



SA Nos.171 to 173 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12-03-2026

PRONOUNCED ON : 18-03-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

**SA Nos.171 to 173 of 2010
and M.P.Nos.1 + 1 of 2010**

S.A.No.171 of 2010

- 1.Abdul Razak (Died)
2. Jamila Bi
3. Meharun Bi
4. Asina
5. Shabeen
6. Shabudin
7. Sharpudeen

... Appellant/3rd Plaintiff

... Appellants 2 to 7 /

LRs of 1st Appellant

Vs.

- 1.Adam Sahib
- 2.Hussain Khan
- 3.Ummar Ali Khan
- 4.Muhamed Jan

... Respondents/Defendants 1 to 3

... 4th respondent/2nd Plaintiff

Appellants 2 to 7 brought on record as LRs of the deceased sole appellant viz., Abdul Razaak vide Court [CVKJ] order dated 17.07.2025 made in CMP Nos.14873, 14874 & 14875 in SA Nos.171, 172 and 173 of 2010.

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned Principal Subordinate Judge, Krishnagiri, dated 28.01.2009 in A.S. No.79 of 2006 confirming the Judgment and Decree of the learned District Munsif, Krishnagiri, dated 18.09.2006 in O.S. No.229 of 1998.



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SA Nos.171 to 173 of 2010

For Appellants:

Mr. V.Nicholas

For Respondents:

Mr.S.Kanniah (for R1)

No appearance (for R2 to R4)

S.A.No.172 of 2010

1.Abdul Razak (Died)

... Appellant/5th Defendant

2. Jamili Bi

3. Meharun Bi

4. Asina

5. Shabeen

6. Shabudin

7. Sharpudeen

... Appellants 2 to 7 /

LRs of 1st Appellant

Vs.

1. Ummar Ali Khan

... 1st Respondent/Plaintiff

2. Adham Sahib

3. Hussain Khan

4. Mohamed Jan

5. Gulzar Begum

6. Jameela

7. Piyari Bi

8. Azeema Bi

9. Rahamath Bi

10. Zamruth Bi

11. Imam Bi

12. Noorjan

... Respondents 2 to 12 /

Defendants 1, 2, 4 & 6 to 13

Appellants 2 to 7 brought on record as LR's of the deceased sole appellant viz., Abdul Razaak vide Court [CVKJ] order dated 17.07.2025 made in CMP Nos.14873, 14874 & 14875 in SA Nos.171, 172 and 173 of 2010.

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned Principal



SA Nos.171 to 173 of 2010

Subordinate Judge, Krishnagiri, dated 28.01.2009 in A.S. No.80 of 2006 confirming the Judgment and Decree of the learned District Munsif, Krishnagiri, dated 18.09.2006 in O.S. No.314 of 1998.

For Appellants:	Mr. V.Nicholas
For Respondents:	Mr.S.Kanniah (for R2)
	No appearance (for R1, R3 to R12)

S.A.No.173 of 2010

1.Abdul Razak (Died)	... Appellant/Plaintiff
2. Jamili Bi	
3. Meharun Bi	
4. Asina	
5. Shabeen	
6. Shabudin	
7. Sharpudeen	... Appellants 2 to 7 / LRs of 1 st Appellant

Vs.

1. The District Collector, Krishnagiri.	
2. The Tahsildar, Krishnagiri.	
3. The Village Administrative Officer, Ponnappa Kavubipalli Village, V.Madapalli Post, Krishnagiri Taluk and District.	... Respondents/Defendants

Appellants 2 to 7 brought on record as LR's of the deceased sole appellant viz., Abdul Razaak vide Court [CVKJ] order dated 17.07.2025 made in CMP Nos.14873, 14874 & 14875 in SA Nos.171, 172 and 173 of 2010.



SA Nos.171 to 173 of 2010

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree of the learned Principal Subordinate Judge, Krishnagiri, dated 28.01.2009 in A.S. No.8 of 2007 confirming the Judgment and Decree of the learned District Munsif, Krishnagiri, dated 18.09.2006 in O.S. No.137 of 2000.

For Appellants:	Mr. V.Nicholas
For Respondents:	Mr.P.Gurunathan (for R1 to R3) Additional Government Pleader

Common Judgment

The captioned Second Appeals have been filed against the common Judgment and Decree of the learned Principal Subordinate Judge, Krishnagiri, dated 28.01.2009 in A.S. Nos. 79 & 80 of 2006 and 8 of 2007 confirming the common Judgment and Decree of the learned District Munsif, Krishnagiri, dated 18.09.2006 in O.S. Nos.229, 314 of 1998 and 137 of 2000.

