



A.S.No.218 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2026

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

A.S.No.218 of 2019

and

C.M.P.Nos.8341 of 2019 & 5355 of 2026

M.D.Lakshmipathi Naidu

... Appellant

Vs.

1.M.D.Jagapathy Naidu

2.M.Barathi

3.M.Srividhya

4.M.Vamsi Choudhry (minor)

R4 minor represented by his father guardian

M.D.Lakshmipathi Naidu

5.Santhosh R.

6.RekhDhoka

7.K.Vanitha

... Respondents

[R4 declared as Major and he is discharged from guardianship vide Court order dated 24.02.2026 in C.M.P.No.5259 of 2026]

Prayer : Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 05.10.2018 passed in O.S.No.73 of 2015 on the file of the District Judge, District Court No.II, Kanchipuram.



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For Appellant : Mr.S.Koteswara Rao
For R1 : Mr.S.Kamadevan
For R5 to R7 : Mr.Ralph V.Manohar
For R2 to R4 : No such person (notice unserved)

J U D G M E N T

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Challenging the decree and judgment of the learned District Judge, District Court No.II, Kancheepuram, dated 05.10.2018, passed in O.S.No.73 of 2015, granting a preliminary decree in favour of the plaintiff in respect of half share in the suit schedule properties, the 1st defendant in the suit has filed the above Appeal.

2.For the sake of convenience, the parties shall be referred to as per their ranking before the trial Court.

3.The 1st defendant is the elder brother of the plaintiff. The defendants 2 to 4 are the wife and children of the 1st defendant.



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4. Brief facts of the plaintiff's case is as follows :

The suit 'A' Schedule property and 'B' Schedule property were purchased by the plaintiff's father M.N.Doraisamy and mother Saraswathi on 09.06.1982. The suit 'C' Schedule property was purchased by both of them on 06.08.1983. The plaintiff and the 1st defendant are the only legal heirs of their parents Doraisamy and Saraswathi. The plaintiff's father died intestate on 16.09.2005 and his mother pre-deceased father on 16.04.1993. Therefore, the plaintiff is entitled to equal share in all the suit schedule properties. Though the 1st defendant was his elder brother, the title deeds were handed over by the parents to the plaintiff. As the plaintiff was away from the family due to his job, the 1st defendant obtained a Legal Heirship Certificate, as if he is the only legal heir of his parents, and sold the suit 'A' Schedule property and 'B' Schedule property in favour of defendants 5 and 6 under registered sale deeds dated 18.09.2008 and the 5th defendant, in turn, sold A-Schedule property to the 7th defendant. Hence, it is his contention that the sale is not binding on the share of the plaintiff. It is his contention that the plaintiff, being the co-sharer, is entitled to equal share. Similarly, it is the case of the plaintiff that C-Schedule property, which is



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situated at Andhra Pradesh, was also purchased by their parents. Though the said property was jointly mortgaged by the plaintiff, his father, and the 1st defendant for family necessities, the plaintiff has also paid Rs.2,00,000/- for discharging the said mortgage loan. Therefore, it is his contention that the plaintiff is entitled to equal share in C-Schedule property also. Hence, he filed the present suit for partition.

5.The 1st defendant filed a written statement, in which, admitting the relationship, it is contended that, as far as C-Schedule property is concerned, the same has been mortgaged by the plaintiff, the 1st defendant, and his father on 02.05.2003 in favour of one Srinivasulu for educational needs of the plaintiff. The plaintiff, after completion of education, joined in the services and is getting more than Rs.1,00,000/- by way of salary. The said mortgagee filed a suit in O.S.No.9 of 2005 on the file of the Principal Senior Civil Judge, Chittoor, and obtained a decree against the plaintiff, 1st defendant and their father. In execution proceedings in O.E.P.No.64 of 2009, the C-Schedule property was brought for sale and the same was sold in Court auction and the mortgagee himself purchased the property on 16.08.2009. It is his further contention that the 1st defendant filed a Civil



