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A.S.No.410 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.10.2025

PRONOUNCED ON : 06.01.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.No.410 of 2007
and M.P.Nos.1, 2, 3 and 4 of 2010
and C.M.P.No.5050 of 2023

1.Banumathy

2.Rajiv

... Appellants

vs.

R.Lakshmi Kutty (Died)

1.N.Surendaran

2.Narayanan Ramachandran

3.N.Sobana

4.K.M.Deviamma (Died)

*(2nd appellant, 5 to 10 and 12 to 14th respondent recorded as
Lrs of the deceased R4, as per Memo ordered dated
22.01.2020. Memo recorded.)*

5.N.Saraswathi

6.Pankajam

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7.N.Mallika

8.N.Susila

9.Chitra

10.Vidhya

11.S.Meera

12.C.Vinoth

13.C.Manoj

14.C.Lenna

15.C.Chinadurai

16.Susila

17.Palaniammal

18.K.Ganesan

(RR15 to 18 impleaded as party respondents. Vide order of Court dated 22.01.2020,made in CMP.No.20017 of 2018 in AS.No.410 of 2007)

19.P.Latha

... Respondents

(Mrs.P.Latha impleaded as 19th Respondent vide Court order dated 03.09.2025 made in CMP.No.641 of 2025 in A.S.No.410 of 2007)

PRAYER: First Appeal is filed under Section 96 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 18.12.2006 in O.S.No.217 of 2004 on the file of Additional District Judge (Fast Track Court), Namakkal.

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For Appellants	: Mr.R.Natarajan
For R1 and R19	: Mr.V.Ashok Kumar for M/s.Su.Srinivasan
For R9 and R10	: M/s.Gopika Nambiar for M/s.Govind Chandrasekar
For R15 and R18	: Mr.S.N.Subramanian
For R4	: Died
For R2 to R5, R6 to R8 and R11 to R14	: No Appearance

J U D G M E N T

The unsuccessful defendants 7 and 9 are the appellants herein.

2. The 1st respondent, his deceased mother-R.Lakshmi Kutty and respondents 2 and 3 have filed a suit for partition against the appellants and other respondents. Pending suit, R.Lakshmi Kutty died and the respondents 1 to 3 were recorded as her legal representatives. The suit was decreed by the Trial Court by granting 10/36 share in favour of the 1st respondent/2nd plaintiff, 1/36 share in favour of 3rd respondent. The suit was dismissed in respect of 2nd respondent. Aggrieved by the said judgment and decree, the appellants have come before this Court.

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

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4. As per the plaint averment, the deceased 1st plaintiff-R.Lakshmi Kutty was the second wife of deceased 1st defendant-Narayanan Nambiar. The plaintiffs 2 to 4 are his sons and daughter. The 3rd plaintiff was born to 1st plaintiff through her 1st husband. The plaintiffs 2 and 4 were born to her through 1st defendant. The 2nd defendant is the 1st wife of deceased 1st defendant. The defendants 3 to 6 are daughters of defendants 1 and 2. It is also not in dispute that the defendants 1 and 2 also had pre-deceased sons Velayutham and Chandran. The defendants 7 to 10 are wife and children of said Velayutham. The defendants 11 to 14 are wife and children of said Chandran.

5. It was the case of the plaintiffs that the 1st plaintiff-R.Lakshmi Kutty got married to 1st defendant in the year 1950 as his second wife. After marriage, the 1st plaintiff joined 1st defendant and lived in matrimonial house in Namakkal. During October-1951, the 1st plaintiff got employment as Maternity Assistant in Municipal Hospital in Rasipuram. During weekends and holidays, the 1st plaintiff would go over to Namakkal and reside with defendants 1 and 2. The 1st plaintiff handed over her entire savings and salary to her husband-1st defendant. The 2nd plaintiff acquired B.Sc., degree and also passed Higher Grade in English and Tamil Typewriting. At the



instance of 1st defendant, he discontinued his studies and helped him in running a hotel business at D.No.155, Thillai Puram Main Road, Namakkal.

