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AS No. 1 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

AS No. 1 of 2018

and

CMP.Nos.111 of 2018 & 2483 of 2022

1. Jayammal
2. Saravanan
3. Malar
4. Mohanasundaram

..Appellants

Vs

1. Parameshwari
2. Kavya (Major)
3. Priyam (major)

R2 and R3 are declared as Major and discharge the guardianship from 1st respondent (Mrs.Parameshwari) vide Court order dated 07.04.2026 in AS.No.1/2018.

..Respondents

Appeal Suit filed under Order 41 Rule 1 and Section 96 of the Code of Civil Procedure to set aside the judgement and decree dated 09/05/2017 passed in O.S.No.170 of 2011 on the file the II Additional District Court, Salem.



For Appellants:

Mr.N.Subramaniyan

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For Respondents:

Mr.C.Prakasam

JUDGMENT

(Judgment of the Court was delivered by C.V.Karthikeyan J.)

The defendants in O.S.No.170 of 2011 on the file of the II Additional District Court, Salem aggrieved by the judgment and decree dated 09.05.2017 had filed the present appeal.

2. The said suit in O.S.No.170 of 2011 had been filed by the respondents herein seeking partition of the suit schedule properties into twelve equal shares and to allot five such shares to the plaintiffs and also grant separate possession. They have also sought for the relief of declaration that the settlement deed dated 15.04.2010 executed by K.V.Perumal in favour of the 2nd defendant and also another sale deed dated 06.09.2010 executed by the 2nd defendant in favour of the 4th defendant as null and void.

3. The learned trial Judge by the judgment dated 09.05.2017 had decreed the suit in part and granted a preliminary decree allotting 5/12th share in item Nos.1 to 4 and in item No.6 of the suit properties. A declaration was also granted that the settlement deed dated 15.04.2010 and the sale deed dated



06.09.2010 are both null and void. The suit was dismissed with respect to item No.5 of the suit schedule property.

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4. In the plaint it had been contended that the 1st plaintiff is the wife of Late Senthil Kumar and the 2nd and 3rd plaintiffs are minor daughters of the 1st plaintiff. The 1st defendant was the second wife of the one K.V.Perumal. The Late husband of the 1st plaintiff, Senthil Kumar and the 2nd and 3rd defendants viz., Saravanan and Malar were sons and daughter of K.V.Perumal and the 1st defendant. K.V.Perumal died on 01.07.2010. It was contended that the father of K.V.Perumal viz., Venga Gounder owned ancestral properties which has been described in the plaint as item No.1. K.V.Perumal had two wives. The first wife pre-deceased him on 06.03.2010 and her only daughter Jayammal also pre-deceased her mother. K.V.Perumal thereafter married the 1st defendant and there were two sons and one daughter viz., late husband of the 1st plaintiff and the 2nd defendant and 3rd defendant. It had been further contended that Venga Gounder, K.V.Perumal, Senthil Kumar and Saravanan constituted a Hindu joint family. They then toiled hard in the farm lands described in item No.1 property and earned sufficient income. It had been contended that from the joint family nucleus item Nos.2 to 6 of the suit properties were purchased in the names of various persons. All the properties had been thrown into common nucleus. On the death of Venga Gounder his legal heirs became entitled to undivided 1/3rd share each in the suit properties. It had been further contended that



K.V.Perumal without division of the properties in metes and bounds had executed a settlement deed in favour of the 2nd defendant and the 2nd defendant under the strength of the settlement deed had sold the property allotted under the settlement deed to the 4th defendant by the sale deed. Those two documents are sought to be declared as null and void by the plaintiffs who also have shares in the properties.

5. In the written statement it had been contended that the late husband of the 1st plaintiff was not a member of the joint Hindu family, since even in the year 2002 there was division of properties among Senthil Kumar and the 2nd defendant and they were put in possession of their respective shares. Senthil Kumar was allotted item Nos.4 and 6 which he had sold along with K.V.Perumal on 26.05.2004 to one Lingeswari. The total area of land which was sold was 4.42 acres. The 2nd defendant was allotted item Nos.1, 2 and 3. Item No.5 was purchased by the 1st defendant out of her income and she was in possession and enjoyment of the property. It had been stated that item No.1 cannot be construed as joint family property. On the death of Senthil Kumar, the 1st defendant as his mother and the plaintiffs became entitled to a share in his properties as Class – I legal heirs. The 1st defendant demanded a share and the plaintiff issued a notice as though no partition had taken place. It is further contended that as a counter blast, the present suit was filed.



