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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.209 of 2026
and
C.M.P.No.5619 of 2026

Kandasamy Gounder (Died)

1.K.Nishanth

2.K.Maheswari

3.Pavayammal

... Appellants

vs.

1.Marayammal

2.Masiriammal

3.Chellammal

4.R.Sahasranamam

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 28.08.2025 made in A.S.No.63 of 2006 on the file of the learned Principal District Court, Erode partly modifying the judgment and decree dated 28.10.2005 made in O.S.No.75 of 2002 on the file of the learned Sub Court, Bhavani by allowing this Second Appeal.



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For Appellants : Mr.N.Manoharan

J U D G M E N T

The legal heirs of unsuccessful 1st defendant are the appellants.

2. The respondents 1 and 2 filed a suit against the deceased Kandasamy Gounder and respondents 3 and 4 seeking Partition of their 1/4th share each. The Trial Court partly decreed the suit by granting decree for 1/4th share each to the plaintiffs in respect of Item-1, 3, 4, 5 and 6. The suit was dismissed in respect of Item-7. As far as Item-2/Dwelling House is concerned, the partition was postponed till the male heir chose to partition the property. Aggrieved by the said order, the deceased 1st defendant Kandasamy Gounder filed an appeal. Pending appeal, he died. Therefore, the appellants herein were brought on record as testamentary heirs of Kandasamy Gounder. The First Appellate Court partly allowed the appeal and modified the decree passed by the Trial Court by declaring 1/4th share to each of the plaintiffs in Item Nos.1 to 6. The suit was dismissed in respect of Item No.7. Aggrieved by the said judgment and decree, the appellants, who are claiming under the Will executed by deceased 1st defendant have come before this Court by way of this second appeal.



3. According to the respondents 1 and 2/plaintiffs, suit properties are ancestral properties and the same was allotted to the share of their father-Kandasamy Gounder in a family Partition Deed dated 08.07.1976 marked as Ex.A1. The said Kandasamy Gounder married the 2nd defendant-Chellammal and they got three children namely the plaintiffs and plaintiff's deceased brother-Appachi Gounder. The plaintiff's brother Appachi Gounder died as a Bachelor and therefore, the mother of the plaintiffs namely Chellammal is entitled to 1/4th share in the suit properties. It was also claimed by the plaintiffs that later on there was strained relationship between the 1st defendant and 2nd defendant and 1st defendant-Kandasamy Gounder started living with another lady and acted against the interest of the plaintiffs. Therefore, they were constrained to file a suit for partition claiming 1/4th share each.

4. The suit was resisted by Kandasamy Gounder by filing a written statement wherein, he claimed that properties allotted to him under family partition are his separate properties. It was further claimed by him that the marriage of the 1st plaintiff and 2nd plaintiff were celebrated by 1st defendant in a grand manner in the year 1991 and 1999. For the purpose of celebrating the marriage, the 1st defendant borrowed money from the third parties. It was



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also pleaded that at the time of marriage, there was a family arrangement and plaintiffs gave up their right over the family properties. It is also pleaded by him that from the date of family arrangement in the year 1991, he has been in possession and enjoyment of the suit property exclusively. On these pleadings, the 1st defendant sought for dismissal of the suit.

5. The 2nd defendant-mother of the plaintiffs filed a written statement submitting to the decree.

6. Before the Trial Court, 1st plaintiff was examined as PW.1 and 6 documents were marked on the side of the plaintiffs as Exs.A1 to A6. The 1st defendant-Kandasamy Gounder was examined as DW.1. The defendants 2 and 3 were examined as DW.4 and DW.5. Two other persons were examined as DW.2 and DW.3. On behalf of the defendants, 7 documents were marked as Exs.B1 to B7.

7. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the suit properties, which were allotted to Kandasamy Gounder in the family partition were ancestral properties and therefore, the plaintiffs are entitled to 1/4th share in



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the suit properties. As far as the 2nd item of the suit property-Dwelling House is concerned, the Trial Court held that till the male coparcener chose to divide the property, the right of the plaintiffs seeking partition shall be postponed.

8. Aggrieved by the said judgment and decree, the deceased 1st defendant filed an appeal in A.S.No.63 of 2006 on the file of the Principal District Court, Erode. Pending first appeal, the 1st defendant died and appellants herein were brought on record as testamentary heirs of 1st defendant. The 3rd appellant herein said to have married Kandasamy Gounder and appellants 1 and 2 were born to said Kandasamy Gounder and 3rd appellant.

9. Since the Kandasamy Gounder's first wife namely 2nd defendant is still alive, any marriage between the Kandasamy Gounder and 3rd appellant will not confer any legal status of wife to 3rd appellant. Therefore, the appellants 1 and 2 can at the most be treated only as children born out of void marriage.



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10. The First Appellate Court partly allowed the appeal filed by the appellants and modified the Trial Court judgment by decreeing the suit in respect of Item 1 to 6 and dismissing the suit claim in respect of 7th Item of the suit property, which was sold to 3rd defendant. Taking into consideration, the deletion of Section 23 of the Hindu Succession Act, 1956 by Central Act, 39 of 2005, the First Appellate Court held that the plaintiffs are entitled to 1/4th share in Item-2 also. Therefore, a decree was passed by the First Appellate Court granting 1/4th share each to the plaintiffs in respect of Item Nos.1 to 6. Aggrieved by the said judgment and decree, the appellants have come before this Court.