2. S.A.No.171 of 2010 had been filed against the judgment in A.S.No.79 of 2006, by the 3rd Plaintiff in OS.No.229 of 1998 on the file of the District Munsif, Krishnagiri. The said suit was filed for a declaration that the plaintiffs 2 and 3 therein are the absolute owners of the suit schedule property viz., 0.98 Cents in S.N.36/2 and 0.70 Cents in S.No.36/3 in Egadathampalli Village & Taluk, Krishnagiri District and



SA Nos.171 to 173 of 2010

for a permanent injunction restraining the defendants therein/respondents herein from interfering with the peaceful possession and enjoyment of the plaintiffs 2 and 3, in the suit schedule property.

3. S.A.No.172 of 2010 had been filed against the judgment in A.S.No.80 of 2006, which in turn had been filed against the judgment in O.S.No.314 of 1998. The said O.S.No.314 of 1998 was filed by one Ummar Ali Khan, the 1st respondent herein for a declaration of title in respect of the aforesaid property which is the suit property in O.S.No.229 of 1998 also and for a permanent injunction, restraining the appellant and the other defendants in the said suit from interfering in his peaceful possession.

4. S.A.No.173 of 2010 has been filed against the judgment in A.S.No.8 of 2007, which in turn was filed against the judgment in O.S.No.137 of 2000. The said suit was filed by the appellant against the respondents herein (the revenue authorities) for an injunction restraining the respondents from transferring patta either in the name of the said Ummar Ali Khan or anybody else.



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5. The suits filed by the appellant [O.S.No.229 of 1998 and 137 of 2000], were dismissed and the suit filed by the said Ummar Ali Khan, was allowed, by the learned District Munsif, Krishnagiri, vide common Judgment dated 18.09.2006. The appellant therefore filed the above referred first appeals before the learned Principal Subordinate Judge, Krishnagiri and all the appeals were dismissed vide common Judgment dated 28.01.2009, as against which, the captioned Second Appeals have been filed.

6. The facts leading to the filing of the above Second Appeals, are as follows:

(i) Admittedly, the suit properties belonged to one Kathija Bi, who is the mother of the appellant and was the 1st plaintiff in O.S.No.229 of 1998. The 3rd plaintiff/appellant herein claimed right over the suit properties by virtue of an oral gift said to have been made by the said Kathija Bi to him and the 2nd plaintiff -Muhamed Jan in O.S.No.229 of 1998.



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(ii) Ummar Ali Khan, who was the 3rd defendant in O.S.No.229 of 1998 and the plaintiff in O.S.No.314 of 1998 claimed title by virtue of a sale deed executed in his favour on 08.09.1997 by one Hussain Khan, who was the 2nd defendant in both the suits. Hussain Khan, in turn claimed right over the property pursuant to a sale deed dated 09.10.1995 executed by one Adham Sahib, who was also a son of the said Kathija Bi. Adham Sahib claimed title over the property pursuant to an oral partition entered into between himself, his mother Kathija Bi and other family members. Therefore, the dispute relating to the property is in effect between the appellant-Abdul Razak and the purchaser Ummar Ali Khan.

(iii) All the three suits were tried together and a common judgment was passed by the trial Court. The trial Court accepted the case of Ummar Ali Khan and held that he had established his right over the disputed property.

(iv) The trial Court also found that the appellant who claimed title by virtue of an oral gift from his mother had not established the said gift;



SA Nos.171 to 173 of 2010

that the oral gift cannot be believed as it was allegedly executed after the suit was filed by Ummar Ali Khan and that the said Kathija Bi, the donor of the property was not in a sound state of mind at the relevant time, as could be seen from the evidence of the witnesses.

(v) The appellate Court confirmed the finding on facts that the appellant had not established his right over the suit schedule property by proving the oral gift and that the said Ummar Ali Khan has established his right over the property and the fact that he was in possession from the date of purchase viz., from 1997.

7. As stated above, all the second appeals were filed in the year 2010 and none of the second appeals were admitted and they are listed under the caption, 'notice of motion'. The following substantial questions of law have been proposed in each of the second appeals.

S.A.Nos.171 and 172 of 2010:

“a) As an acquisition of the property by a female could be treated as her separate property and that it is not in dispute that the suit properties were purchased by the 1st plaintiff (Kathija Bi-3rd defendant in S.A.No.172 of 2010) and as such they are her separate properties whether the Courts below are correct in holding that the said properties



are the joint family properties.

b) When the oral partition under which the suit properties which were purchased by the 1st plaintiff (Kathija Bi-3rd defendant in S.A.No.172 of 2010) were allotted to 1st defendant was not established by any evidence and as such he himself has no right over the said properties whether the Courts below are correct in accepting the sale deed executed by him in favour of the 2nd defendant.

c) When the wish of the donor to make a gift, the acceptance of the donee either impliedly or expressly the taking of possession of the subject matter of the gift either actually or constructively or the essential requisites to make a gift valid under the Mohammedan Law and no written document is necessary for the same and as such the settlement deeds executed by the 1st plaintiff (Kathija Bi-3rd defendant in S.A.No.172 of 2010) in favour of plaintiffs 2 and 3 (4th and 5th defendants in S.A.No.172 of 2010), contained all these salient features whether the Courts below are correct in not accepting the said settlement deeds.”

