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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-11-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 350 of 2006

CNR: {HCMA010105812006}

Case QR

1. G.Ganapathi
   S/o.Gopalasamy Chettiar,
   No.34,Sekar Nagar,
   Semmandalam, Cuddalore.

2. Kumudham
   W/o.Ganapathi,no.34,sekar Nagar,
   Semmandalam, Cuddalore

3. Sivaraj
   S/o.G.Ganapathi
   No.34,Sekar Nagar,
   Semmandalam, Cuddalore.

   (A3 declared as major and his mother/natural guardian viz Mrs.Kumudham discharged from the guardianship vide court order dated 22/12/2023 made in CMP No.29096 of 2023 in SA No.350 of 2006)

..Appellant(s)

Vs

1. G.Kanakaraj
   S/o.K.Gopalasamy Chettiar,No.99,
   Chetty Street,Varakalpattu,
   Cuddalore Taluk.

2. G.Raghuraman
   S/o.K.Gopalasamy Chettiar, No.99, Chetty Street, Varakalpattu, Cuddalore Taluk

3. S.Sakunthala(died)
   W/o.Gopalasamy Chettiar, 99
   Chetti Street, Varkalpattu,
   Cuddalore Taluk

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4. Vijayalakshmi
   W/o.R.Selvam, 10-c, Conveyar Street,
   Block 24, Neyveli

5. Revathi,
   W/o.Murugesan
   109/2, Chetti Street, Varakalpet,
   Cuddalore Taluk

6. P.Kuppusamy
   S/o.Pavadai Chettiar,
   Varakalpet, Cuddalore Taluk

7. N.Srinivasa Chettiar
   S/o.Natesa Chettiar, Thiruvendhipuram Main Road, Pilali, Cuddalore Taluk

8. V.Durai
   S/o.Veerappa Chettiar, Varakalpet
   Cuddalore Taluk

9. Kasturiranga Raju
   S/o.Ramamurthi Raju,
   Mariamman Koil Street, Varakalpet,
   Cuddalore Taluk

10. Dhandapani Chettiar (died)
    S/o.Nagappa Chettiar, Rajalakshmi Stores Main Road, Pudupalayam,
    Cuddalore-1

11. Lakshminarayanan
    S/o.Natarajan Padayachi, Pillali Village, Cuddalore Taluk

12. R.Arumugham
    S/o.Balasubramaniam, Chetty Street,
    Varakalpet, Cuddalore Taluk

13. A.Lalitha,
    W/o.Arumugham
    Chetty Street, Varakalpet,

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Cuddalore Taluk

14. Gomathi (died)
W/o.Anandha Baskaran, Elango Street, Thillai Nagar, Villiyanur, Pondicherry

15. Devaki,
W/o.Jayabal
17, Kamaraj Nagar, Panrutti

16. Vasantha
W/o.Natarajan,
No.64, Chetty St, Varakalpattu, Cuddalore Tk and Dt.

17. Pushpavalli
W/o.S.Kumarasamy,
Guru Prabha Flats, No.201, I Floor, Kennedy St, Vinayagapuram, Ambathur OT, Chennai 53.

18. Saraswathi
W/o.Jayabalan,
No.97-C, Chetty St, Varakalpattu, Cuddalore Tk and Dt.

19. Vanitha
W/o.Selvaraj,
254, Mariamman Koil St, Varakalpattu, Cuddalore Tk and Dt.

20. Babu
S/o.Dhandapani Chettiar,
22/2, Mariamman Koil St, Varakalpattu, Cuddalore Tk and Dt.

21. Vaidyanathan
S/O.Dhandapani Chettiar,
112, Rajalakshmi Paper Store, Pudupalayam Main Road, Pudupalayam, Cuddalore Tk and Dt.

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22.Latha
W/o.Balakrishnan,
Rajalakshmi Stores, Main Road, Pudupalayam,
Cuddalore-1.

23.Amsaveni
W/o.Ramesh,
Rajalakshmi Stores, Main Road, Pudupalayam,
Cuddalore-1.

24.Rajalakshmi
W/o.Saravanan,
Vijayalakshmi Nagar, Koothapakkam,
Cuddalore Tk and Dt.

(R10 DIED, RR16 TO 24 ARE BROUGHT ON RECORD AS LRS OF DECEASED R10, VIDE ORDER OF COURT DATED 18/03/2024 MADE IN CMP.NOS.29110, 29101 AND 29109/2023 IN SA.NO.350 OF 2006)

25.V.Vasanty
D/O.Late Anandha Baskaran,
W/O.S.A.Venkatesahkumar, AH-123, 4th St,
Anna Nagar (West), Chennai 40.