Revision Petition in C.R.P.No.871 of 2015 against the Execution Petition filed by the mortgagee, seeking permission to deposit the entire EP amount and the Court also granted permission by order dated 13.03.2015, permitting the 1st defendant to deposit the entire EP amount on or before 20.03.2015. Pursuant to the same, the 1st defendant borrowed money from his friends and relatives and deposited the entire EP amount of Rs.8,44,064/-. Thereafter, the auction sale in favour of the mortgagee was set aside. It is his further contention that, half of the C-Schedule property belongs to the mother and she has executed a Will in favour of the 2nd defendant on 15.01.1993, while she was in a sound disposing state of mind. Hence, according to the 1st defendant, the plaintiff has no right to claim his share in the C-Schedule property. A-Schedule and B-Schedule properties were in the name of the parents of the 1st defendant and the same were sold by the 1st defendant to discharge the family debts borrowed by his parents. Hence, he opposed the suit claim.

6.The defendants 2 to 4 adopted the written statement filed by the 1st defendant.



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7.The defendants 5 and 6 filed a written statement claiming that the plaintiff is not in possession and enjoyment of the properties. It is their contention that the 1st defendant produced a Legal Heirship Certificate as if he is the only legal heir of his parents. Believing the same, they purchased the properties from the 1st defendant and therefore, they are the *bona fide* purchasers. It is their further contention that one portion of the properties has already been sold to the 7th defendant and therefore, the plaintiff is not in possession of the properties and he cannot seek partition.

8.The 7th defendant also took a stand that she is a *bona fide* purchaser of A & B Schedule properties and the purchase was made only after obtaining legal opinion.

9.Based on the above pleadings, the trial Court has framed the following issues :

1. *Whether the plaintiff is entitled to half share in the suit properties ?*
2. *Whether the defendants 5 to 7 are bona fide purchasers or not ?*



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3. *Whether the plaintiff is entitled to decree as prayed for ?*

4. *To what relief the parties are entitled to ?*

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10. On the side of the plaintiff, P.W.1 was examined and Exs.A1 to A22 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs.B1 to B32 were marked.

11. Based on the evidence and materials on record, the trial Court, by its judgment and decree dated 05.10.2018, has granted a preliminary decree in favour of the plaintiff for half share in all the suit schedule properties and also held that the 1st defendant is entitled to half of the amount that has been incurred in the Execution Petition in discharging the mortgage loan in respect of the C-Schedule property.

12. Challenging the same, the present Appeal has been filed by the 1st defendant.

13. Now, the appellant/1st defendant has filed an application in C.M.P.No.5355 of 2026 under Order 41 Rule 27 of CPC for reception of certain documents as additional evidence in this Appeal.

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14.It is relevant to note that, prior to filing of the said application, the matter was referred to mediation many times. When the matter came before this Court on 12.01.2026, this Court suggested that the appellant shall receive a sum of Rs.10 Lakhs towards the expenses for discharging the mortgage loan. Again, when the matter came before this Court on 23.01.2026, the appellant/1st defendant and the 1st respondent/plaintiff were present in the Court and they sought specific time to negotiate with each other, as the only issue is with regard to the C-Schedule property and its division. Only on that request, the matter was adjourned to 05.05.2026. Thereafter, the present application under Order 41 Rule 27 CPC came to be filed by the 1st defendant.

15.In the application filed under Order 41 Rule 27 CPC, it is the contention of the appellant that he came to know that, apart from the suit schedule properties, his father has also left another immovable property, being a residential flat bearing No.18 in the Second Floor, in the building known as Padmavathi Apartment, Kennedy Nagar, Tirupathi, Andhra Pradesh, which has not been included by the plaintiff in the suit for partition.



According to the appellant, the said property has been purchased in the name of the plaintiff out of the joint family nucleus. It is stated that, since the plaintiff had informed that the property was sold by a financial institution, the same had not been included in the suit schedule. Now, according to the appellant, the said property also has to be included in the suit schedule. Therefore, he has sought to file the certified copy of the sale deed in favour of the plaintiff in respect of the flat, and the encumbrance certificate relating thereto, as additional evidence. Further, the certified copy of the valuation report of the C-Schedule property is also sought to be filed as additional evidence.

