



S.A. NO.277 OF 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A. NO.277 OF 2012

AND

M.P. NO.1 OF 2012

1.Minor.Muthu
S/o.Sambandam

2.Minor.Arunkumar
S/o.Sambandam,

3.Minor.Brinda,
D/o.Sambandam,

Appellants 1 to 3 are minors,
represented by their Mother,
Natural Guardian and Next Friend
- Anjalidevi

Appellants 1 to 3 are residing at
No.20, State Bank Colony,
L.B.N.Nagar, Dharmapuram Road,
Mayiladuthurai Town and Munsif.

...Appellants/Respondents 1 to 3/
Plaintiffs

-versus-

1.Prema,
W/o.Late.Kaliaperumal

2.Minor.Hemavathi

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D/o.Late.Kaliaperumal

3.Minor.Satish,
S/o.Late.Kaliaperumal

Respondents 1 to 3 are residing at
Main Road, Thiruvilanthur,
Myladuthurai Taluk and Munsif.

... Respondents 1 to 3 / Appellants /
Defendants 6 to 8

Respondents 2 and 3 are Minors
Represented by their Mother,
Natural Guardian and Next
Friend - Prema, the 1st
Respondent herein.

4.Sambandam,
S/o.Dharmalingam,
No.20, State Bank Colony,
L.B.N.Nagar, Dharmapuram Road,
Myladuthurai Town and Munsifi.

5.Thiyagarajan
S/o.Dharmalingam

6.Nagarathinam,
S/o.Dharmalingam

7.Viswanathan,
S/o.Dharmalingam

Respondents 5 to 7 are
residing at
Vaithiampet Village,
Myladuthurai Taluk and Munsifi.

...Respondents 4 to 7/
Respondents 4 to 7/
Defendants 1 to 4

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PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated December 21, 2010 made in A.S. No.26 of 2009 on the file of the Additional Sub-Ordinate Judge, Myladuthurai, in reversing the Judgment and Decree dated August 07, 2008 passed in O.S. No.438 of 2005 on the file of the Additional District Munsif, Myladuthurai.

For Appellants	:	Mr.A.Gowthaman
For Respondents-1 to 3	:	Mr.M.J.Srinivas - No appearance
For Respondent-4	:	Left
For Respondent-5	:	Deceased
For Respondents-6 & 7	:	Served – No appearance

JUDGMENT

Feeling aggrieved by the Judgment and Decree dated December 21, 2010 made in A.S. No.26 of 2009 by 'the Additional Subordinate Court, Mayiladuthurai' ['First Appellate Court' for brevity], reversing the Judgment and Decree dated August 07, 2008 passed in O.S. No.438 of 2005 by 'the Additional District Munsif, Myladuthurai' ['Trial Court' for short], the Respondents 1 to 3 / Plaintiffs therein have preferred this Second Appeal.

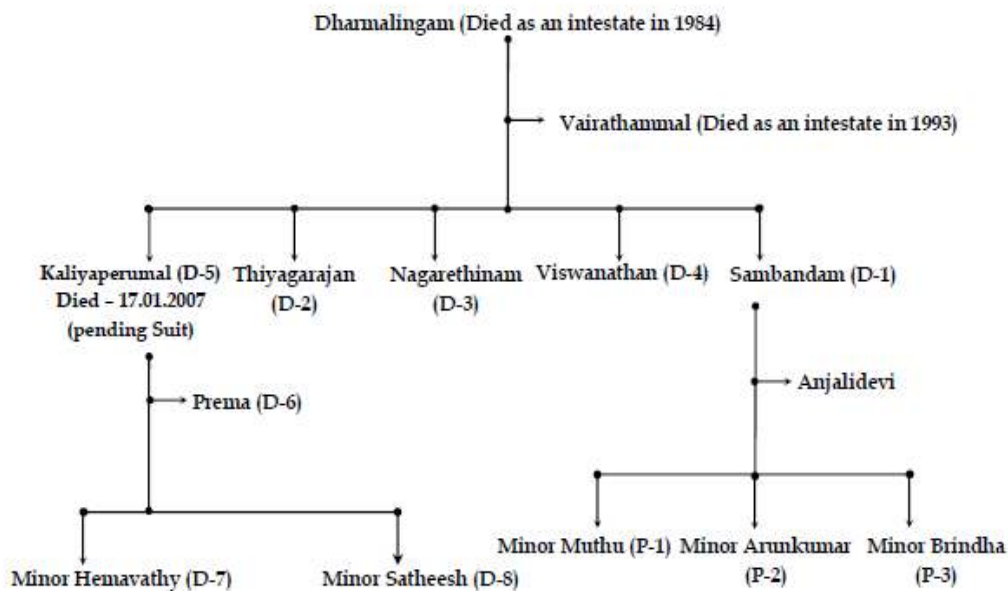
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2. For the sake of convenience, the parties will be referred to as per their array in the Original Suit.