S.A.No.173 of 2010

“a) As an acquisition of the property by a female could be treated as her separate property and that it is not in dispute that the suit properties were purchased by the mother of the plaintiff and as such they are her separate properties and therefore she is entitled to patta whether the Courts below are correct in declining to accept the claim of the plaintiff regarding grant of patta.

b) When the oral partition under which the suit properties which were purchased by the mother of the plaintiff were allotted to Adham Sahib was not established by any evidence and as such he himself has no right over the said properties and therefore Hussain



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SA Nos.171 to 173 of 2010

Khan who purchased the property from Adham Sahib and in turn Ummar Ali Khan who purchased the properties from Hussain Khan are not entitled to claim any right over the suit properties whether the Courts below are correct in not accepting the claim of the plaintiff.

c) When all the salient features regarding a gift under the Mohammedan Law have been established by the plaintiff and therefore he and his brother Muhamed Jan are entitled to the suit properties under the settlement deeds executed by Kathija Bi in their favour whether the Courts below are correct in not accepting the claim of the plaintiff with regard to the issuance of patta to Ummar Ali Khan.”

8. From the above discussion, it could be seen that the dispute with regard to the suit schedule property is between Ummar Ali Khan, who is one of the respondents in S.A.Nos.171 & 172 of 2010 and Abdul Razak, the appellant in all the appeals. Ummar Ali Khan claimed that he had purchased the property in the year 1997 from Hussain Khan, who in turn purchased the property from Adham Sahib (the 1st respondent in S.A.No.171 of 2010), who is the brother of the appellant. Adham Sahib had claimed title over the property pursuant to an oral partition said to have been executed between himself and other family members including his mother Kathija Bi. The appellant claimed that the said Kathija Bi, who is the original owner of the suit schedule properties had executed a gift in the year 1998. The Courts below found on facts that the appellant



SA Nos.171 to 173 of 2010

had not established the three essential requirements for a gift to be valid under the Mohammedan Law viz., (a) a declaration of the gift by the donor; (b) the acceptance either express or implied by the donee; and (c) delivery of possession of the property by the donor to the donee.

9. The Courts below found on facts that the said Kathija Bi was bedridden for about two months prior to her death. The appellant had also not established that possession was handed over to him by the said Kathija Bi and the Courts also noted that after the said Ummar Ali Khan filed OS.No.314 of 1998 on 12.10.1998, the appellant claimed that the said Kathija Bi made an oral gift on 26.10.1998 and she died four days later i.e., on 30.10.1998. In fact the appellant had not sought for setting aside the sale deed executed by Adham Sahib in favour Hussain Khan, who in turn executed the sale deed in favour of Ummar Ali Khan.

10. Ummar Ali Khan substantiated his claim by filing the sale deed executed by Adham Sahib in favour of Hussain Khan as Ex.B4 and the sale deed executed by Hussain Khan in his favour as Ex.B5. Ummar Ali Khan also had marked Ex.B1 dated 24.07.1990, Ex.B2 dated 23.04.1996



SA Nos.171 to 173 of 2010

and Ex.B3 to show that other family properties were sold by Kathija Bi and her sons by acting upon the oral partition.

11. In fact, the appellant had stated in his plaint that a suit was instituted, as Adham Sahib had created certain documents in favour of third parties. He had not chosen to challenge any of the sale deeds as stated above. For all the above reasons, the Courts below accepted the claim of Ummar Ali Khan as probable and disbelieved the alleged oral gift in favour of the appellant. The factual findings of the Courts below do not suffer from any infirmity whatsoever and in any case, the questions of law proposed by the appellant in effect do not raise any legal issues and are factual in nature and therefore, no substantial question of law arises for consideration.

12. As regards S.A.No.173 of 2010, it is seen that the suit was filed by the appellant to restrain the revenue authorities from issuing patta in favour of Ummar Ali Khan, but, patta was issued on 27.01.1999 i.e., much before the suit in O.S.No.137 of 2000 was instituted by the appellant. In any case, the revenue authorities have acted upon the sale



SA Nos.171 to 173 of 2010

deeds produced by Ummar Ali Khan and the issuance of patta in his favour cannot be faulted. Hence, this Court finds no merits in the above second appeals and accordingly, all the three Second Appeals are dismissed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

18-03-2026

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

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To

1. The Principal Subordinate Judge,
Krishnagiri.
2. The District Munsif,
Krishnagiri.
3. The District Collector,
Krishnagiri.
4. The Tahsildar,
Krishnagiri.
5. The Village Administrative Officer,
Ponnappa Kavubipalli Village,
V.Madapalli Post,
Krishnagiri Taluk and District.



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SA Nos.171 to 173 of 2010

SUNDER MOHAN J.

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**Pre-delivery Common Judgment in
SA Nos.171 to 173 of 2010**

18-03-2026

Page 14 of 14