.B.Ramanth Venkat Bhagavath

(RR10 to R12 brought on record as Lrs of the
deceased R8 vide order of Court dated
05.03.2021 made in CMP.No.4032 of 2021 in
A.S.No.1008 of 2005)

..Respondent(s)

Prayer in A.S.No.1008 of 2005: Appeal Suit filed under Section 96 of the Code of Civil Procedure, praying to allow this appeal set aside the judgment and preliminary decree passed in O.S.No.497 of 2004 dated 21.07.2005 on the file of the Additional District Court / Fast Track Court No.1, Chengalput.

For Petitioner(s):

Mr.R.Agilesh

For Respondent(s):

For RR1 to R5 - Mr.J.Kamaraj

For R6 - No appearance

For R7 – No appearance

R8 – Died

For R9 – Mr.M.Rajasekar

For RR10 to R12 – Mr.T.M.Hariharan

A.S.No.1009 of 2005

1.Mrs.Anusuya

2.Indumathi

3.Prasanna

4.Mr.Ellappan

5.Sakthi

(A1 discharged from guardianship of
A5, vide order of Court dated 18.10.2023
made in CMP.Nos.6857& 6861/2022
in A.S.Nos.1008 & 1009 of 2005)

(A5 declared as Major, vide order of Court



dated 18.10.2023 made in CMP.Nos.6858 & 6859/2022 in A.S.Nos.1008 & 1009 of 2005)

..Appellant(s)

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Vs

- 1.Vasantha
2. Ravi
3. Anbazhagan
- 4.Saravanan
- 5.Dhatchayani

6.Tahsildar,
Tambaram Taluk,
G.H.T.Road, Kadaperi,
Tambaram, Chennai – 600 045.

7.Commissioner, Alandur Municipality,
New Street, Alandur, Chennai – 600 016.

8. Branch Manager,
Canara Bank, College Road,
Pazhavanthangal,
Chennai – 600 114.

9.Branch Manager, I.O.B.
Meenambakkam Branch,
Chennai – 600 114.

10.State Bank of India,
Alandur Branch, Railway Station Road,
Alandur, Chennai – 600 016.

11. R.Seethalakshmi(Died)
(R11 impleaded vide order of Court dated
23.12.2020 made in CMP.NO.343 of 2012
in A.S.No.1009 of 2005)

12.S.Bagavath Subramonian

13.B.Shriraam Bhagavath

14.B.Ramanth Venkat Bhagavath

(RR12 to R14 brought on record as Lrs of the
deceased R11 vide order of Court dated
05.03.2021 made in CMP.No.4022 of 2021 in



A.S.No.1009 of 2005)

..Respondents (s)

Prayer in A.S.No.1009 of 2005: Appeal Suit filed under Section 96 of the Code of Civil Procedure, praying to allow this appeal set aside the judgment and preliminary decree passed in O.S.No.526 of 2004 dated 21.07.2005 on the file of the Additional District Court / Fast Track Court No.1, Chengalput.

For Petitioner(s):	Mr.R.Agilesh
For Respondent(s):	For RR1 to R5 - Mr.J.Kamaraj For R6 & R7 – Mr.M.Murali Government Advocate For R8 – No appearance For R9 – No appearance For R10 – No appearance R11 – Died For RR12 to R14 – Mr.T.M.Hariharan

COMMON JUDGMENT

Both the Appeal suits in A.S. No.1008 of 2005 and A.S. No.1009 of 2005 arise out of the common judgment and preliminary decree dated 21.07.2005 passed by the Additional District Court/Fast Track Court No. I, Chengalpattu, in O.S. No.497 of 2004 and O.S. No.526 of 2004.

2. The plaintiffs instituted, O.S. No.497 of 2004 seeking partition and separate possession of their lawful shares in the suit schedule properties and instituted O.S. No.526 of 2004 seeking permanent injunction restraining the defendants from alienating or encumbering the properties and from dealing



with the bank deposits and movables to the prejudice of the plaintiffs' rights.