The 2nd plaintiff also runs a Job typing center in a small portion in the hotel premises and thus, contributed to the wealth of the family. From the joint earnings of plaintiffs 1 and 2 and 1st defendant, several properties were acquired for the benefit of the joint family consisting of plaintiffs 1 and 2, defendants 1 and 2 and deceased Velayutham and Chandran. The documents were taken in the name of 2nd Plaintiff, Velayutham, Chandran and 2nd defendant. Since the 1st defendant made representation that building in D.No.154, Thillaipuram Main Road, Namakkal could be treated as exclusive property of 2nd plaintiff, he executed a Release Deed in favour of the Velayutham and Chandran in respect of property in Item No.7 (suit 'B' schedule). A portion of the said property was also sold to 2nd plaintiff. After death of Velayutham and Chandran, the 1st defendant and 2nd defendant filed a collusive suit against the other defendants for partition and obtained a collusive decree and the same would not bind the plaintiffs. Since Suit 'A' schedule and 'C' schedule properties were purchased out of joint contribution made by the plaintiffs 1 and 2, the suit was laid for partition.



6. The appellants/defendants 7 and 9 filed a written statement denying the factum of marriage between 1st plaintiff and 1st defendant. They also contended that the plaintiffs 1 and 2 were not members of their joint family. It was also stated that the properties purchased in the name of 2nd defendant, Velayutham and Chandran, were their own joint property and the same could not be treated as joint family property. It was also stated that properties purchased in the name of Velayutham and Chandran cannot be claimed by the plaintiffs as per the provisions of the Benami Transactions (Prohibition) Act, 1988. In nutshell, by denying the claim of the plaintiffs that they were also members of the joint family, the defendants resisted the suit.

7. The Trial Court based on the pleadings of the parties, formulated the following issues for consideration:-

- 1) முதல் பிரதிவாதி, முதல் வாதியை திருமணம் செய்து கொண்டாரா? இல்லையா?
- 2) தாவா சொத்துக்கள் 1, 2 வாதிகள் மற்றும் முதல் பிரதிவாதியின் பொது வருமானத்திலிருந்து வாங்கப்பட்ட சொத்துக்களா?
- 3) இந்த தாவாவை நிலைநிறுத்த, நாமக்கல் உதவி அமர்வு நீதிமன்ற அசல் வழக்கு எண்.388/2002ல் கூறப்பட்டுள்ள தீர்ப்பாணை தடையாக உள்ளதா?
- 4) வாதிகள் கோரியுள்ள பரிகாரமோ அல்லது மாற்று பரிகாரமோ அவர்களுக்கு சித்தித்துள்ளதா?
- 5) வேறு என்ன பரிகாரங்கள்?



8. Before the Trial Court, on behalf of the plaintiffs, the 2nd plaintiff was examined as PW.1. Third party neighbours were examined as PW.2 and PW.3. The cousin of 1st defendant was examined as PW.4. 56 documents were marked as Exs.A1 to A56. On behalf of the defendants, 2nd defendant was examined as DW.1 and 9th defendant-grandson of defendants 1 and 2 was examined as DW.2. No documents were marked on the side of the defendants.

9. The Trial Court on appreciation of oral and documentary evidence came to the conclusion that the marriage of the 1st plaintiff with the 1st defendant and legitimacy of the 2nd and 4th plaintiffs were proved. The Trial Court also concluded that suit properties were purchased out of joint contribution made by plaintiffs 1 and 2 also and hence, decreed the suit by granting preliminary decree for partition as mentioned above. Aggrieved by the same, the defendants 7 and 9 have come before this Court.

10. The learned counsel appearing for the appellants would submit that in the absence of any direct evidence to prove the marriage of 1st plaintiff with the 1st defendant, the Trial Court committed an error in concluding that the 1st plaintiff was legally married wife of 1st defendant. It



was also stated that after coming into force of the Bigamy Prohibition Act, 1949, the marriage between the 1st plaintiff and 1st defendant could not be treated as a valid one.