3. For ease of reference, a genealogical tree is drawn showing the undisputed relationship between the parties:



Note:

1. Minor Plaintiffs 1 to 3 are represented by their next friend and Mother Anjali Devi.
2. Minor Defendants 7 & 8 are represented by their next friend and mother

PLAINTIFFS' CASE IN BRIEF:

4. The suit properties originally belonged to Dharmalingam, the grandfather of the minor plaintiffs, who passed away intestate in 1984.



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Dharmalingam's wife - Vairathammal passed away intestate in 1993.

Defendants 1 to 5 are their sons / legal heirs. Sixth defendant is the wife of the fifth defendant. The first defendant is the father of the minor plaintiffs 1 to 3, who are represented by their mother - Anjalidevi.

4.1. The fifth defendant - Kaliyaperumal filed a Suit for partition of the properties left behind by Dharmalingam as against defendants 1 to 4 herein in O.S. No.711 of 1998 on the file of the Principal District Munsif Court, Mayiladuthurai. The present suit properties are same as those in that Suit. The said Suit was decreed and a preliminary decree was passed declaring that the defendants 1 to 5 herein are entitled to 1/5 share each in the suit properties. Feeling aggrieved by the same, defendants 1 and 2 herein preferred an appeal in A.S. No.97 of 2004 on the file of the Principal Subordinate Court, Mayiladuthurai, which ended in dismissal; the Trial Court's Judgment and Decree were confirmed in the appeal.

4.2. The plaintiffs, being the children of the first defendant herein, claim a right by birth in the suit properties, which according to them are the properties of their grandfather. Though the suit properties are being cultivated and managed by the first defendant, the plaintiffs and the



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defendants are deemed to be in joint possession and enjoyment of the same.

4.3. A plea of joint family debt was rejected by the Court in O.S. No.711 of 1998, following which the sixth defendant being the fifth defendant's wife, filed a Suit in O.S. No.116 of 1997 on the file of the Additional District Munsif Court, Mayiladuthurai against the first defendant, alleging that he had borrowed jewels valued at Rs.21,000/- and seeking return of the same or payment of their value. The said Suit was decreed on February 27, 2004. Pursuant to the decree, E.P. No.16 of 2002 was filed, and the undivided 1/5 share of the first defendant was attached.

4.4. The plaintiffs in the present Suit contend that the plea of joint family debt raised in O.S. No.711 of 1998 was negated by the Court. Therefore, the liability arising out of O.S. No.116 of 1997 is not binding on the plaintiffs and they are not legally bound to discharge the same out of their share in their father / first defendant's 1/5 undivided share in the suit properties. According to the plaintiffs, they are each entitled to 1/4 share out of the 1/5 undivided share of the first defendant in the suit properties.



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4.5. Pending E.P. No.16 of 2002, in June 2005, the first defendant attempted to alienate his undivided 1/5 share in favour of third parties. Hence, the present Suit for partition came to be instituted by the guardian of the minor plaintiffs viz., their mother to safeguard their interests and to meet their educational needs.

4.6. During the pendency of the Suit, the fifth defendant died on January 17, 2007 and his minor children were brought on record as defendants 7 and 8.

DEFENDANTS' CASE IN BRIEF:

5. Defendants 4 to 6 filed separate written statements and the third defendant adopted the written statement of the fourth defendant and contents of which are more or less similar. Sum and substance of the same is as follows :

5.1. It is admitted that the first defendant herein is the father of the minor plaintiffs 1 to 3, and that one Anjalidevi is their mother and that the suit properties originally belonged to Dharmalingam, the grandfather of the minor plaintiffs. The fifth defendant filing the Suit in O.S.No.711 of 1998



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for partition and the factum of it being decreed and sustained in appeal is also admitted.

5.2. It is stated that the first defendant borrowed jewels from the sixth defendant and executed a *muchalika* before Panchayatdars, undertaking to return the same. However, despite repeated demands, the first defendant failed to do so. Consequently, the sixth defendant instituted a Suit in O.S. No.116 of 1997 and the same was decreed as pleaded in the plaint. Thereafter, the sixth defendant initiated execution proceedings and caused attachment of the undivided share of the first defendant.

5.3. According to defendants 4 to 6, the present Suit has been filed by the first defendant in collusion with the plaintiffs with a view to obstruct the execution proceedings. Further, the plaintiffs have no right or title over the suit properties and the first defendant has been in exclusive possession and enjoyment of the same for the past eight years without accounting to the other co-sharers. Stating so, defendants 3 to 6 prayed for dismissal of the suit.