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6. The learned trial Judge had framed five issues based on the pleadings.

During trial, three witnesses were examined on the side of the plaintiffs and Exs.A1 to A13 were marked. Exs.X1 to X11 were marked through revenue officials. On the side of the defendants one witness was examined and Exs.B1 to B8 were marked.

7. On the basis of the evidence adduced and pleadings, the suit had been decreed in part. A preliminary decree was granted allotting 5/12th share in item No.1-4 and 6 and the suit was dismissed with respect to item No.5. The settlement deed executed by K.V.Perumal in favour of the 2nd defendant and the sale deed executed by the 2nd defendant in favour of the 4th defendant were both declared as null and void. Questioning these findings, the defendants filed the present appeal.

8. The learned counsel for the appellants pointed out that while the learned trial Judge had framed issues it was necessary to answer each one of the issues framed. However, a perusal of the judgement shows that on and from paragraph No.7 onwards, the trial Court had reduced the plaint and thereafter had reduced the averments in the written statement and thereafter the evidence of the witnesses and finally in paragraph No.16, the learned trial Judge has



observed as follows:-

16. After going through the evidence on record and the submissions made on either side, this Court has to analyze only 2 points i.e.,

(i) whether the defendants have proved the alleged oral partition said to have been taken place in the year 1992 during the lifetime of the deceased Senthil and K.V.Perumal and

(ii) whether the plaintiffs have proved item No.5 of the suit properties are also joint family properties of the plaintiffs and the defendants as alleged in the plaint.

9. It is pointed out by the learned counsel for the appellants that when four separate issues have been framed, even without considering the submissions in the written statement, the issues framed were thereafter reduced to two separate points and those two points were answered by the learned trial Judge. It is contended that the entire trial procedure, rather the manner in which evidence was analysed requires re-consideration, as each one of the issues have not been answered as required under the Code of Civil Procedure. Order XIV Rule 2 of the Code of Civil Procedure reads as follows:-

2. Court to pronounce judgment on all issues.--

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof



may be disposed of on an issue of law only, it may try that issue first if the issue relates to --

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the Settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

10. Necessarily when five issues were framed, if the evidence overlaps, the trial Court can take a decision to discuss all the issues together. But, a finding must be given with respect to each one of the issues. In the instant case, after recording pleadings and after reducing the evidence, the trial Court framed two separate points for consideration and thereafter proceeded to answer those two points over looking the issues framed. The necessity of framing issues is to bring focus to the parties on the points they should tender evidence. The issues are framed on the points asserted and points denied. It is on those aspects evidence will have to be tendered. Order XLI Rule 23 reads as under:-

23. Remand of case by Appellate Court.-- *Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, which directions to re-*



admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

11. In the instant case, we find that very unfortunately the learned trial Judge had not taken up the task of answering each one of the issues. It is for that reason we refrain from entering into a discussion on the merits of the case or the merits of the evidence adduced and remand the matter back to the trial Court to answer each one of the issues already framed.

12. Before this Court the defendants have filed an application to introduce additional documents. The said application may be presented before the trial Court. On consideration of the facts and circumstances, the trial Court may take appropriate decision regarding the same. If the additional documents are introduced, then if any further evidence required the same may be recorded.

13. The judgment under appeal has to be necessarily set aside. The Registry to forward all the original records back to the trial Court forthwith.

14. In the result, the appeal stands **allowed**. The judgment and decree in O.S.No.170 of 2011 on the file of the II Additional District Court, Salem is set aside. There shall be no order as to costs. A time period of three (3) months is



granted to comply with the directions of this Court. Consequently, the connected miscellaneous petitions in CMP.No.111 of 2018 and CMP.No.2483 of 2022 stand closed.

(C.V.K.,J.) (K.R.S.,J.)
21-04-2026

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

DSA

To

The II Additional District Judge,
Salem.



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**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

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