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3. The plaintiffs pleaded that the first plaintiff Vasantha was the legally wedded wife of late M. Damodaran and that plaintiffs 2 to 5 were born through the said lawful wedlock solemnised in the year 1971 according to Hindu rites and customs. During the subsistence of the said marriage, Damodaran developed intimacy with the first defendant Anusuya and defendants 2 to 5 were born through such relationship. According to the plaintiffs, no valid marriage was ever solemnised between Damodaran and the first defendant and therefore defendants 2 to 5 could not claim the status of legitimate heirs through a lawful marriage.

4. It was further pleaded that Damodaran died intestate on 27.09.2001 leaving behind several movable and immovable properties including residential properties, landed properties, bank deposits, business assets, vehicles, jewellery and other movables. The plaintiffs alleged that after the death of Damodaran, the first defendant, with an ulterior motive, had wrongfully obtained a legal heirship certificate exclusively in favour of defendants 1 to 5 by suppressing the plaintiff and her children from the list of legal heirs of the deceased Damodaran. Taking advantage of the same, the defendants were attempting to alienate and encumber both the movable and immovable properties belonging to the deceased.



5. The plaintiff further stated that she was collecting the revenue and title records relating to the suit properties standing in the name of the deceased and

reserved her right to file a separate partition suit before the competent Court.

Pending such proceedings, she sought permanent injunctions restraining the defendants from alienating the properties, effecting mutation in the revenue records, and withdrawing the monetary deposits of the deceased.

6. The first defendant specifically denied the plaint allegations that the first plaintiff Vasantha was the legally wedded wife of late M. Damodaran and that plaintiffs 2 to 5 were his legitimate children. The first defendant contended that she alone was the legally wedded wife of Damodaran and that their marriage was solemnised on 15.07.1979 according to Hindu rites and customs. It was further pleaded that after the marriage, they lived together continuously as husband and wife and were recognised by relatives and society as a lawful family.

7. The first defendant further contended that defendants 2 to 5 were born through the lawful wedlock between herself and Damodaran and therefore they alone were the legitimate legal heirs entitled to succeed to the estate of the deceased. According to her, the plaintiffs had fabricated documents and created false records after the death of Damodaran in order to unlawfully claim status as legal heirs.

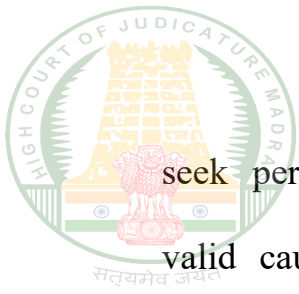


8. She also contended the nature of the properties, that some of the properties were ancestral properties and several other items mentioned in the plaint did not belong to Damodaran at all. Certain movables and deposits were further claimed to be the exclusive properties of the first defendant. On these grounds, the first defendant sought dismissal of both suits.

9. The defendants 2 to 5 adopted the written statement filed by the first defendant and supported her claim that she alone was the legally wedded wife of Damodaran. They contended that they were the legitimate children born through the lawful marriage between the first defendant and Damodaran and therefore were the only lawful heirs entitled to inherit the estate left behind by the deceased.

10. The defendants collectively contended that the plaintiffs had failed to establish lawful heirship and therefore were not entitled to seek partition and separate possession. It was further pleaded that the suit for partition was not maintainable since proper proof regarding title, ownership and nature of the suit properties had not been produced.

11. The defendants denied the allegation of the second suit, that they were attempting to alienate or encumber the suit properties. According to them, the plaintiffs had no legal right over the estate and therefore were not entitled to



seek permanent injunction. The defendants also contended that there was no valid cause of action for the suit and no irreparable injury would arise to the plaintiffs.

12.The banks concerned filed separate written statements stating that rival claims had been made regarding the deposits standing in the name of Damodaran. The Banks contended that unless succession proceedings were properly initiated and legal heirship conclusively determined by a competent Court, the deposits could not be released in favour of either party. The banks therefore sought appropriate directions from the Court regarding disbursement of the deposits.

13. *On the aforesaid pleadings the following issues were framed*

(a) In O.S. No. 497/2004

Issue 1: Whether a preliminary decree for partition should be granted as prayed for?

Issue 2: Whether the 1st plaintiff is the legally wedded wife of the deceased Damodaran?

Issue 3: Whether plaintiffs 2 to 5 are the legitimate sons and daughters of Damodaran?

Issue 4: Whether the 1st defendant is the legally wedded wife of Damodaran?

Issue 5: Whether defendants 2 to 5 are the children of Damodaran?



