



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-02-2026

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 244 of 2021 & SA No.116 of 2026

SA NO.244 OF 2021

Nallappan Gounder(died)

1. Sengottaian,
S/o. Late Nallappa Gounder
2. Porappannan
S/o. Late Nallappa Gounder
3. Thirumayee
W/o. Late Nallappa Gounder,
All are residing at Rayapalayam Cusba,
Kumilanparappu Village,
Erode Tk And District.

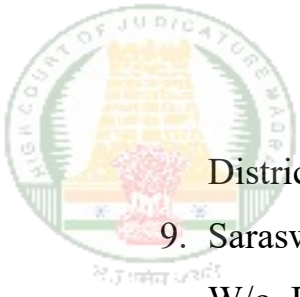
..Appellant(s)

Vs

1. Pavathal
W/o. Palanisamy,
Res At, Kallapalayam, Avalpoondurai Village,
Erode Tk, Erode District.
2. Annakodi
W/o. Mani,
Res At, Kallapalayam, Avalpoondurai Village,
Erode Tk, Erode District.



3. Thirumayammal
W/o. Perumal Gounder,
Rayapalayam Pudur,
Kumilanparappu Village,
Erode Tk And District.
4. Rathinammal
W/o. Narayanasamy,
Solipalayam, Avalpoondurai Village,
Erode Tk And District.
5. Vimalasamy
S/o. Sengodagounder,
At Rayapalayam Pudur Cusba,
Kumilanparappu Village, Erode Tk And
District.
6. V.Shanmugha Sundaram
S/o. Vellamuthu Gounder,
At Rayapalayam Pudur, Cusba,
Kumilanparappu Village, Erode Tk And
District.
7. V.Subbulakshmi
W/o. Vellamuthu Gounder,
At Rayapalayam Pudur, Cusba,
Kumilanparappu Village, Erode Tk And
District.
8. Lakshmi
W/o. Late Sengoda Gounder,
At Rayapalayam Pudur, Cusba,
Kumilanparappu Village, Erode Tk And



District.

9. Saraswathi

W/o. Ramasamy,

Attayampalayam, Tiruchengode, Tiruchegode
Tk, Namakkal District.

10. Samiyathal

D/o .Late Sengoda Gounder,

Rayapalayam Pudur Cusba, Kumilanpparappu
Village, Erode Tk, And District.

11. Vasanthamani

W/o. Eswaran,

At Rayapalayam Pudur Cusba,
Kumilanparappu Village, Erode Tk And
District.

12. Meyyarasi

D/o. Eswaran,

At Rayapalayam Pudur Cusba,
Kumilanparappu Village, Erode Tk And
District.

13. Meyyaran

So. Eswaran,

At Rayapalayam Pudur, Cusba,
Kumilanparappu Village, Erode Tk And
District.

14. Chinnasamy

S/o. Kuppana Gounder,

At Rayapalayam Pudur, Cusba,
Kumilanparappu Village, Erode Tk And
District.



15. Thirumoorthy

S/o. Ramasamy Gounder,
At Palakattu Thottam, Rayapalayam Pudur,
Suriyampalayam Pudur, Village, Erode Tk
And District.

..Respondent(s)

SA No. 116 of 2026

Thirumoorthy
S/o Rangasamy Gounder,
Palakkadu Thottam,
Rayapalayam Pudur Village,
Erode Taluk, Erode District

..Appellant(s)

Vs

1. Pavathal
W/o Mani,
Rayanpalayam Pudur,
Kumilanparappu Village,
Erode Taluk.

2. Annakkodi
W/o Mani,
Kalipalayam, Avalpoondurai Village,
Erode Taluk



3. Thirumayammal

W/o Perumal Gounder,
Rayapalayam Pudur,
Kumilanparappu Village,
Erode Taluk.

4. Rathinammal

W/o Narayanasamy,
Solipalayam, Avalpoondurai Village,
Erode Taluk.

..Respondent(s)

PRAYER IN SA No. 244 of 2021

Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the judgement and decree dated 29/08/2019 made in AS No.30/2016 on the file of I Addl. Sub Court, Erode confirming the fair and final order dated 18/03/2016 made IA.No.1080/2004 in OS No.1292/2004 on the file of Principal District Munsif Court, Erode

PRAYER IN SA No. 116 of 2026

Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the judgment and decree made in AS No. 28 of 2017 dated 30.10.2023 on the file of the First Additional Subordinate Court, Erode, Confirming the Fair and Final Order made in IA No. 1080 of 2004 in OS No. 1292 of 2004, on the file of the Principal District Munsif at Erode dated 18.03.2016.



SA No. 244 of 2021

For Appellant(s): Mr.S.Kaithamalai Kumaran
For Respondent(s): Mr.S.Parthasarathy Senior Counsel For
Mr.V.S.Kesavan For R1 To R4 And R6
Mr.C.Kulanthaivel For R15
R5, R7 And R8 - No Appearance
R9 -insufficient Address
R10 - Unclaimed
R11 To R13 - Service Awaited

SA No. 116 of 2026

For Appellant(s): Mr.C.Kulanthaivel
For Respondent(s): Mr.S.Parthasarathy Senior Counsel For
Mr.V.S.Kesavan For R1 To R4

COMMON JUDGMENT

Challenging the concurrent findings of the courts below rendered in A.S.Nos.30 of 2016 and 28 of 2017 confirming the findings rendered in the final decree proceedings in I.A.No.1080 of 2004 in O.S.No. 1292 of 2004, the plaintiffs 1 to 3 have preferred Second Appeal in S.A.No.244 of 2021 and the 15th respondent herein preferred Second Appeal in S.A.No.116 of 2026.