16.Learned counsel appearing for the appellant/1st defendant would submit that, though all the suit schedule properties were purchased by his parents, as far as A-Schedule and B-Schedule properties are concerned, they were sold by the 1st defendant in discharge of family debts. The C-Schedule property was under mortgage with one Srinivasalu and the mortgagee filed a suit for recovery of mortgage money. In that suit, the C-Schedule property was brought to auction and subsequently, in Court auction, the property was sold to the mortgagee itself. However, it is his contention that, only the



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appellant took steps and filed a revision as against the execution order before the High Court of Andhra Pradesh under Ex.B5 and deposited the entire EP amount. Therefore, it is his contention that the property has been redeemed only by the appellant. Further, it is his contention that the value of the C-Schedule property is now Rs.9,73,000/- as per the Valuation Certificate, sought to be filed as additional document. Hence, as far as C-Schedule property is concerned, the plaintiff has no right, whatsoever, to claim partition. According to him, when the plaintiff has not contributed anything for discharge of the mortgage, he cannot lay any claim over the C-Schedule property. As far as A-Schedule and B-Schedule properties are concerned, the same have been sold only for the joint family debts. The defendants 5 to 7, who are the purchasers, are in possession of the properties and the plaintiff is not in joint possession of the properties. Therefore, the suit is not maintainable. Further, yet another property is in the name of the plaintiff, which was also purchased out of the joint family funds and therefore, it has to be included in the suit schedule. Therefore, the additional documents sought to be filed are also relevant to decide the Appeal.



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17. Whereas, the learned counsel appearing for the 1st respondent/plaintiff would submit that, admittedly, the properties were purchased by the parents of the plaintiff and the 1st defendant. This fact is not in dispute. The A-Schedule and B-Schedule properties were sold by the 1st defendant himself, suppressing the plaintiff as a legal heir of his parents. In fact, he has committed forgery and fraud by obtaining a Legal Heirship Certificate in his favour, suppressing the plaintiff as one of the legal heirs of his parents and sold the properties to third parties. Therefore, according to him, at any event, the sale is not binding in respect of the half share of the plaintiff. As far as C-Schedule property is concerned, it is his contention that the plaintiff has also paid an amount of Rs.2 Lakhs for discharging the mortgage. The learned counsel refuted the contention of the appellant that the mortgage was made only for the educational purpose of the plaintiff. It is his contention that, in fact, the mortgage was made for discharge of the family debts by the father and two sons. It is his contention that, merely because the 1st defendant, being the elder son, had deposited the mortgage amount and redeemed the mortgage, it cannot be said that the 1st defendant is the owner of the property. The learned counsel would submit that the



plaintiff is prepared to share half of the expenses incurred by the 1st defendant in discharging the mortgage, even now. As far as the application under Order 41 Rule 27 of CPC is concerned, the learned counsel would submit the flat has been purchased by the plaintiff out of his own income. This aspect has already been cross-examined during trial, wherein, it is clearly deposed that the property has been purchased by the plaintiff out of his own income by raising loan. Admittedly, the plaintiff has completed his education in the year 1997 and joined job, even as per the admission of the 1st defendant. Therefore, it is his contention that the property purchased by a person in his employment, cannot be construed as joint family property and no claim, whatsoever, can be raised against the said property. Hence, it is his contention that the additional documents are no way relevant to the present issue.

18. In the light of the above submissions, now the points that arise for consideration in this Appeal are as follows :

- 1. Merely because the mortgaged C-Schedule property has been redeemed by the 1st defendant, being the elder son of the family, whether it will take away the right of the plaintiff to claim his share in the C-Schedule property ?*



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2. *Whether the sale in favour of the defendants 5 to 7 in respect of A-Schedule and B-Schedule properties, is binding on the share of the plaintiff?*
3. *Whether the application under Order 41 Rule 27 CPC is maintainable at this stage and the documents sought to be filed are relevant to decide the Appeal?*

Point No.(3) :

19.As already stated, an application has been filed under Order 41 Rule 27 CPC for reception of additional documents, only on 23.02.2026, much after the negotiation failed before this Court. We are of the view that this application has taken out at the last minute, when the matter is posted before this Court for arguments, only in order to, somehow or the other, avoid this Bench. Be that as it may.