11. It was also submitted on behalf of the appellants that when the marriage between the 1st plaintiff and 1st defendant was not established, the plaintiffs 2 and 4 cannot be treated as legitimate children of 1st defendant and therefore, they could not be treated as members of the joint family. Thirdly, it was contended on behalf of the appellants that the compromise decree passed in O.S.No.388 of 2002 shuts out the present claim of the plaintiffs and therefore the suit is liable to be dismissed.

12. The learned counsel appearing for the respective respondents would submit that the 1st defendant in his affidavit filed before the Court in Ex.A53 clearly admitted that the 1st plaintiff as his wife and plaintiffs 2 and 4 as his children. The said statement is relevant under Section 32 (5) of the Indian Evidence Act, 1872. Therefore, the Trial Court was justified in coming to the conclusion that the 1st plaintiff was the legally wedded wife of 1st defendant and the plaintiffs 2 and 4 were his children. It was also submitted that various official documents marked as exhibits on behalf of



the appellants would indicate that the 1st defendant received the family pension of the 1st plaintiff. The learned counsel also by taking this Court to the evidence of PW.1 to PW.4 submitted that their evidence clinchingly proved that the suit properties were purchased out of joint contribution made by plaintiffs 1 and 2. Therefore, the learned counsel appearing for the respondents sought for dismissal of the appeal by confirming the findings rendered by the Trial Court.

13. On the basis of the pleadings of the parties and submission made by the learned counsel appearing for either side, the following points are arising for consideration:-

- (a) Whether the 1st plaintiff and the 1st defendant could be treated as legally wedded couple?
- (b) Whether plaintiffs 2 and 4 are legitimate children of 1st defendant?
- (c) Whether the plaintiffs are entitled to decree for partition?

Discussion on Point Nos. (a) to (c):

14. As per the pleadings, the plaintiffs claimed that the 1st plaintiff was the second wife of 1st defendant. There is no dispute that 2nd defendant was the first wife of 1st defendant. As per the plaint, the marriage between

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the 1st plaintiff and 1st defendant had taken place in the year 1950. The factum of marriage between the 1st plaintiff and 1st defendant was seriously disputed by the defendants in the written statement. Ex.A53, is the certified copy of affidavit filed by the deceased 1st defendant before the District Court, Namakkal in O.S.No.388 of 2002. In his own affidavit, he had categorically stated that he married 1st plaintiff as his second wife and out of the said wedlock, the plaintiffs 2 and 4 were born to him. The statement on oath made by deceased 1st defendant is relevant one and the same had been taken into consideration as admission of existence of relationship in the light of Section 32(5) of the Indian Evidence Act, 1872. Taking into consideration, the statement on oath made by 1st defendant in his sworn affidavit and also the evidence of independent witnesses, who were examined as PW.2 to PW.4, the Trial Court came to the conclusion that the factum of marriage between the 1st defendant and 1st plaintiff was proved. However, We have to see even assuming the factum of marriage between the 1st defendant and 1st plaintiff was proved whether it could be treated as a lawful marriage.

15. It is an admitted fact that the marriage of 1st plaintiff and 1st defendant had taken place in the year 1950. The Madras Hindu (Bigamy



Prevention and Divorce) Act, 1949, came into force on 23rd March, 1949.

Section 4(1) of the said Act reads as follows:-

“4.(1) Notwithstanding any rule of law, custom or usage to the contrary, any marriage solemnized after the commencement of this Act between a man and a woman either of whom has a spouse living at the time of such solemnization shall be void, whether the marriage is solemnized within or outside the Province of Madras:

Provided that a man or woman whose marriage has been dissolved by a final order of a Court of competent jurisdiction under Section 5 or under any other law for the time being in force, or in accordance with any custom or usage permitting of divorce, may solemnize a valid marriage with another, after the expiry of six months from the date of such final order or from the date on which the marriage was dissolved in accordance with such custom or usage, as the case may be.

Explanation.-An order shall be deemed to be a final order within the meaning of the above proviso, if no appeal lies against such order or if the time allowed for filing an appeal against such order has expired without an appeal having been filed.”