26.A.Ramesh
S/o.Late Anandha Baskaran,
No.18, Subramaniar St, Thillai Nagar,
Villiyanur, Pondicherry 605 110.

27.A.Shankar
S/o.Late Anandha Baskaran,
Elango St, Thillai Nagar, Villiyanur,
Pondicherry 605 110.

28.S.B.Jayamalini
D/o.Late Anandha Baskaran,
W/O.P.Sundra Bharathi, Old No.74, New No.26, Odiampet Road, Villianur, Puducherry 605 110.

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(R14 DIED, RR23 TO 28 ARE BROUGHT ON RECORD AS LRS OF DECEASED R14, VIDE ORDER OF COURT DATED 22/12/2023 MADE IN CMP.NOS.14055,14056 AND 14058/2023 IN SA.NO.350/2006)

(R3 DIED. RR1,2 AND 4 ARE LRS OF THE DECEASED 3RD RESPONDENT VIZ S.SAKUNTHALA DIED VIDE ORDER OF COURT DATED 09. 07.2019 MADE IN SA.350 OF 2006 AS PER MEMO DATED 11.08.2015 IN USR NO. 67202 OF 2015)

..Respondent(s)

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 18.10.2005 passed in A.S. No.11 of 2005, on the file of the Principal District Court, Cuddalore, reversing the decree and judgment dated 22.12.2004 passed in O.S.No.83 of 2001, on the file of the Principal Subordinate Court, Cuddalore.

For Appellant(s): Ms.A.L.Ganthimathi, Senior Counsel
for Mr.L.Palanimuthu

For Respondent(s): Ms.M.Sneha
for Mr.K.Prakash for R1 & R2

Mr.P.Mohanraj
for R4, R5, R6, R7, R8, R12, R13, R16 to R18

Mr.R.Rajavelan
for R26 and R27

No appearance for R25 and R28

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JUDGMENT

This second appeal has been preferred as against the decree and judgment dated 20.02.2004 passed by the Principal District Court, Cuddalore in A.S.No.11 of 2005. The appellants are the defendants 2, 5 & 7. The respondents 1 and 2 have filed the suit in O.S.No.83 of 2001, on the file of the Principal Subordinate Court, Cuddalore, for the relief of partition and for permanent injunction. The said suit was dismissed by the Trial Court. Aggrieved over the said decree and judgment, the plaintiffs have preferred an appeal in A.S. No.11 of 2005, on the file of the Principal District Court, Cuddalore. The first appellate court reversed the judgment and decree passed by the trial court and decreed the suit. Aggrieved over the said decree and judgment, the present second appeal have been preferred by the defendants 2, 5 & 7.

2. For the sake of convenience, the parties are referred to as per their rank in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiffs before the Trial Court is that originally the suit A schedule property are joint family properties allotted to the share of the first defendant under registered partition deed dated 15.09.1978. The B schedule property was purchased by the first defendant as joint family manager and karta

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of the family out of the joint family surplus income through sale deed dated 05.07.1990. The C schedule property has been purchased by the first defendant in the name of the seventh defendant out of joint family surplus income. All the properties were treated as joint family properties and the properties are under joint possession and enjoyment of the plaintiffs and the defendants. The first defendant is the father of the plaintiff. The first defendant married first wife, namely, Palaniammal who died 40 years ago and the second defendant is the son born through the first wife to the first defendant. Through first wife two daughters namely, Gomathy and Devaki were also born and they got married prior to commencement of Hindu Succession Act, 1990. After the demise of the first wife, the first defendant married the third defendant as second wife. The plaintiffs are his sons through the second wife and fourth defendant is the sister of the plaintiffs and daughter of defendants 1 and 3. The fourth defendant got married in the year 1995 and thereby she is also co-parcener entitled to equal share as per Tamil Nadu Amendment Act 1990. The fifth defendant is the wife of the second defendant and the sixth defendant is the first defendant's brother's daughter. The seventh defendant is the son of the defendants 2 and 5. The defendants 8 to 13 are debtors to whom the first defendant has lent money in the name of the defendants 2, 5 and 6. The first defendant apart from agricultural activities is also doing money lending business out of joint family income in the name of the defendants 2, 5 & 6. The D schedule property is outstanding money of the joint family properties. Therefore, the defendants 1, 2 and 4 are each

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entitled to 1/5th share. The plaintiffs together are entitled to 2/5th share over the suit property. The first defendant, at the instigation of the second defendant, deserted and neglected to maintain the third defendant and the first defendant is liable to maintain the third defendant. The plaintiffs and the defendants 1, 2 and 4 are deemed to be in joint possession of the suit properties. When the plaintiffs demanded partition, the first defendant was giving evasive answers, thereby the plaintiffs filed the suit. During pendency of the suit, the first defendant died intestate on 28.09.2002 leaving behind the plaintiffs, his widow third defendant, daughters 4, 16 & 17. Therefore, the plaintiff is entitled to 16/35 shares ; the defendants 2, 4, 16 & 17 each entitled to 5/35 shares.