Issue 6: Whether each plaintiff is entitled to a 1/9th share in the suit properties?

Issue 7: Whether there is a cause of action for this suit?

Issue 8: Whether the suit has been properly valued and the correct court fee paid?

(b) In OS.No.526 of 2004

Issue 1: Whether the plaintiff is the sole surviving legal heir of the deceased Damodaran?

Issue 2: Whether defendants 1 to 5 are the exclusive legal heirs of the deceased Damodaran?

Issue 3: Whether the plaintiff is entitled to a decree of permanent injunction restraining defendants 1 to 5 from alienating or transferring the title of the 'A' Schedule property?

Issue 4: Whether the plaintiff is entitled to a permanent injunction restraining defendants 6 and 7 from effecting any mutation of names in the revenue records in favour of defendants 1 to 5?

Issue 5: Whether the plaintiff is entitled to a permanent injunction restraining defendants 8 to 10 from releasing or disbursing the funds specified in the 'B' Schedule to defendants 1 to 5?

Issue 6: Whether any monetary deposits currently exist in the name of the deceased Damodaran within the banking institutions cited as defendants 8 to 10?



Issue 7: To what relief, if any, is the plaintiff entitled?

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14. On the plaintiff's side, PW1 to PW3 was examined and documents Ex. A1 to Ex. A15 were marked. On the defendant's side, DW1 to DW3 as examined and documents Ex. B1 to Ex. B14 were marked.

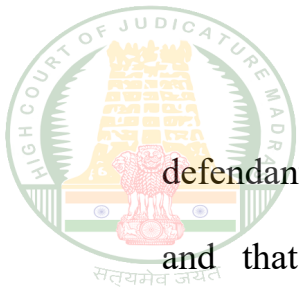
15. The trial court combined the issues in OS. No.497 of 2004 and in OS.No. 526 of 2004 in its entirety. With regard to the issues concerning whether the plaintiff and the defendant were the legally wedded wives of the deceased Damodaran and the legal heirship of the plaintiffs and defendants, the plaintiff Vasantha, examined herself as P.W.1, deposed that she had married Damodaran in the year 1971 in accordance with Hindu rites and customs and that she lived with him as his wife continuously until his death in the year 2001. The trial court evaluated the long-term cohabitation and public recognition of them through the evidence of PW3 who claimed to be the younger brother of the deceased Damodaran's father. The Exhibits Ex. A1 to Ex. A15 were evaluated by the trial court, Ex. A 2, the legal heir certificate, substantiates that the 1st plaintiff is the first wife of the deceased Damodaran, the 1st defendant is his second wife, and plaintiffs 2 to 5 along with defendants 2 to 5 are the children of the deceased Damodaran. Exs. A3 and A4, being the school leaving certificates of defendants 4 and 5, contain the name of the deceased Damodaran as their father. Further, Exs. A5 to A7, namely the



community certificates of plaintiffs 3 to 5, were also produced. These documents collectively establish that the 1st plaintiff was the wife of the deceased Damodaran and that Damodaran was the father of the children.

16. The Court applied the principle that continuous cohabitation of a man and woman as husband and wife over a prolonged period gives rise to a presumption of valid marriage under Section 115 of the Indian Evidence Act, 1872, particularly when such relationship is corroborated by the birth and upbringing of children. In support of this principle, reliance was placed on the decisions reported in *1994 (2) Law Weekly 125* and *2004 (3) Law Weekly 247*. The Trial Court thereafter considered the defence plea that the 1st plaintiff was not the legally wedded wife of Damodaran and that plaintiffs 2 to 5 were illegitimate children. The Court found that the defendants had failed to produce any convincing oral or documentary evidence disproving the prolonged cohabitation between the 1st plaintiff and Damodaran. No material contradiction was brought out in the evidence of P.W.1.

17. The Court further observed that the defendants had not produced any acceptable evidence to establish that the relationship between the 1st plaintiff and Damodaran was clandestine or casual in nature. On the contrary, the records produced before the Court clearly disclosed long domestic association, public recognition, and acknowledgment of the children. With regard to the 1st



defendant, the Trial Court found that she had also cohabited with Damodaran and that defendants 2 to 5 had been recognised as his children. The Court observed that the legal heir certificate and school records consistently referred to defendants 2 to 5 as the children of Damodaran. The evidence further showed that the relationship between the 1st defendant and Damodaran was publicly known and accepted. Consequently, the Court held that defendants 2 to 5 were also entitled to be treated as the children and legal heirs of Damodaran.