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16. The above said provision would make it clear that a marriage between a man and woman either of whom has a spouse living at the time of such solemnisation shall be void. Even as per the pleading of the plaintiffs, the 1st plaintiff was only the second wife of 1st defendant and 2nd defendant was the first wife of 1st defendant. Therefore, it is clear when the marriage between the 1st plaintiff and 1st defendant had taken place in the year 1950, the 1st defendant had a spouse living namely the 2nd defendant. Therefore, by virtue of Section 4(1) of the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949, the marriage between the 1st plaintiff and 1st defendant shall be treated as a void marriage. Even if the marriage is held to be void by virtue of above said provision, the plaintiffs 2 and 4, who were born to 1st plaintiff and 1st defendant under the void marriage are entitled to the legitimacy conferred under Section 16(1) and (2) of Hindu Marriage Act, 1955. Therefore, the plaintiffs 2 and 4 are entitled to a share in the property of the 1st defendant as per Section 16(3) of Hindu Marriage Act, 1955.

17. Ex.A50 is the certified copy of the suit for partition filed by the defendants 1 and 2 in O.S.No.388 of 2002 against other defendants treating the suit property as a joint family property of all the defendants. Ex.A51 is the certified copy of the compromised final decree passed in the said suit.

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Ex.A52 is the certified copy of the plaint in O.S.No.595 of 2003 filed by the defendants 1 and 2 against other defendants seeking to set aside the decree passed in O.S.No.388 of 2002 on the ground that there was inequitable distribution of property. Ex.A53 is the affidavit filed by 1st defendant before the Court, wherein he admitted that 1st plaintiff was his second wife and plaintiffs 2 and 4 were his children born through 1st plaintiff. Therefore, it is clear that defendants 1 and 2 clearly admitted the suit properties were properties of joint family consisting the 1st defendant and his sons namely deceased Velayutham and Chandran. The other defendants, who were party to the earlier suit in O.S.No.388 of 2002 admitting the suit properties as joint family properties entered into a compromise for allotment of shares as per the compromise decree. Ofcourse, the allotment made under compromise decree was later questioned by defendants 1 and 2 by filing a separate suit on the ground there was inequitable distribution of properties.

18. Be that as it may, the fact remains, the defendants categorically admitted the suit properties were treated as joint family properties among themselves. In such case, as the children born to 1st defendant under a void marriage, the plaintiffs 2 and 4 are entitled to share in the property of 1st defendant. First of all, the 1st defendant's share in the joint family property

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has to be ascertained and in his share, the plaintiffs 2 and 4 are entitled to equal share along with other children of 1st defendant through 2nd defendant.

19. Ex.A56-Death Certificate of 1st defendant would establish he died on 09.09.2004 prior to coming into force of Hindu Succession Amendment Act (Act 39 of 2005). Therefore, we have to ascertain the interest of 1st defendant in the coparcenary of his family. The plaintiffs 2 and 3 being children born to 1st defendant under a void marriage cannot claim that they are members of the coparcenary. At the most, they are only entitled to the benefit of Section 16 of the Hindu Marriage Act and can claim a share in the share of their father. In this regard it would be appropriate to refer to the judgment of the Apex Court in ***Revannasiddappa and another vs. Mallikarjun and others*** reported in **2023 (10) SCC 1**. The relevant observation reads as follows:-

“61. In the distribution of the property of the deceased who has died intestate, a child who is recognised as legitimate under sub-Section (1) of Section 6 of the HMA 1955 or under sub-Section (2) of Section 16 would be entitled to a share. Since this is the property that would fall to the share of the intestate after notional partition, it belongs to the intestate. Under Section 16(3), a child conferred with legitimacy is entitled to the property of their parents only, and does not have



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*any rights to or in the property of a person other than the parents. Hence, where the deceased has died intestate, the devolution of this property must be among the children - legitimate as well as those conferred with legitimacy by the legislature under Section 16(1) and 16(2) of the HMA 1955. ...
... .. ”*

20. The interest of their father (1st defendant) in the coparcenary shall be determined based on explanation to Section 6 of Hindu Succession Act, 1956. The 1st defendant admittedly died prior to coming into force of Act 39 of 2005 and Section 6 of Hindu Succession Act as it stood on the date of death of 1st defendant reads as follows:-

“6.Devolution of interest in coparcenary property.-

When a male Hindu dies after the commencement of this Act having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by



survivorship.