4. The case of the second defendant is that the relationship between the parties are admitted. The allegations that the first defendant was doing money lending business is denied. The A schedule properties are joint family properties and the first defendant is entitled to the said property through partition deed dated 15.09.1978. The B schedule property was not purchased as joint family manager and karta of the family. Out of joint family income, B and C schedule properties were not purchased. In fact the B schedule property was purchased by the first defendant by borrowing loan from the fifth defendant through promissory note dated 02.03.1987. The C schedule property was purchased by the fifth defendant in the name of her minor son out of her separate income

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never B and C schedule properties are treated as joint family properties. The B and C schedule properties were not joint family properties ; B schedule property is separate property of the first defendant ; C schedule property is separate property to the seventh defendant. The first defendant executed a Will dated 30.08.1999 bequeathing the properties in favour of the plaintiffs to an extent of 1.40 acres and the second defendant was allotted 1.41 acres. Items 7 & 8 were allotted to the second defendant in respect of A schedule property. After the demise of the first defendant, the plaintiffs are enjoying the properties bequeathed to them and this defendant is in possession and enjoyment of the property bequeathed to him through the Will. Therefore, the alleged joint possession pleaded by the plaintiffs are false. Therefore, the suit is liable to be dismissed.

5. The case of the fifth defendant is that the suit is false and he also admitted the relationship between the parties. The averments that the first defendant during his lifetime was doing money lending business in the name of the fifth defendant is denied. She had lent a sum of Rs.75,000/- to the eighth defendant ; a sum of Rs.50,000/- to the eleventh defendant and also lent a sum of Rs.1,00,000/- to the fifteenth defendant. She had not lent any money to the ninth defendant as alleged in the plaint. The money lent by the fifth defendant to the defendants 8, 11 & 15 are the separate money of the fifth defendant which

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she got by doing milk vending and also by pledging her jewels. The B schedule property was purchased by the fifth defendant from the first defendant through sale deed dated 29.01.2001. The first defendant borrowed a sum of Rs.75,000/- from this defendant based on a promissory note to purchase a house and thereafter, he did not repay the money. Therefore, she informed the same to the first defendant and he informed that she may take a house after the death of the first defendant. After problems erupted in the family, the first defendant had executed the said sale deed in favour of the fifth defendant. Therefore, the B schedule property is separate property of the fifth defendant and nobody have right over the property. The C schedule property was purchased by the fifth defendant out of her separate funds in the name of her minor son, the seventh defendant, neither the plaintiffs nor the defendants 2 to 4 have any right in the said property. As far as loans are concerned, they were advanced by the fifth defendant alone and the plaintiffs cannot seek for any share in the said loans. The B and C schedule properties are not joint family properties and the same are separate properties of the defendants 5 & 7.

6. The case of the sixth defendant is that the suit is not maintainable. The allegations in the plaint that this defendant lent money to the defendants 10, 12 and 13 is false. In fact, this defendant had paid money of Rs.85,000/- to 12th defendant. Due to non-payment of the said amount, the sixth defendant filed a

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suit in OS No.20 of 1999 on the file of the Additional Subordinate Court, Cuddalore and the same is pending. Since the money paid by the sixth defendant is a separate money, the first defendant has nothing to do with the same. Neither the plaintiffs nor the defendants 2 to 4 have any share in the said money. Therefore, prayed to dismiss the suit.

7. The case of the 12th defendant is that the 12th defendant had money dealings with the first defendant. At the time of lending money, the first defendant used to get unfilled promissory notes. The 12th defendant already paid the entire loan. While so, by misusing the said unfilled promissory notes, the sixth defendant filed a suit in OS No.20 of 1999 and the same is pending before the Additional Subordinate Court, Cuddalore. The first defendant is doing money lending business through the defendants 2, 5 & 6 and the first defendant also lending money business separately. Therefore, prayed to dismiss the suit.

8. Based on the above said pleadings and after hearing both sides and perusing the records, the Trial Court framed the following issues

"(i) Whether the Suit B Schedule Property is a separate property of the 5th defendant?