20.The reception of additional documents is not a matter of right. It can be allowed only when the appellant establishes that, notwithstanding the exercise of due diligence such evidence was not within his knowledge or could not after exercise of due diligence, be produced by him at the time when the decree appealed against was passed.



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21. One of the additional documents sought to be filed is only a certified copy of the sale deed relating to a Flat in the name of the plaintiff, situated at Andhra Pradesh. It is relevant to note that the certified copy of the sale deed filed along with the petition shows that, on 11th March, 2002, the plaintiff has purchased a Flat bearing No.18 in the 2nd Floor situated in the building known as Padmavathi Apartments, for a sum of Rs.3,85,000/-. It is the contention of the appellant that this property is also a joint family property. It is relevant to note that the evidence of D.W.1, in the cross-examination, clearly shows that the 1st respondent/plaintiff has completed his education in AMI in the year 1997; the plaintiff initially joined his job in Ananthapur District in the year 1993. Though he pleads ignorance about the job at ICF, Hyderabad, D.W.1 has admitted that, in 1997, the plaintiff has joined a job in Guntur and later, in 2002, he joined Reliance Company and he was working in Surat. These facts clearly show that the 1st respondent/plaintiff has independent income out of his earnings. Therefore, the plea that the above Flat has been purchased out of the joint family nucleus, has no legs to stand. When a person acquires a property by means of learning, such acquisition shall be held to be his exclusive and separate



property, despite the fact that education has been given, whole or in part, with the aid of the joint funds of the family, as per Section 3 of Hindu Gains of Learning Act, 1930. Therefore, when it is established that the plaintiff was employed from 1997 and he acquired the property in the year 2002, it cannot be now said that the property has been acquired by him out of joint family funds. Even in order to show that there were joint family funds which was given to the plaintiff for purchase of the Flat, absolutely, there is no evidence. It is further to be noted that, even during cross-examination of P.W.1, a specific question has been put with regard to the document now sought to be filed, wherein, it is clearly stated by the plaintiff that it is his individual property and the same was purchased by raising loan. Therefore, this document is no way helpful to the appellant. Hence, we are of the view that the certified copy of the sale deed in respect of the Flat purchased by the plaintiff out of his own income and the encumbrance certificate relating thereto, are no way relevant to decide the present Appeal. Similarly, the other document, i.e., Valuation Report in respect of the C-Schedule property, is sought to be filed to show that the net worth of the property is Rs.9,73,000/-. This is also no way relevant.



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22. In such view of the matter, we are of the view that the additional documents now sought to be filed are no way relevant for disposal of the Appeal. Further, the appellant has not established his due diligence for not producing these documents during trial. We are of the view that these documents are filed only to, somehow or the other, drag on the matter. ***Accordingly, Point No.(3) is answered against the appellant and C.M.P.No.5355 of 2026 is dismissed.***

Point No. (2) :

23. Admittedly, all the suit schedule properties belong to the parents. This fact is not in dispute. Exs.A14 and A15 (sale deeds in favour of the parents) have been filed. Similarly, it is not in dispute that the C-Schedule property was also purchased by the mother and father vide Exs.A12 and A13 dated 06.08.1983 and 06.08.1983. It is not in dispute that the plaintiff and the 1st defendant alone are the Class-1 legal heirs of their parents. This fact is not at all in dispute.



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24.The only contention raised by the 1st defendant is that A-Schedule and B-Schedule properties have been sold by him in the year 2008 only to discharge the family debts. It is relevant to note that, while selling the properties, he has, in fact, suppressed the existence of his brother (the plaintiff herein) and has obtained Legal Heirship Certificate as if he is the sole legal heir of his parents and sold the properties to third parties. Admittedly, the plaintiff was residing in Surat on account of his job. Therefore, when the 1st defendant has played fraud and dealt with the properties, including the shares of the plaintiff, such sale, in our view, is not binding on the share of the plaintiff. Further, to show that only to discharge the family debts, the properties have been sold, no material, whatsoever, placed on record. It is relevant to note that the recitals of Exs.A4 and A5 - sale deeds in favour of the defendants 5 and 6 clearly show as if the parents of the 1st defendant have left the 1st defendant alone as their legal heir and he is in possession of the properties along with his wife and children. In the sale deeds, it is nowhere mentioned that the properties are sold only to discharge the family debts. Whereas, it is projected as if the 1st defendant and his wife are the absolute owners of the properties after the death of the



