



WEB COPY

SA No. 79 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 79 of 2021 and
CMP No.1717 of 2021**

1. Rajalakshmi
W/o.Late Palanisamy
2. Velmurugan
S/o.Late Palanisamy, Res At Kuttaiyur,
Appellants 1 and 2 are residing at
Malaiveppankuttai, Uthiragidi Kaval Village,
Sendamangalam Taluk Namakkal Dist.

..Appellant(s)

Vs

Krishnaveni
W/o.Subramanian, 32a, Sevanthalingapuram
Village, Mursiri Taluk, Trichy District

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree of the Learned Additional District Judge, Namakkal dated 06.07.2020 in AS No.37/2019 confirming the Judgment and Decree of the learned Principal Subordinate Judge, Namakkal dated 02.03.2019 in OS No.53/2016.

For Appellant(s): Mr. K.A.Mariappan

For Respondent(s): Sole Respondent - No Such Addressee



JUDGMENT

The unsuccessful defendants are the appellants herein. The respondent herein/ plaintiff filed a suit in O.S.No.53 of 2016 for partition against the appellants, who are her mother and brother, seeking 1/3 share in the suit property. The said suit was decreed by the Trial Court and the appeal in A.S.No.37 of 2019 filed by the appellants/defendants was also dismissed. Aggrieved by the concurrent findings of the courts below, the defendants have come before this court.

2. According to the respondent/plaintiff, the suit property belonged to her father Palanichamy and the appellants 1 and 2 are her mother and brother respectively. The said Palanichamy died intestate leaving behind the plaintiff and the defendants as his legal representatives. Therefore, claiming 1/3 share in the suit property, the present suit has been laid.

3. The appellants/defendants filed a written statement and resisted the suit on the ground that the above said Palanichamy performed marriage of the plaintiff in a grand manner with all marriage presentations and therefore, the claim made by the plaintiff over the suit properties is not maintainable. It was also pleaded by the defendants that in the year 1995, Palanichamy borrowed a sum of Rs.5,00,000/- from one Chengamalai to meet his medical expenses and



it was repaid by the 2nd defendant. Therefore, the plaintiff is entitled to share the burden of repayment of the said borrowed amount. The defendants further stated that the suit property was a rough land and the second defendant, by borrowing a sum of Rs.2,00,000/-, developed the land and made it fit for cultivation. Hence, the plaintiff is bound to share the burden of repayment of the said amount. In the year 2009, the second plaintiff borrowed a sum of Rs.70,000/- from one Subramanian, a member of Panchayat and put up pump set in the suit property and the plaintiff is bound to contribute her 1/3 share in repayment of the said amount by the 2nd defendant.

4. Before the Trial Court, the plaintiff was examined as PW1 and 5 documents were marked as Ex.A1 to Ex.A5 on her side. The 2nd defendant was examined as DW1 and one Chengamalai was examined as DW2. On the side of the defendants 3 documents were marked as Ex.B1 to Ex.B3.

5. The Trial Court, on appreciation of evidence available on record, came to the conclusion that the plaintiff was entitled to 1/3 share in the suit property and passed preliminary decree. Aggrieved by the same, the appellants/defendants preferred an appeal in A.S.No.37 of 2019 on the file of the Additional District Judge, Namakkal and the first appellate court confirmed the findings of the Trial Court. Aggrieved by the concurrent findings of the courts below, the appellants/defendants have preferred the instant second appeal.



6. The learned counsel for the appellants/defendants would submit that the defendants borrowed the amounts to meet the medical expenses of deceased Palanichamy and to develop the land and hence, the plaintiff is bound to contribute to the extent of 1/3 share in repayment of the family debts. According to the learned counsel for the appellants, both the courts below failed to take into consideration the family debt incurred by the defendants and granted preliminary decree for partition, without directing the plaintiff to share the liability of the repayment of loan amounts.

7. A perusal of the pleadings would indicate that there is no dispute with regard to the relationship of the parties. The plaintiff is the daughter of first defendant and sister of the 2nd defendant. The father of the plaintiff Palanichamy is no more. The properties were originally owned by Palanichamy and he died intestate. In such circumstances, there is no difficulty in coming to the conclusion that the plaintiff is entitled to 1/3 share in the property left by the deceased Palanichamy.