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TRIAL COURT:

WEB COPY 6. Based on the above pleadings, the Trial Court framed the following issues:

- "1. Whether the plaintiffs are entitled for partition and separate possession of the suit property as prayed for?*
- 2. To what share is the plaintiffs are entitled to?*
- 3. Whether the plaintiffs are entitled for mesne profits as sought for?*
- 4. To what other relief the plaintiffs are entitled for?"*

6.1. At trial, the plaintiffs' mother - Anjalidevi was examined as P.W.1 and Ex-A.1 to Ex-A.4 were marked on the side of the plaintiffs. On the side of the defendants, the sixth defendant was examined as D.W.1 and Ex-B.1 was marked.

6.2. After a full-fledged trial, the Trial Court held that the first defendant is entitled to 1/5 share in terms of the Judgment and Decree passed in O.S. No.711 of 1998. It was further held that the plaintiffs, being the sons of the first defendant are jointly entitled to 3/20 share in the suit properties. The Trial Court further held that the plaintiffs are



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consequently entitled *mesne* profits under Order XX Rule 12 of the Code of Civil Procedure, 1908. Accordingly, the Suit was decreed and a preliminary decree was passed granting 3/20 share in favour of the plaintiffs.

FIRST APPELLATE COURT:

7. Aggrieved by the same, defendants 6 to 8 preferred an appeal in A.S. No.26 of 2009 before the First Appellate Court. The First Appellate Court, after hearing both sides, held that the suit properties are separate properties of Dharmalingam. Further held that upon the demise of Dharmalingam and his wife, in terms of Sections 8 and 15 of the Hindu Succession Act, 1956, their sons / defendants 1 to 5 namely Sambandam, Thiagarajan, Nagarathinam, Viswanathan and Kaliaperumal are each entitled to 1/5 share in it. It was further held that, when the first defendant is very much alive, his sons will not be entitled to claim any share under Section 8 of the Hindu Succession Act, 1956. Accordingly, the First Appellate Court allowed the appeal and set aside the judgment and decree of the Trial Court.



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SECOND APPEAL:

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8. Feeling aggrieved by the Decree and Judgment of the First Appellate Court, the Plaintiffs have preferred this Second Appeal under Section 100 of the Code of Civil Procedure, 1908.

ARGUMENTS:

9. Mr.A.Gouthaman, learned Counsel appearing for the appellants / respondents / plaintiffs, would submit that in the earlier Suit in O.S. No.711 of 1998, the Trial Court found that the Suit Properties are joint family properties and held that the first defendant and his brothers are each entitled to 1/5 share therein. Hence, according to the learned Counsel, the plaintiffs being the heirs of the first defendant, acquire a right by birth in the suit properties and are consequently each entitled to $\frac{1}{4}$ share in the first defendant's 1/5 share in suit properties, which is equal to $\frac{1}{20}$ share each [$\frac{1}{4}$ in $\frac{1}{5} = \frac{1}{20}$] in the suit properties. The Trial Court, therefore, rightly held that the plaintiffs are entitled to a $\frac{1}{20}$ share each. However, the First Appellate Court, without properly appreciating the facts and circumstances of the case and without considering the earlier judgment in O.S. No.711 of 1998, erroneously held that Section 8 of the Hindu Succession Act, 1956 is the applicable law and on that basis, allowed the appeal and set aside the

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Judgment and Decree of the Trial Court. He would further submit that the then Section 6 of the Hindu Succession Act, 1956 alone is applicable to the facts of the present case as the suit properties are joint family properties. He would contend that the substantial questions of law stated in the grounds of appeal arises for consideration in this Second Appeal and therefore, prays for admission of the same.

10. In the present case, though Mr. M.J. Srinivas, learned Counsel had filed *Vakalath* for respondents 1 to 3 and though his name was mentioned in the cause list, he did not appear today. No arguments on the side of respondents 1 to 3.

DISCUSSION:

11. This Court has considered the submissions made by the learned Counsel appearing for the appellants and perused the materials available on record.

12. Admittedly, A.S. No.97 of 2004 on the file of Principal Sub Court, Mayiladuthurai was filed assailing the Judgment and Decree passed in O.S. No.711 of 1998, however, it ended in dismissal. Feeling aggrieved,



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defendants 1 and 2 herein who are defendants 1 and 4 in O.S. No.711 of 1998, have filed Second Appeal No.1494 of 2005. As the matter is inter-related and the suit properties are one and the same, S.A. No.1494 of 2005 and the present Second Appeal are heard simultaneously and decided *vide* separate Judgments.