parents of the 1st defendant and due to some urgent necessities, they have decided to sell the properties. The very recitals of the sale deeds show a clear case of fraud. When the very existence of his brother has been suppressed, the alleged contention of the 1st defendant that these documents were executed only for discharge of family debts, has no legs to stand. In any event, though the defendants 5 and 6 and subsequently, the 7th defendant/transferees claim to be the *bona fide* purchases on the ground that they also appear to have been cheated by production of the Legal Heirship Certificate obtained by the 1st defendant, the fact remains that the sale, at the most, would be valid only in respect of the 1st defendant's share alone, but not in respect of the share of the plaintiff. Admittedly, the plaintiff was away from the suit properties and was working in Surat. That has been taken advantage by the 1st defendant and the properties have been sold. Therefore, the sale deeds under Exs.A4, A5 and A6 in favour of defendants 5, 6 and 7, will be valid only in respect of the share of the 1st defendant alone, but not in respect of the share of the plaintiff. The plaintiff will be certainly entitled to partition in respect of his half share in the A-Schedule and B-Schedule properties. ***Point No.(2) is answered accordingly.***



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Point No.(1) :

25.As far as C-Schedule property is concerned, it is admitted case of the parties that C-Schedule property was mortgaged jointly by the plaintiff's father, plaintiff and the 1st defendant in favour of one Srinivasalu. A suit came to be filed by Srinivasalu for recovery of his mortgage money and under Ex.A19-judgment, the suit has been decreed on 08.09.2006 for a sum of Rs.1,38,929/- along with interest at the rate of 24% p.a. on Rs.1,00,000/- from the date of filing of the suit till the date of decree and at 6% p.a. from the date of decree till the date of realisation with costs. It is an admitted case that execution proceedings were initiated by the decree holder/mortgagee to realise the decree amount and the property was brought for sale with the permission of Court, in which, the said mortgagee himself had purchased the property. This was challenged later by the 1st defendant in C.R.P.No.871 of 2015 before the High Court of Andhra Pradesh, wherein, the 1st defendant sought permission of the Court to deposit the entire EP amount. The said Civil Revision Petition has been allowed, pursuant to which, a sum of Rs.8,44,064/- has been deposited by the 1st defendant vide Ex.B4 and the auction sale in favour of Srinivasalu, has been set aside. All these facts are



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clearly established on record.

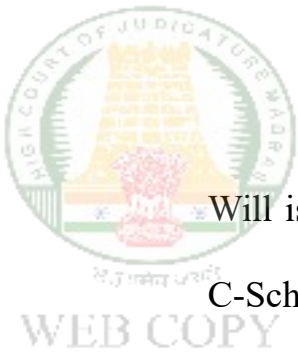
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26. Now, the only contention of the 1st defendant is that, since he has discharged the mortgage amount, the plaintiff will not get any share in the C-Schedule property. It is relevant to note that it is not an absolute purchase made by the 1st defendant in Court auction, whereas, he has sought redemption of mortgage by way of deposit of the entire EP amount. Admittedly, the 1st defendant is the elder member of the family and he is admittedly in possession of the property. Therefore, it should be construed that his redemption is only in favour of the family. Though it is the contention of the plaintiff that he has also paid a sum of Rs.2,00,000/- at an earlier point of time for discharging the mortgage, the same has not been established. But the fact remains that, once the mortgage is discharged and the property is redeemed, the property relates back to its original owners, namely the parents. Such being the position, it is relevant to note that, merely because the elder brother has discharged the mortgage, the share of the other co-owners will not be lost. At the most, the 1st defendant will be entitled to refund of half of the expenses incurred by him towards discharging the mortgage, from the other co-sharer, viz., the plaintiff.