2. Before the trial court, the plaintiffs have filed a suit for partition and a counter claim was also filed by the contesting defendants. On considering both side evidence and documents, the preliminary decree was passed allotting



shares. Thereafter, the final decree application in I.A.No.1080 of 2004 was filed and the Commissioner was also appointed. The Commissioner had measured the property in the presence of both parties as well as their counsels. Thereafter, the Commissioner had filed a report submitting a suggestion to divide the property conveniently considering each of sharers. Accordingly, the Commissioner's report along with sketch was produced before the court. Based on that, the trial judge had passed the final decree in I.A.No.1080 of 2004 by allotting shares to all the parties to the proceedings as suggested by the Commissioner for the convenient sake of parties. Aggrieved BY that findings, the plaintiffs 1 to 3 preferred an appeal in A.S.No. 30 of 2016 and the 15th respondent herein preferred an appeal in A.S.No. 28 of 2017 on the file of I Additional Subordinate Judge, Erode respectively.

3. On hearing both sides, the first appellate judge held that objections raised by the plaintiffs 1 to 3 as well as 15th respondent herein was not sustainable one. Accordingly, the appeals were dismissed by confirming the findings of trial judge. Against which, the plaintiffs 1 to 3 have preferred Second Appeal in S.A.No. 244 of 2021 and the 15th respondent herein had preferred Second Appeal in S.A.No. 116 of 2026.

4. The learned counsel for appellants argue that while measuring the property, the Commissioner has not compared with old and new survey



numbers and erroneously concluded that 12 cents belong to them in R.S. No.240/3. Therefore, they have raised objections, but it was not considered by the court below. Hence, they prayed to set aside the findings rendered in the final decree passed by the courts below.

5. By way of reply, the learned counsel for respondents 1 to 4 and 6 raised objections stating that even before the courts below, to substantiate their arguments, the appellants have not furnished any of the revenue records to show that they have owned the land on the southern boundary of the second item of suit property in R.S. No.240/3 and also not produced any relevant document to show the said southern boundary, without which the contention of appellants not to be accepted. Therefore, the courts below rightly disagreed with the objections raised by the appellants, which requires no interference.

6. Sisters of the plaintiffs, who are ranked as defendants 3 to 6 in the suit and from them, the purchaser/15th respondent herein purchased a portion of property through sale deed. Therefore, he raised objections with regard to Commissioner's suggestion with regard to division of property and for the remaining extent, he filed a specific performance suit. He obtained a decree in respect of sale agreement. Therefore, he raised objections for the division of property as suggested by the commissioner as well as final decree passed by the trial court as such is not acceptable one for the reason that the larger extent



allotted to the parties would not have been used for division among themselves.

Therefore, he suggested to divide the property by laying pathway in the middle of the suit property in order to divide the same into two items. However, the suggestion given by the purchaser/15th respondent herein also not acceptable one for the reason that if there is any inconvenience in enjoyment of property as per the final decree, the court can cause interference, but on seeing the Commissioner's report as well as division of property as ordered in the final decree proceedings, it does not require any interference for the reason that all the sharers are allotted equal shares with pathway right and convenient enjoyment is clearly evidenced from the report of the Commissioner as well as final decree passed by the court below. Therefore, the objections raised by the both appellants and the purchaser/15th respondent herein is unsustainable one. To that effect, the 15th respondent herein had also preferred an appeal in A.S.No.28 of 2017 and it was disposed of accordingly.

7. Furthermore, as on date, according to sisters, they have preferred an appeal against the judgment and decree passed in the suit filed for specific performance in S.A.No.314 of 2018, but it is between sisters and purchaser of the property. Therefore, without being influence of the findings rendered in the Second Appeal in S.A.No.244 of 2021, the purchaser/15th respondent herein has to work out his remedy before the appropriate forum. Accordingly, the Second Appeal in S.A.No. 116 of 2026 is disposed of. No costs.



8. In the result, the findings rendered by the first appellate court in A.S.No.30 of 2016 on the file of I Additional Subordinate Judge, Erode confirming the findings rendered by the trial court in the final decree proceeding in I.A.No. 1080 of 2004 in O.S.No.1292 of 2004 on the file of Principal District Munsif, Erode is confirmed and the Second Appeal in S.A.No. 244 of 2021 is dismissed. The Commissioner's report as well as plan shall form part and parcel of the decree. No costs.

05-02-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

RPP

To

1. The I Additional Subordinate Judge, Erode.
2. The Principal District Munsif, Erode.
3. The Section Officer, VR Section, Madras High Court.



WEB COPY

SA Nos. 244 of 2021 & 116 of 2



T.V.THAMILSELVI J.

RPP

**SA No. 244 of 2021
AND
SA NO. 116 OF 2026**

05-02-2026