(ii) Whether the Suit C Schedule Property is a separate property of the 7th defendant?

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(iii) To what relief is the plaintiff entitled to?"

9. In order to prove the case, before the Trial Court, on the side of plaintiffs, PW1 and PW2 were examined and marked Ex.A1 to Ex.A5. On the side of the defendants, DW1 to DW5 were examined and marked Ex.D1 to Ex.D9.

10. After analysing the evidence on both sides, the Trial Court dismissed the suit, vide decree and judgment dated 22.12.2004. Aggrieved by the said decree and judgment, the plaintiffs have preferred an appeal in A.S.No.11 of 2005 before the Principal District Court, Cuddalore, on various grounds.

11. The First Appellate Court, after hearing both sides and perusing the records, framed the following point for determination:

(i) Whether the IA filed by the plaintiffs to receive additional evidence could be allowed ?

(ii) Whether the suit properties described in A to D schedule in the plaint are the join family properties of the first defendant and his descendants ?

(iii) Whether Ex.B1 Will executed by the first defendant is valid in law ?

(iv) Whether the plaintiffs are entitled to a preliminary decree for

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partition as prayed for in the plaint ?

(v) Whether there is any infirmity in the judgment and decree of the trial court ?

12. Pendency of the first appeal, the plaintiffs filed a petition in IA No.257 of 2005 to receive the documents as additional evidence and allowed the petition and received the documents and the said documents were marked as Ex.A6 to Ex.A9. By relying upon those documents, the first appellate court set aside the judgment and decree passed by the trial court and decreed the suit as prayed for, vide its judgment and decree dated 18.10.2005. Aggrieved by the said decree and judgment, the defendants 2, 5 and 7 have preferred this second appeal.

13. This Court, at the time of admitting the second appeal, framed the following substantial question of law :

(i) "Whether the learned District Judge is right in granting decree for partition when there is no proof with regard to the joint family income out of which properties in B and C schedules were alleged to have been purchased ?

(ii) Whether the learned District Judge is right in not considering the fact that the burden of proof is on the plaintiffs to show that the properties belong to the joint family ?"

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14. The learned Senior Counsel appearing for the appellants would submit that the first item of A schedule property originally belonged to the first defendant ancestrally. The B schedule property was purchased by the first defendant through his separate income and thereafter the fifth defendant purchased the property through sale deed from the first defendant. Thereby, the B schedule property is separate property of the fifth defendant. The C schedule property was purchased by the fifth defendant in the name of the seventh defendant through her separate income and she was doing money lending business and thereby she earned money separately and she purchased the property through her separate income. Therefore, the B and C schedule properties are not joint family properties, and they are the separate properties. The plaintiffs filed the suit by claiming share over the suit properties including the separate properties of the defendants 5 & 7. In fact, the first defendant entitled the A schedule property through partition deed dated 15.09.1978 and thereafter, the B schedule property was purchased through sale deed on 05.07.1990 by the first defendant through his separate earnings and C schedule property was purchased by the fifth defendant in the name of the seventh defendant. Therefore, B and C schedule properties are not available for partition. Already the first defendant executed registered Will dated 30.08.1999, through that Will the plaintiffs were allotted 1.40 acres in the items 1 to 3 and items 4 to 6, while the second defendant was allotted 1.41 acres in the items 1 to

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3 and items 7 and 8 in A schedule property. After the death of the first defendant, the plaintiffs are enjoying the properties bequeathed through the Will and the second defendant is in possession and enjoyment of the property bequeathed to him through the Will. Before the Trial Court, to substantiate the claim of the defendants, they examined DW1 to DW5 and marked Ex.D1 to Ex.D9. The Trial court after considering the evidences correctly dismissed the suit. However, the first appellate court allowed the appeal without considering the evidence in a proper perspective. Before the first appellate court, the appellants therein have filed the petition to receive the additional documents in IA No.257 of 2005. The first appellate court allowed the said application and received the documents and based on the above said documents, reversed the judgment and decreed the suit filed by the plaintiffs. The first appellate court failed to consider that there are no evidence to prove that through the A schedule property there was an income and the said income was surplus and through that surplus income the B schedule property was purchased by the first defendant. As far as C schedule property is concerned, the separate property was purchased by the fifth defendant in the name of the seventh defendant and the same has not been considered by the first appellate court. Further, the first appellate court failed to consider that the plaintiffs have to prove that the B & C schedule properties were purchased through the joint family income but shifted the burden on the side of the defendants, therefore, the judgment and decree passed by the first appellate court are liable to be set aside.