8. In the written statement, the defendants raised three points.

i) The deceased Palanichamy borrowed a sum of Rs.5,00,000/ from one Chengamalai in the year 1995 by executing two promissory notes, which were marked as Ex.B2 and Ex.B3 and hence, the plaintiff is liable to share the burden of repayment.



ii) The defendants borrowed a sum of Rs.2,00,000/- and developed the suit property and made it fit for cultivation and hence, the plaintiff is entitled to share the burden of repayment of the said amount.

iii) A sum of Rs.70,000/- was borrowed by the 2nd defendant from one Subramanian for the purpose of putting up pump set in the suit property and the plaintiff is liable to contribute her proportionate share in repayment of the said amount.

9. As far as the borrowal of Rs.2,00,000/- for the purpose of developing the property and a sum of Rs.70,000/- from one Subramani are concerned, the defendants have not produced any documentary evidence, except the interested testimony of DW1. In the absence of any acceptable evidence to show that the defendants incurred debt for the purpose of developing the suit lands and put up pump set in the suit lands, the plaintiff cannot be directed to share the burden of repayment of the said amounts.

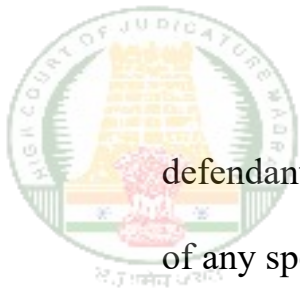
10. As far as the contention raised by the defendants that Palanichamy borrowed a sum of Rs.5,00,000/- from one Chengamalai is concerned, in order to prove the said plea, the defendants examined the said Chengamalai as DW2 and through him two promissory notes executed by Palanichamy for a sum of Rs.3,00,000/- and Rs.2,00,000/- were marked as Ex.B2 and B3 respectively. A perusal of evidence of DW2 would indicate that Palanichamy borrowed a sum



of Rs.5,00,000/- on 20.05.1995. He also deposed that the said two promissory notes were cancelled, after repayment of the amount in the year 2005.

Therefore, it is clear that the amount of Rs.5,00,000/- borrowed by Palanichamy to meet out his medical expenses was discharged in the year 2005 itself. When the suit was filed in the year 2016, the said debt was not subsisting. In such circumstances, the defendants are not entitled to claim that the plaintiff shall share the burden of repayment of the said amount.

11. It is also pertinent to note that, it is the case of the defendants that the amount of Rs.5,00,000/- was repaid by the 2nd defendant out of his own earnings. But, there is no plea in the written statement that the 2nd defendant, namely Velmurugan had independent source of income and out of his individual income, he repaid the said amount. Based on the answer given by the 2nd defendant as Dw1, the trial court came to a considered view that in the year 2005, the 2nd defendant was only 18 years old and therefore, the contention raised by the defendants that the 2nd defendant paid the entire amount in his individual capacity could not be accepted. Though the DW2 in his evidence had stated that in the year 2005, the amount borrowed by Palanichamy was repaid by the 2nd defendant, we cannot presume that the amount was repaid by the 2nd defendant out of his self earnings. After the death of Palanichamy, his estate has been enjoyed by the defendants and the plaintiff was married and residing with her husband. In such circumstances, the repayment made by the



defendants should have been out of the income from the estate. In the absence of any specific pleading that the amount was repaid by the defendants out of self earning, we cannot come to the conclusion that the amount was repaid by the 2nd defendant out of his self earning, that too when he was only 18 years old. The trial court as well as the first appellate court, on proper appreciation of the evidence available on record, came to the conclusion that the amount was repaid in the year 2005 itself and hence, the plaintiff could not be directed to share the burden of repayment. I do not find any perversity in the approach of the courts below.

12. In view of the above discussion, the submission made by the learned counsel for the appellants are not be appealable to this court and I do not find any substantial question of law to interfere with the concurrent findings reached by the first appellate court as well as the Trial court.

13. Accordingly, the second appeal stands dismissed, confirming the concurrent findings of the courts below. There shall be no order as to costs. Connected miscellaneous petition is closed.

11-03-2026

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

MST



To

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1. The Additional District Judge, Namakkal.
2. Principal Sub Judge, Namakkal.



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S.SOUNTHAR, J.

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