18.The Trial Court specifically rejected the attempt made by one branch of the family to deny the status and legitimacy of the other branch. The Court observed that the documentary records produced by both parties clearly established that Damodaran had maintained relationship with both families and that all the children had been acknowledged by him during his lifetime. The Trial Court concluded that the plaintiff in O.S. No.526 of 2004 could not claim that she alone was the sole surviving legal heir of Damodaran. Equally, defendants 1 to 5 could not assert exclusive heirship over the estate to the exclusion of the plaintiffs in O.S. No.497 of 2004. The Court held that the estate of Damodaran devolved upon all the legal heirs belonging to both branches of the family. Therefore, the Court held that plaintiffs 2 to 5 as well as defendants 2 to 5 were legitimate heirs entitled to inherit the estate of Damodaran.



19. After resolving the dispute regarding relationship and legitimacy, the Trial Court proceeded to determine the rights of the parties in the suit schedule properties. The Court observed that the properties admittedly belonged to the deceased Damodaran and that after his death the estate devolved upon all his legal heirs. Since both branches of the family had been recognised as legal heirs, the Court held that none of the parties could claim exclusive ownership over the properties. The Court observed that once the status of the plaintiffs as legal heirs stood established, their right to seek partition naturally followed. The Court further noted that the evidence on record disclosed that disputes had arisen between the parties regarding possession and enjoyment of the suit properties and that the plaintiffs had been denied their lawful shares. The Trial Court then calculated the shares of the parties and held that there were nine sharers entitled to succeed to the estate. Consequently, the Court declared that each plaintiff was entitled to 1/9th share in the suit properties and passed a preliminary decree for partition and separate possession accordingly. the Trial Court concluded that the plaintiff in O.S. No.526 of 2004 could not claim that she alone was the sole surviving legal heir of Damodaran. Equally, defendants 1 to 5 could not assert exclusive heirship over the estate to the exclusion of the plaintiffs in O.S. No.497 of 2004. The Court held that the estate of Damodaran devolved upon all the legal heirs belonging to both branches of the family.



20. The Trial Court held that the suit was supported by a clear and subsisting cause of action. The Court observed that after the death of Damodaran serious disputes had arisen among the parties regarding inheritance and enjoyment of the properties left behind by him. The plaintiffs specifically alleged that their status as legal heirs were denied and that attempts were made to exclude them from succession. The Court found that such denial of rights and refusal to grant partition constituted sufficient cause of action for institution of the suit.

21. With regard to valuation and court fee, the Trial Court held that the suit had been properly valued under the relevant provisions governing partition suits and that the plaintiffs had paid the requisite court fee. The Court observed that although objections had been raised by the defendants, no acceptable material had been placed before the Court to show that the valuation adopted by the plaintiffs was incorrect. The plaintiff sought a decree of permanent injunction restraining defendants 1 to 5 from alienating or transferring the 'A' Schedule properties. The grievance of the plaintiff was that defendants 1 to 5, who were entitled to 5/9th share in the properties, were attempting to mutate and deal with their respective shares, while the plaintiff sought to prevent such alteration of revenue records and transfer of rights on the ground that she claimed exclusive entitlement over the properties. The Trial Court carefully examined the relief sought in the light of the findings already rendered



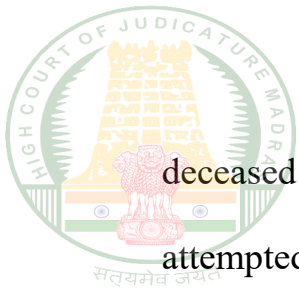
regarding heirship and succession.

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22.The Court observed that once it had been conclusively established that the estate of Damodaran devolved upon several legal heirs, no single heir could claim absolute or exclusive ownership over the suit properties. The Court held that the plaintiff had failed to establish exclusive title or exclusive possession over the 'A' Schedule properties. On the contrary, the evidence disclosed that the properties formed part of the joint estate left behind by Damodaran and that all the legal heirs had succession rights therein.