13. In the earlier Suit in O.S. No.711 of 1998, neither side took a clear and specific plea regarding the character of the suit properties in the hands of the sons of Dharmalingam *i.e.*, defendants 1 to 5 herein. The stand taken therein was that the suit properties belong to Dharmalingam. In the absence of specific pleadings, no issue was framed by the Court *qua* character of suit properties in the hands of sons of Dharmalingam / defendants 1 to 5. While so, both parties proceeded with the Suit in O.S. No.711 of 1998 on the footing that the suit properties were the separate properties of Dharmalingam, and both, the Trial Court and the First Appellate Court therein held that the sons of Dharmalingam are each entitled to 1/5 share in the suit properties.

14. Admittedly, the plaintiffs herein were not parties to the earlier Suit in O.S. No.711 of 1998. As stated *supra*, the character of the suit



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properties was neither disputed, put in question nor determined in the earlier Suit.

15. The plaintiffs herein claim that the suit properties are ancestral and joint family properties. If it is so, the burden is upon them to plead and prove the same. The plaintiffs in Paragraph No.4 of the plaint in the present Suit, have merely pleaded that the suit properties are properties of their grandfather - Dharmalingam and that their grandfather - Dharmalingam and his wife passed away intestate. There is no specific pleading that the suit properties are ancestral and joint family properties in the hands of their father / first defendant. In the present Suit as well, no issue as to character of suit properties in the hands of Dharmalingam's sons was framed and no evidence was adduced in this regard. In the absence of clear and specific pleadings, issues and evidence, in view of the available pleadings that the suit properties were originally owned by Dharmalingam who passed away intestate in 1984 followed by his wife's demise as an intestate in 1993, the only rational conclusion is that the suit properties are separate properties of Dharmalingam.



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16. Admittedly, Dharmalingam and his wife passed away as Hindus and the plaintiffs and the defendants 1 to 5 as well are Hindus. Hence, the applicable law is the Hindu Succession Act, 1956. As per Section 8 thereof, in the presence of son, son's sons are not Class-I legal heirs.

17. It is a settled principle of law that an admission made in the pleadings is conclusive, unless the contrary is established by adducing cogent evidence. In the earlier as well as the present Suit, both sides have proceeded on the footing that the suit properties originally belonged to Dharmalingam. It is not in dispute that Dharmalingam passed away intestate in the year 1984 and that his wife - Vairathammal, passed away intestate in December 1993. Therefore, in view of Sections 8 and 15 of the Hindu Succession Act, 1956, the defendants 1 to 5 being their legal heirs, are each entitled to 1/5 share in the suit properties. In such view of the matter, the applicable provisions are Sections 8 and 15 of the Hindu Succession Act, 1956, and not the unamended Section 6 of the said Act. The Trial Court failed to take into consideration the fact that, during the lifetime of the first defendant, the plaintiffs being his sons do not fall within the category of legal heirs under Section 8 read with the Schedule to the Hindu Succession Act, 1956. The First Appellate Court, upon a proper

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appreciation of the pleadings, evidence on record and the overall facts and circumstances of the case, has rightly held that Section 8 alone governs the matter and that the plaintiffs are not entitled to seek partition during the lifetime of the first defendant. Consequently, it was correctly concluded by the First Appellate Court that the Suit is not maintainable at their instance. No question of law, much less any substantial question of law, arises for consideration in this Second Appeal. Accordingly, the Second Appeal is devoid of merits and is liable to be dismissed.

CONCLUSION:

18. Accordingly, this Second Appeal is dismissed and the Judgment and Decree passed by the First Appellate Court dated December 21, 2010 in A.S. No.26 of 2009 is confirmed and the Suit in O.S.No.438 of 2005 on the file of the Trial Court is dismissed. Considering the relationship between the parties, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

24.03.2026
(3/3)

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
PAM/TK



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To

- 1.The Principal Sub-Ordinate Judge
Mayiladuthurai.
- 2.The Principal District Munsif
Mayiladuthurai.



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R. SAKTHIVEL, J.

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(3/3)

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R.SAKTHIVEL, J.



This matter is listed today *suo motu* by this Court under the cause list caption “for being spoken to”.

2.This Second Appeal, along with the connected Second Appeal in S.A. No.1494 of 2005, was dismissed by this Court on March 24, 2026 by separate judgments. However, since further listing of S.A. No.1494 of 2005 was found necessary, the said connected Second Appeal was also listed today, and an appropriate judgment has been pronounced therein.

3.In view of the same, no further orders are necessary in the present Second Appeal in S.A.No.277 of 2012 and the judgment dated 24.03.2026 passed in S.A.No.277 of 2012 remains unaltered.

21.04.2026

(3/3)

TK