11. The learned counsel appearing for the appellants would submit that the properties allotted to Kandasamy Gounder in the family partition shall be treated as his separate properties. Therefore, the plaintiffs are not entitled to any share in the properties of Kandasamy Gounder. In support of the said contention, he relied on the judgment of the Apex Court in *Angadi Chandranna vs. Shankar and others* reported in **2025 Live Law (SC) 494**.

12. The learned counsel further submitted that Kandasamy Gounder executed a Will bequeathing the entire suit properties in favour of the



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appellants 1 and 2. Therefore, they have got absolute right over the suit properties.

13. As far as ancestral properties are concerned, in case of partition among coparceners, the allotment of coparcenary property in favour of one of the coparcenar is not only for his benefit but also for the benefit of the entire inner coparcenary headed by him. Therefore, the allotment of property in a partition is not only for the benefit of party to the partition and also his sons and daughters, who acquired right in the coparcenary property by birth. It is not in dispute in the present case partition had taken place in the year 1976 between Kandasamy Gounder and his brother.

14. In *Angadi Chandranna* case cited by learned counsel for appellant, in a family partition suit properties were allotted to one C.Thippeswamy in a partition between him and his brothers. Subsequently, he sold the properties to his divided brother C.Jayaramappa (D1 in said case). The sons of C.Jayaramappa, filed suit claiming partition over the said property. The Court held the suit property acquired by C.Jayaramappa (D1, therein), under sale by his brother C.Thippeswamy shall be treated as his separate property. Therefore, the Apex Court taking into consideration, one



of the sharer sold the partitioned share to another sharer held that the said property at the hands of purchaser shall be treated as separate property. The sons of purchasers claimed that the said property was purchased with the help of funds provided by joint family nucleus and the same was factually rejected. Hence, the said case law will not support the case of the appellant herein.

15. A Three Member Bench of Apex Court in ***Vineeta Sharma vs Rakesh Sharma*** reported in ***2020 (9) SCC 1*** categorically explained the floating nature of the coparcenary properties, the relevant portion reads as follows:-

“38. In Rohit Chauhan v. Surinder Singh & Ors., MANU/SC/0692/2013 : (2013) 9 SCC 419, the concept of coparcenary of sharing equally with others and no definite share, was discussed thus:

“11. We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr Rao. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before the commencement



of the *Hindu Succession (Amendment) Act, 2005*, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. **We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.**”

16. In *Ranganayakamma vs. K.S.Prakash* reported in (2008) 15 SCC 673, while considering the legal effect of birth of son to a Single Coparcener, the Apex Court observed as follows:-

“31. Even otherwise, in view of the well-settled principles of law that when a son gets a property from his father, as soon as sons are born to him, a joint family is constituted.”



17. In ***M.Yogendra and others vs. Leelamma N. and others*** reported in **(2009) 15 SCC 184**, the Apex Court referred about the revival of coparcenary when a son is born to single coparcenar. The relevant observation reads as follows:-

“29. It is now well-settled in view of several decisions of this Court that the property in the hands of sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him. It is one thing to say that the property remains a coparcenary property but it is another thing to say that it revives. The distinction between the two is absolutely clear and unambiguous. In the case of former any sale or alienation which has been done by the sole survivor coparcener shall be valid whereas in the case of a coparcener any alienation made by the karta would be valid.”

18. In ***Rohit Chauhan vs. Surinder Singh and others*** reported in **(2013) 9 SCC 419**, while considering the floating nature of the coparcenary, the Apex Court observed as follows:-

“11. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are



further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.” (Emphasis Supplied)

19. In view of plethora of judgments, cited supra, wherein it was held that property allotted to a sharer shall remain as his separate property till his son (who acquires birth right) is born and on birth of son it will again acquire character of coparcenary property, I reject the submission of learned counsel for the appellants. The First Appellate Court also rightly referred to the judgment of the Apex Court in **Vineeta Sharma** case and came to the conclusion the plaintiffs are entitled to share in the suit properties. Therefore, I am unable to accept the first submission made by the learned counsel appearing for the appellants.

20. As mentioned earlier, the 3rd appellant said to have married Kandasamy Gounder during the subsistence of his marriage with 2nd



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defendant, therefore, she cannot acquire the status of legally wedded wife.

However, the appellants 1 and 2, who are the son and daughter of Kandasamy Gounder and the 3rd appellant, as the children born out of void marriage are entitled share in the 1/4th share allotted to deceased Kandasamy Gounder in the preliminary decree. The rights of the appellants 1 and 2 to claim the due share in the 1/4th share of the Kandasamy Gounder based on Will executed by him, can very well be agitated by the appellants before the Trial Court in the final decree proceedings. The First Appellate Court also in it's judgment reserved the said right. If any such claim is made by appellants, the same shall be adjudicated in accordance with law.

21. With this clarification, the Second Appeal stands dismissed. In the facts and circumstances of the case, there will be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

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Index : Yes
Speaking order : Yes
Neutral Citation : Yes
dm



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To

1.The Principal District Court,
Erode.

2.The Sub Court,
Bhavani.



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S.SOUNTHAR, J.

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