23.The Trial Court further observed that injunction is an equitable relief and can be granted only when the plaintiff establishes a clear legal right requiring protection. Since the plaintiff had failed to prove exclusive entitlement and since the other parties had also been recognised as co-heirs, the Court held that the plaintiff was not entitled to restrain defendants 1 to 5 from dealing with the properties as co-sharers.

24. The plaintiff further sought a decree restraining defendants 6 and 7, namely the revenue authorities, from mutating the revenue records in favour of defendants 1 to 5. The plaintiffs had also sought to restrain the defendants from having their names entered in respect of the 'B' Schedule property, namely the amount lying in the account of the 8th defendant bank to the credit of the



deceased Damodaran, which amounted to Rs.78,621.08/-. The plaintiffs further attempted to prevent the defendants from claiming or partitioning their alleged 5/9th share in the said bank deposit, asserting exclusive entitlement over the amount standing in the account of the deceased.

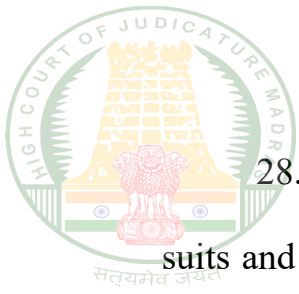
25.The Trial Court held that such relief could not be granted in view of the findings already rendered regarding the legal heirship of the parties. The Court observed that mutation entries in revenue records are only fiscal arrangements maintained for administrative purposes and do not by themselves confer title. Since the Court had already recognised several persons as legal heirs entitled to succession, the plaintiff could not seek an order completely restraining the authorities from recognising the rights of other co-heirs. The Trial Court therefore held that no exclusive right had been established warranting the grant of injunction against the revenue authorities.

26. The Court further observed that disputes relating to title and shares had already been adjudicated in the connected partition suit and therefore the proper remedy available to the parties was to work out their rights in terms of the preliminary decree rather than seek blanket injunctions against mutation proceedings. The plaintiff also sought to restrain defendants 8 to 10, namely the concerned banking institutions, from releasing or disbursing the monies standing in the name of the deceased Damodaran. The Trial Court analysed the



evidence relating to the bank deposits and considered whether the plaintiff had established any exclusive right over such amounts. The Court observed that the documentary evidence produced before it established the existence of deposits and monetary amounts standing in the name of Damodaran. However, the Court held that those amounts formed part of the estate of the deceased and therefore devolved upon all his legal heirs.

27. The Trial Court further observed that once succession rights had been determined in the connected partition suit, all legal heirs would be entitled to claim their respective shares in the deposits in accordance with law. Therefore, no injunction could be granted in favour of one heir against the others. Upon examining the bank records and the evidence adduced through the concerned bank officials, the Trial Court found that monetary deposits stood in the name of the deceased Damodaran in the banks arrayed as defendants 8 to 10. The Court held that such deposits formed part of the estate of the deceased and were therefore available for succession among all the legal heirs. Consequently, the Court rejected the plaintiff's claim of exclusive entitlement over the suit properties and bank deposits and dismissed O.S. No.526 of 2004. Simultaneously, the Court decreed O.S. No.497 of 2004 by granting a preliminary decree for partition, declaring that the plaintiffs therein were each entitled to 1/9th share in the suit schedule properties, with liberty to work out their rights in the final decree proceedings.

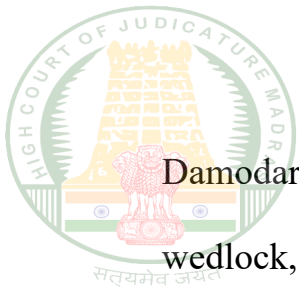


28. Heard Mr.R.Agilesh, learned counsel for the appellants in both appeal suits and Mr.J.Kamaraj, learned counsel for respondents 1 to 5 in A.S.No.1008 of 2005; Mr.M.Rajasekar, learned counsel for 9th respondent in A.S.No.1008 of 2005; Mr.T.M.Hariharan, learned counsel for respondents 10 to 12 in A.S.No.1008 of 2005 and Mr.M.Murali, learned Government Advocate for respondents 6 and 7 in A.S.No.1009 of 2005.

29. The appellants are the defendants and the respondents 1 to 5 are the plaintiffs. The newly impleaded respondents are subsequent purchasers of the property from the appellants.