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15. The learned counsel appearing for the respondents would submit that A schedule property belonged to the first defendant ancestrally and he got the property through the partition deed dated 15.09.1978, through the joint family income of the A schedule property the first defendant purchased the B schedule property in his name and C schedule property was purchased by the fifth defendant in the name of the seventh defendant through sale deed and all the properties have been treated as joint family properties and the plaintiffs and the defendants are in joint possession and enjoyment of the properties. The plaintiffs are children born to the first defendant through the second wife, third defendant. While so, they filed the suit for partition for the joint family properties of the plaintiffs and the defendants 1, 2 and 4. The first defendant also doing money lending business in the name of the 2, 5 & 6 defendants. The defendants 2, 5 and 7 have no independent income and thereby the properties were purchased through the joint family income. The Trial Court without considering the evidences in a proper perspective dismissed the suit. However, the first appellate court, after analysing the evidence in proper perspective, correctly allowed the appeal and granted partition over the suit properties. The first appellate court has offered opportunity to the respondents in the appeal before receiving the documents sought to be received as additional evidence and the first appellate court has given adequate reasons for receiving the additional evidence and marked documents and correctly analysed the evidence and came

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to a fair conclusion thereby there is no any illegality or perversity in the judgment passed by the first appellate court and the second appeal is liable to be dismissed.

16. This Court heard both sides and perused the records.

17. In this case, there is no dispute in respect of relationship between the parties. The plaintiffs' father is the first defendant and he is entitled to A schedule property through partition deed dated 15.09.1978. As far as B and C schedule properties are concerned, according to the plaintiffs, those properties were purchased by the first defendant from and out of the income of the joint family properties and the same was denied by the defendants. According to the defendants, the B schedule property was purchased by the first defendant through his separate income ; C schedule property was purchased by the fifth defendant in the name of her minor son, the seventh defendant through her funds. The Trial Court dismissed the suit by holding that B and C schedule properties are separate properties of the defendants 1 & 7 and those properties are not available for partition. As far as A schedule property is concerned, it is also separate property of the first defendant, thereby declined to grant partition over the properties and dismissed the suit. Whereas the plaintiffs have preferred an appeal before the first appellate court. During pendency of the appeal, they also filed an application in IA No.257 of 2005 to receive the additional

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documents as additional evidence and the same was allowed by the first appellate court and the same were marked as Ex.A6 to Ex.A9. By relying upon those documents, the first appellate court reversed the judgment of the trial court by setting aside the decree and judgment passed by the trial court and decreed the suit and granted partition. Though the first appellate court has given reasons for receipt of those documents as additional evidence after receipt of those documents has not given an opportunity to the respondents in that appeal to dispute the said documents. It is well settled law that production of documents is different from proving the contents of the documents and in order to prove the contents of the documents, oral evidence is necessary and without examining witnesses, the first appellate court straightaway marked those documents and relied upon those documents and rendered findings based on the documents. There are no reference in the pleadings about the said documents which were received as additional evidence by the first appellate court. Thereby the respondents have no occasion to deny the said documents. According to the respondents in the said appeal, the properties are separate properties, therefore, to prove the said documents received as additional evidence, oral evidence is very essential. As per Order 41 Rule 28 of CPC, the first appellate court has to take evidence or remit back the matter for recording the evidence in respect of the additional evidence received by the first appellate court. In this case, the first appellate court has complied the provisions of Order 41 Rule 27 of CPC by giving reasons for receipt of those documents. However, failed to follow the

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procedure under Order 41 Rule 28 of CPC and without giving opportunity to the respondents to defend the additional evidence received, the first appellate court had rendered the findings. Therefore, the judgment and decree passed by the first appellate court are not in consonance under Order 41 Rule 28 and 29 of CPC. Therefore, it is appropriate to set aside the judgment and decree passed by the first appellate court and remit back the matter for fresh consideration by giving opportunity to both the parties to adduce oral evidence in respect of the documents received as additional evidence.

18. Accordingly, this Second Appeal is Allowed ; the decree and judgment dated 18.10.2005 passed in A.S. No.11 of 2005, on the file of the Principal District Court, Cuddalore, is set aside and the matter is remitted back to the first appellate court for fresh consideration by giving opportunity to both the parties to adduce oral evidence in respect of additional evidence received by the first appellate court and the first appellate court is directed to dispose of the appeal within a period of four months from the date of receipt of a copy of this Judgment. No costs.

16-11-2026

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

1. The Principal District Court, Cuddalore,

2. The Principal Subordinate Court, Cuddalore.

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

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P.DHANABAL, J.

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