Admittedly, the 1st defendant has deposited a sum of Rs.8,44,064/- in which, he is entitled to half of the amount. However, considering the fact that the deposit was made in the year 2016, i.e., within 60 days from the date of the order in the Civil Revision Petition, i.e., 14.12.2015, and also having regard to the fact that, even at that relevant point of time, the plaintiff is also liable to share half of the expenses, i.e., Rs.4,22,032/- and considering the delay all these years and also the interest aspect, we are of the view that the plaintiff shall pay a sum of Rs.15,00,000/- to the 1st defendant towards his share in discharging the mortgage in respect of the C-Schedule property. That will meet the ends of justice. Or else, adjustment can be made towards Rs.15,00,000/- in the final decree proceedings while sharing half of the C-Schedule property.

27.Though a contention is raised in the written statement to the effect that his mother has already executed a Will in respect of her half share in the C-Schedule property in favour of the 2nd defendant, that aspect has not been established. The Will projected has not been filed and in fact, there is already a finding in earlier proceedings in C.R.P.No.4580 of 2014 on the file of the High Court at Hyderabad, that the Will was negatived. The so-called



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Will is also not produced in the present suit nor proved. As admittedly the

C-Schedule property was purchased by the parents, the plaintiff is also certainly entitled to half share in the same, however, subject to payment of Rs.15,00,000/- to the 1st defendant. We make it clear that, either it can be paid to the 1st defendant or adjusted while allotting his share in C-Schedule property. The said aspect can be decided in the final decree proceedings.

28.Further, the contention of the defendants that the plaintiff is not in joint possession of the properties, has no legs to stand for the simple reason that the plaintiff was away from the properties, as he was working in Surat. It is not the case of the defendants that there was any ouster and adverse title has been set up against the plaintiff. The possession of one co-owner is deemed to be the possession of the other co-owner(s). In such view of the matter, when admittedly the properties belong to their parents and the plaintiff and the 1st defendant are the only Class-1 legal heirs of the parents, both the plaintiff and the 1st defendant are entitled to equal share in all the suit schedule properties.



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29.It is further contended by the 1st defendant that he has put up a construction in the C-Schedule property and therefore, the C-Schedule property has to be allotted to him. Even during the pendency of the Appeal, we had directed the 1st defendant to produce the plan to show that he has constructed a house. However, despite several opportunities, the same has not been produced before this Court. It is relevant to note that, when the Appeal came up before this Court on 11.08.2022, this Court, in C.M.P.No.11137 of 2022 in A.S.No.218 of 2019, has clearly observed as follows :

“4.In these circumstances, we are not inclined to grant an order of interim injunction in favour of the 1st respondent/plaintiff. However, we make it clear that in the event of the appellant putting up any construction in the suit property, he cannot claim equity at the time of passing of final decree.

With these observations, this Civil Miscellaneous Petition is dismissed. ”

30.This Court has already made it clear that any construction during the pendency of the *lis* will not enable the appellant to claim equity. Since the appellant has not established that he has only constructed the house, his



contention cannot be countenanced at this stage. Therefore, we are of the view that the plaintiff is entitled to half share in the C-Schedule property subject to payment of Rs.15,00,000/- to the 1st defendant. **Accordingly, Point No.(1) is answered.**

31.In view of the above discussion, the judgment and decree of the trial Court granting preliminary decree in favour of the plaintiff, stands confirmed, however, as far as C-Schedule property is concerned, the preliminary decree for half share will be subject to payment of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the 1st defendant by the plaintiff, towards the expenses incurred for discharging the mortgage in respect of the C-Schedule property. Accordingly, this Appeal is dismissed. No costs. Consequently, connected miscellaneous petition in C.M.P.Nos.8341 of 2019 is closed.

(N.S.K., J.) (R.S.V., J.)
25.02.2026

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Internet : Yes
Index : Yes / No
Speaking Order
Neutral Citation : Yes



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To

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1.The District Judge,
District Court No.II,
Kanchipuram.

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



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N. SATHISH KUMAR, J.
and
R. SAKTHIVEL, J.

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