30. The learned counsel appearing for the appellants would submit that the respondents 1 to 5 in both the appeals had instituted two suits, one seeking for partition of the suit schedule properties into nine equal shares and allotment of five such shares to them together with mesne profits, and the other suit seeking injunction restraining the appellants from in any manner alienating or encumbering the suit schedule properties and also restraining the official respondents from mutating the revenue records and disbursing the amounts described in the schedule.

31. He would submit that according to the respondents 1 to 5, the cause of action for filing the suit was that the first respondent was married to one



Damodaran, who is the husband of the first appellant, and out of the said wedlock, the respondents 2 to 5 were born. Though they had admitted the relationship of the appellants with the deceased Damodaran, they had contended that the first appellant did not have any right over the property as she is not the legally wedded wife of the said Damodaran. The said suit was contested by the appellants by contending that the first respondent was never married to the said Damodaran, nor were respondents 2 to 5 born to him. He would submit that to sustain the marriage, no documentary evidence had been let in by the first respondent, who examined herself as PW1. She had also not filed any Birth certificates of respondents 2 to 5, but had relied only upon Exs.A2 to A9 to claim that respondents 2 to 5 are the children of the said Damodaran. He would further submit that Ex.A2, namely the Legal Heir certificate, is a concocted document and could not have been relied upon by the Court below, as the same had been issued with a specific noting that it could not be used in Court proceedings and had been issued only for banking purposes and for transfer of electricity and revenue records.

32. He would further submit that PW2 had been examined to put forth the theory that Damodaran, along with respondents 1 to 5, had lived in their premises as tenants. He would submit that firstly, to substantiate that PW2's husband owned the property, no documents had been filed. He would further submit that the Court below had wrongly relied upon PW3, who is none other



than the son of the paternal uncle of the first respondent, and therefore the deposition of PW3, at any stretch of imagination, could not help the first respondent to substantiate the marriage. He would further submit that the first respondent had admitted in cross-examination that the first appellant and the deceased Damodaran had lived together and had also given birth to appellants 2 to 5. In that context, he would draw the attention of this Court to Ex.B1, namely the marriage invitation of the first appellant with the deceased Damodaran, and also the Birth Certificate marked as Ex.B2, along with other documents namely Exs.B8 and B10, to claim that the appellants are the legal heirs of the deceased Damodaran. He would submit that the respondents 1 to 5 are nothing but interlopers, trying to grab the properties of Damodaran by placing on record fraudulent documents.

33. He would further submit that relying upon the deposition of DW2, who is the Tahsildar, alleged to have issued Ex.A2, DW2 had categorically spoken that Ex.A2/Legal Heir certificate produced by PW1 was not issued by the competent authority and that the signature found in the said certificate did not belong to the authority, who is alleged to have signed the same. In that context, he would submit that the finding of the Court below that respondents 1 to 5 are the legal heirs of the deceased Damodaran is contrary to the facts. Hence, he would submit that the grant of preliminary decree for partition and the consequential injunction in respect of the shares under the preliminary

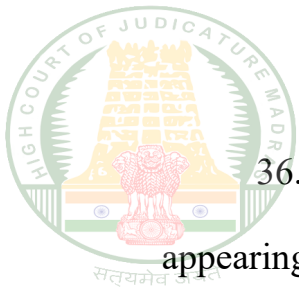


decree requires interference by this Court.

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34. Countering the said arguments, Mr.J.Kamaraj, learned counsel appearing for respondents 1 to 5 would submit that admittedly the first respondent was married to the said Damodaran even much prior to the admitted date of marriage of the first appellant, which is substantiated under Ex.B1. He would submit that even assuming Ex.A2 had been tried to be discredited, taking this Court to Exs.A3 to A9 and Ex.A15 would categorically substantiate that respondents 1 to 5 are the family members of the deceased Damodaran. He would submit that no contra evidence had been produced by the appellants, disputing the birth of respondents 2 to 5 to the said Damodaran. He would further submit that there is no infirmity or illegality in the judgment and decree of the Court below, which requires interference by this Court.

35. The learned counsel appearing for the subsequent purchasers would submit that they are bonafide purchasers of the value, and the internal disputes between the parties cannot be put against their purchase, which had been made by utilizing their hard-earned money and on the strength of the various documents produced with regard to title to the property. Hence, seeks appropriate orders from this Court.



