



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-02-2026

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CORAM

**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

AS No. 194 of 2021 and CMP.No.9017 of 2021

1. K.Krishnan

Appellant(s)

Vs

1. Shanthi
2.K.P.Murugesan (died)
3.K.P.Shanmugasundaram
4.V.Sakthivel
5.V.Rajkumar
6.V.Bhuvaneswari
7.K.Rajammal
8.Saraswathi
9.Arivalagan
10.Kamalakannan
11.The Sub Registrar
B.A.M.Thangavel, Mallasamudram
Office 637503, Salem Dist

12.S.Boopathy
13.S.Dhanasekar
14.S.Senthamarai
15.Geethakrishnan
16.Vennila
17.Ponmathi
18.Arulmurugan
19.Kavitha

R2 Died. R15 to R19 are brought on
record as LRS of deceased R2 vide
court order dated 25.09.2025 made in
CMP.No.17948/2021 in

AS.No.194/2021 (GJJ and MSKJ)

Respondent(s)

PRAYER: Appeal suit filed under Section 96 of Code of Civil Procedure, 1908



to set aside the judgment and decree dated 11.10.2018 made in OS No.137 of 2007 on the file of the III Additional District Court, Salem in so far as it is against the appellant

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For Appellant(s): Mr.T.Murugamanickam, Senior Counsel
for M/s.Zeenath Begum

For Respondent(s): Mr.A.K.Kumarasamy, Senior Counsel
for Mr.S.Kaithamali Kumaran for R1
R2 Died
Mr.V.Sekar for R3
R4 to R7, 9, 10, 12 & 13 (No appearance)
Mr.M.Murali for R11
Government Advocate
R8, 14 and 15 to 19 not served

JUDGMENT

(Judgment was delivered by N.Sathish Kumar J.)

Challenging the preliminary decree passed by the Trial Court granting 1/12 share in favour of the plaintiff, the defendant No.6, power agent and also the auction purchaser has filed the present appeal.

2. Admitted facts of both sides are as follows:-

2.a. The properties were originally owned by one Ponnusamy Mudaliar, he has executed a will bequeathing the properties equally to his three sons namely defendants 1 and 2 and one Vaithialingam. The plaintiff is the daughter of Vaithialingam and the defendants 3 to 5 are brothers and sister of the plaintiff. Hence, the plaintiff has claimed 1/12 the share in the property.

2.b. The first defendant has took a stand that there was oral partition in



respect of the property and he has no objection for partition in 'B' scheduled property. The defendants 3 and 4 took a stand that Vaithialingam has left a will in favour of the defendants 3 and 4, accordingly, they are entitled to share and the fifth defendant has taken a stand that the plaintiff's father already sold 1/3rd share in 'B' schedule property and the remaining 5460 sq.ft., was brought under the court auction and therefore, the plaintiff has no right in the property. The defendants 7 and 9 are the purchaser of the property.

2.c. On the basis of pleadings and evidence, the Trial Court framed the following issues:

- 1) Whether the plaintiff is entitled to 1/12th share in the suit properties as prayed for?
- 2) Whether the 'A' schedule property has already been divided?
- 3) To what relief?

2.d. On the side of plaintiff, PW1 to PW3 were examined and Exs.A1 to A13 were marked. On the side of defendants, DW1 and DW2 were examined and Exs.B1 to B39 were marked. C1 and C2 were marked.

3. After appreciation of evidence, the Trial Court granted preliminary



decree of 1/12 share in favour of the plaintiff. Aggrieved over the same, the present appeal has been filed by the sixth defendant.

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4. The only grievance of the sixth defendant/appellant by filing the appeal suit is that the Trial Court while granting preliminary decree of 1/12 share in favour of the plaintiff has observed in paragraph 19 that the property is ancestral properties, however, the properties are not ancestral properties, it is self acquired properties, such finding has to be removed. In respect of other aspects, the learned senior counsel for the appellant fairly submitted that the plaintiff is entitled to 1/12 share. Though offer has been made to allot the 1/12th share in the place which is unsold, it is not agreeable for the first respondent.

5. The learned senior counsel for the first respondent would point out that valuable properties have already been sold by the appellant, now, the appellant is proposing settlement in respect of unsold properties which is less valuable only. Hence, the first respondent is not agreeable for the settlement as proposed by the appellant.

6. The issue has been narrowed down, and no question has been raised regarding the merits of the case. Since there is no point for consideration, it follows that there is no disputed question of law and law.



7. The only concern of the appellant is that the observation of trial court in paragraph 19 with regard to the character of the property alone has to be removed. According to the learned senior counsel for the first respondent, the Trial Court's observation that the properties are ancestral properties is not correct, it should be read separate properties. This aspect has not been disputed by both sides.

8. Such view of the matter, as the appellant as well as the respondents have not disputed the allotment of share and the plaintiff is admittedly entitled to allotment of 1/12th share and as the plaintiff as well as the defendant has challenged the finding with respect to the ancestral properties, the finding of the Trial Court in paragraph 19 that the properties are ancestral properties alone is set aside and with regard to the granting of preliminary decree of 1/12th share to the plaintiff is hereby concerned, the decree and judgment of the Trial Court stands confirmed. The parties are directed to work out their allotment in the final decree proceedings.

9. Accordingly, the appeal suit stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.



(N.SATHISH KUMAR J.)(R.SAKTHIVEL J.)
11-02-2026

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The III Additional District Judge
III Additional District Court
Salem

2. The Section Officer
VR Section, Madras High Court



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AND
R.SAKTHIVEL J.**

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