Explanation 1. – For the purpose of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2. – Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.”

21. In the case on hand, the 1st defendant died on 09.09.2004 prior to coming into force of Act 39 of 2005 leaving behind Class-I Female Heirs namely defendants 2 to 6, his wife and daughters. Therefore, his interest in the coparcenary would not devolve by survivorship, but it will devolve by testamentary or intestate succession. It is nobody's case that 1st defendant left a Will, therefore, the property of 1st defendant will devolve as per provisions of Section 8 among his heirs. By virtue of Section 16(3) of Hindu Marriage Act, the plaintiffs 2 and 4 in their capacity as children born to 1st defendant under void marriage are also entitled to equal share along with other children of 1st defendant and his surviving wife. On the date of death of

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1st defendant, he is entitled to 1/7th share in the suit properties along with her daughters defendants 3 to 6 and legal heirs of pre-deceased sons namely defendants 7 to 14. Though 1st defendant died prior to coming into force of Act 39 of 2005, in view of the judgment of the Apex Court in *Vineeta Sharma vs Rakesh Sharma* reported in **2020 (9) SCC 1**, Act 39 of 2005 is retroactive in nature and hence, the daughters are entitled to the benefit of the same. Hence, I hold the 1st defendant's interest in coparcenary shall be fixed as 1/7th share. On the date of his death, he was survived by his first wife/2nd defendant, four daughters, namely defendants 3 to 6, legal representatives of pre-deceased first son Velayutham namely defendants 7 to 10 and legal representatives of predeceased son Chandran namely defendants 11 to 14, apart from plaintiffs 2 and 4. Therefore, plaintiffs 2 and 4 are entitled to 1/9th share each in the 1/7th share of the 1st defendant. In all plaintiffs 2 and 4 are entitled to 1/63 share each in the suit property. Likewise, the 2nd defendant is also entitled to 1/63 share in the suit property. The daughters of 1st defendant, defendants 3 to 6 are entitled to 10/63 share each. The defendants 7 to 10 in their capacity as legal representatives of predeceased son-Velayutham collectively entitled to 10/63 share each. Likewise, the defendants 11 to 14 in their capacity as legal representatives of predeceased son-Chandran collectively entitled to 10/63 share each.



22. The Trial Court committed an error in treating the plaintiffs 2 and 4 as member of the joint family by over looking the legal position that children born to 1st defendant under void marriage can only claim share in the property of 1st defendant or his interest in the coparcenary. Further, the Trial Court also did not have the occasion to consider the effect of judgment of the Apex Court in *Vineeta Sharma* case as Trial Court judgment was delivered prior to the pronouncement of the law in *Vineeta Sharma* case. Hence, the Trial Court did not treat the daughters as equal sharers along with sons of 1st defendant. A partition suit is deemed to be pending till passing of final decree. Hence, the benefit of law laid down in *Veneetha Sharma* Case that Act 39 of 2005 is retroactive, will enure to defendants 3 to 6, daughters of 1st defendant. Hence, this Court is inclined to allot equal share to them along with sons of 1st defendant.

23. In view of the above discussion, the judgment and decree passed by the Trial Court needs modification and it is declared the plaintiffs 2 and 4 are entitled to 1/63 share each in the suit properties.



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24. In Nutshell:-

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- (i) The First Appeal stands partly allowed and the judgment and decree passed by the Trial Court is modified by granting 1/63 share each to the plaintiffs 2 and 4 in the suit properties.
- (ii) The Preliminary Decree passed by the Trial Court is modified accordingly.
- (iii) Consequently, the connected miscellaneous petitions are closed.
- (iv) In the facts and circumstances of the case, there will be no order as to costs.

06.01.2026

Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No
dm

To

The Additional District Court
(Fast Track Court), Namakkal.



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Pre-delivery judgment made in
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