36. I have considered the submissions made by the learned counsel appearing on behalf of the respective parties and perused the materials available on record.

37. The following issues are framed for consideration:

(1) Whether the Court below was right in holding that the first appellant was not entitled to a share in the property?

(2) Whether the Court below was correct in granting a preliminary decree of partition and allotting 5/9 share in the properties to respondents 1 to 5?

(3) Whether the Court below was right in granting injunction in respect of the 5/9 share in the suit schedule property?

Issue Nos.1 & 2:

38. It is the claim of respondents 1 to 5/plaintiffs that the deceased Damodaran had married the first respondent in the year 1971 and had begotten respondents 2 to 5. To substantiate that the first respondent was the wife of the deceased Damodaran, they had relied upon Ex.A2/Legal Heir Certificate and Ex.A15/Ration card issued by the Civil Supplies Department.



39. As regards the relationship of father and children between the deceased Damodaran and respondents 2 to 5, they had marked Exs.A3 to A9.

On the other hand, the first appellant, who had examined herself as DW1, had produced the marriage invitation, which is marked as Ex.B1. As regards the relationship between the deceased Damodaran and appellants 2 to 5, the respondents themselves have admitted that they are the children of the deceased Damodaran born through the first appellant. The respondents 1 to 5/plaintiffs had examined PW2 and PW3 to establish the marriage between the first respondent and the deceased Damodaran. Admittedly, no marriage invitation had been produced before the Court.

40. As regards Ex.A2, DW2/Tahsildar, who had been examined through Court summons, had categorically deposed that Ex.A2 had not been issued by the authority, who is alleged to have issued the same. Even though an attempt had been made to cross-examine DW2 to discredit his chief examination, the same had been unsuccessful, and even in the cross-examination, DW2 had maintained that Ex.A2 was never issued by the Revenue Department.

41. In that context, respondents 1 to 5 had failed to produce further evidence by taking steps to bring on record the proceedings under which Ex.A2 came into existence. When that be so, Ex.A2 cannot be relied upon by the Court to hold that respondents 1 to 5 are the legal heirs of the deceased



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42. Ex.A15, namely the Ration Card bearing the names of the family members of the deceased Damodaran, had also been relied upon. A perusal of Ex.A15 would indicate that the same came to be issued by proceedings of the Assistant Commissioner, Civil Supplies, Tambaram, dated 13.11.2001. It is to be noted that the deceased Damodaran had died on 27.09.2001, as reflected under Ex.B9. The date of death of Damodaran is also not disputed by respondents 1 to 5. Hence, Ex.A15 had come into existence after the death of Damodaran, showing the name of Damodaran as the head of the family. In the context of respondents 1 to 5 having attempted to mark a forged document under Ex.A2, this Court is also not inclined to place reliance upon Ex.A15 to come to a conclusion that respondents 1 to 5 were the family members of Damodaran, namely his wife and children.

43. The trial Court had solely relied upon the evidence of PW3 to come to the conclusion that the first respondent had been living with the said Damodaran and had begotten respondents 2 to 5. It had further held that when there is an admission that the first appellant got married subsequent to the relationship which had been acknowledged in public, as evidenced by PW2 and PW3, it has to be presumed that the first respondent had been validly married to the deceased Damodaran and therefore the marriage of the first appellant with the



deceased Damodaran would have to be only an invalid marriage.

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44. In that context, it has also placed reliance upon a judgment of this Court reported in 1994 (2) LW 125 and 2004 (3) LW 247.

45. In the present case, the primordial *lis* is based upon the marriage of the the first respondent and the deceased Damodaran. It is trite law that a marriage between two Hindus should be solemnized in the manner as mandated under Section 7 of the Hindu Marriage Act. To substantiate solemnization of the marriage as per the customary rites and ceremonies, the first respondent had not produced any evidence. Further, it is the claim of the first respondent in her cross-examination that the marriage had taken place in a temple. Except the evidence of PW3, who is the son of the paternal uncle of the first respondent, no independent evidence had been let in to substantiate such marriage. The manner in which the marriage had taken place had also not been substantiated.

46. Admittedly, the alleged marriage had taken place much after coming into force of the Hindu Marriage Act, 1955, and any marriage which had not been solemnized in accordance with the customary rites and ceremonies of either party cannot be termed to be a valid marriage as prescribed under Section 7 of the Hindu Marriage Act. The trial Court had also not given a finding that there was a valid marriage, but had only presumed a valid marriage in view of

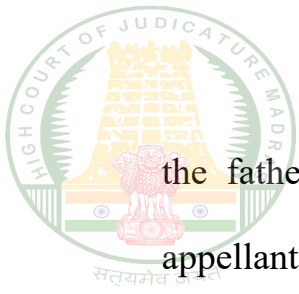


the long-standing relationship between the parties. The said findings and reasonings are directly in contradiction to the judgment of the Hon'ble Apex Court in the case of Dolly Rani Vs. Manish Kumar Chanchal, reported in 2025 2 SCC 587. For better appreciation, the following paragraphs 27 and 28 of the said judgment are extracted hereunder:

"27. In effect a union of two persons under the provisions of the Act, by way of a Hindu marriage gives them the status and character of being a husband and wife in society. The said status is of significance inasmuch as a man and a woman cannot be treated as a husband and a wife unless a marriage is performed or celebrated with proper and due ceremonies and in the prescribed form. In the absence of any solemnisation of a marriage as per the provisions of the Act, a man and a woman cannot acquire the status of being a husband and a wife to each other.

28. In the above context, we deprecate the practice of young men and women seeking to acquire the status of being a husband and a wife to each other and therefore purportedly being married, in the absence of a valid marriage ceremony under the provisions of the Act such as in the instant case where the marriage between the parties was to take place later."

47. Further, to substantiate the relationship of respondents 2 to 5 with the deceased Damodaran, Exs.A3 to A9 had been marked. Even though the appellants had attempted to dislodge the said exhibits through the deposition of the respective parties, particularly PW1, this Court is unable to find any substance in the cross-examination, which could lead to discredit Exs.A3 to A9. A perusal of Exs.A3 to A9, which are all anterior to the *lis* would indicate that



the father of respondents 2 to 5 had been shown as one Damodaran. The appellants have also not dislodged or brought forth any theory that the Damodaran was shown as father of the respective respondents in Exs.A3 to A9 is not the very same Damodaran, who had left behind the suit schedule properties.

48. In that context, this Court is of the view that respondents 2 to 5 were born to the deceased Damodaran, who is also the predecessor-in-interest of the appellants.

49. It is true that the Court should not come to the rescue of a litigant, who had placed fraudulent documents on record. At the same time, the Court cannot lose sight of the fact that the law of succession provides inheritance to the legal heirs of a deceased person, who had left behind properties.

50. For the aforesaid reasons, this Court is of the view that the judgment and decree, granting 1/9th share to the first respondent alone is liable to be interfered with, and that the first appellant is entitled to 1/9 share in the suit schedule properties.

Issue No:3:

51. An injunction cannot be granted ordinarily against a co-owner to deal



with the property. However, in the present case, the injunction had been restricted only to the limited extent of the shares that had been declared under the preliminary decree in the partition suit.

52. In that context, this Court do not find any infirmity for the grant of injunction.

53. For the aforesaid reasons, the appeal suit in A.S.No.1008 of 2005, is partly allowed by setting aside the grant of 1/9th share in favour of the first respondent and grants decree, holding that the first appellant would also be entitled to 1/9th share in the suit property. In respect of allotment of the remaining shares, the decree of the Court below is left intact.

54. In view of the judgment passed in A.S.No.1008 of 2005, the appeal suit in A.S.No.1009 of 2005 stands dismissed. No costs.

12-06-2026

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

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To

1. The Additional District Court
/ Fast Track Court No.1, Chengalput.

2. Tahsildar,
Tambaram Taluk,
G.H.T.Road, Kadaperi,
Tambaram, Chennai – 600 045.

3. Commissioner, Alandur Municipality,
New Street, Alandur, Chennai – 600 016.

4. State Bank of India,
Alandur Branch, Railway Station Road,
Alandur, Chennai – 600 016.

5. The Section Officer,
V.R.Section, High Court,
Madras.



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A.S.Nos.1008 & 1009 of 2



K.KUMARESH BABU, J.

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A.S.Nos.1008 & 1009 of 2005

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