



WEB COPY



S.A.No.515 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

S.A.No.515 of 2013

and

M.P.No.1 of 2013

1.Uthandi Gounder (died)

[Sole appellant died.

Appellants 2 to 4 are brought on record
as LR's of the deceased sole appellant
(Uthandi Gounder) vide order of the
Court dated 07.02.2024 made in
CMP Nos.2945, 2938 & 2943 of 2024
in S.A.No.515 of 2013]

2. Rasammal

3. Balakrishnan

4. Kamadhenu

...Appellant/Appellant/Defendant

Vs

1. Lakshmi

2. Mariammal



S.A.No.515 of 2013

Respondents 1 & 2 / Respondents 1 & 2 / Plaintiffs 1 & 2

... 3rd Respondent / 3rd Respondent / 3rd Defendant

3. Ayyammal

4. Ramachandran

5. Devaraj

6. Sakthivel

7. Mahendiran

... Respondents / Respondents / (L.Rs Of Deceased Lakshmi R2 / D2

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgement and decree dated 03.09.2012 made in Appeal Suit No.9 of 2011 on the file of the Court of the Principal District and Sessions Judge, Erode, confirming the judgment and decree dated 30.10.2008, made in Original Suit No.29 of 2008 on the file of the Court of the Subordinate Judge, Bhavani.

For Appellants : Mr.V.Gowtham

For R1, R4 to R7 : Mr.P.Valliappan
for M/s.SMS.Shriram Narayanan

For R2 : Mr.T.Balaji



S.A.No.515 of 2013

JUDGMENT

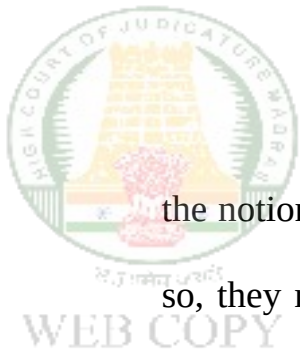
WEB COPY

Heard.

2. This Second Appeal is directed against the judgment and decree dated 03.09.2012 of the Principal District Judge, Erode in A.S. No. 9 of 2011, which confirmed the judgment and preliminary decree dated 30.10.2008 of the Subordinate Judge, Bhavani in O.S. No. 29 of 2008. By those orders, the suit for partition was decreed, declaring that the plaintiffs (daughters) are entitled to 2/8th shares in the suit properties, and granting an injunction as a consequential relief until the final decree is passed.

3. The suit properties include both ancestral properties and properties purchased by the parties' father. The plaintiffs are the daughters of late Narayana Gounder. The first defendant is his son, and defendants 2 and 3 are his granddaughters through a daughter who predeceased him.

4. The Courts below held that, since the father died in 1977, before the amendment introduced by Act 39 of 2005, the plaintiffs could claim a share only in



S.A.No.515 of 2013

the notional share of their father, and not as coparceners equal to the son. In doing so, they relied on the legal position then prevailing, including *Sheela Devi v. Lal Chand* (2006) 8 SCC 581.

5. Challenging the concurrent findings, the first defendant filed this Second Appeal. During the pendency of the appeal, the original appellant died and his legal heirs were brought on record. The appeal has remained pending and has not yet been admitted.

6. When the matter was taken up for admission, learned counsel for the appellant made an endorsement seeking to withdraw the appeal, stating that the appellant is not pressing the Second Appeal.

7. At this stage, learned counsel for the respondents opposed the withdrawal and sought their transposition as appellants under Order XXIII Rule 1A CPC. Counsel also relied on the decision of the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma***, reported in (2020) 9 SCC 1 contending that, in view of the



amended Section 6 of the Hindu Succession Act, 1956, the plaintiffs' shares should be increased from 2/8th to 2/4th.

8. At the stage of admission under Section 100 CPC, the Court must examine whether the appeal raises any substantial question of law and, if so, frame it before the appeal can proceed. Until the appeal is admitted, it does not take the form of a regular appellate proceeding.

9. It is well settled that, at the pre-admission stage of a Second Appeal, the respondent has no vested right of audience unless a caveat has been lodged under Section 148A CPC. In the present case, although notice appears to have been ordered earlier no substantial question of law has been framed and the appeal has not been admitted.

10. If the appellant seeks to withdraw the appeal before it is admitted, the respondent cannot insist that the appeal be continued merely to enlarge the decree

5/11



or to seek enhancement of share, especially when the respondent has not filed any independent appeal.

11. The power under Order XLI Rule 33 CPC can be exercised only in a properly constituted and admitted appeal. It cannot be used to create jurisdiction at the pre-admission stage, when no substantial question of law has been framed. Likewise, Order XXIII Rule 1A CPC, which deals with transposition, presupposes a pending and maintainable proceeding. If the appeal is withdrawn before admission, no lis survives for transposition.

12. The decisions cited by the respondents, (i) **Rajammal (Deceased) Thirupathi v. Mangai**, S.A. No. 137 of 2019, dated 05.07.2024 (Madras High Court), (ii) **Thangarasu Pillai v. Selvakumar**, 2025 SCC OnLine Mad 5114, and (iii) **Murugan Asari v. Chinnammal and others**, S.A. No. 16 of 2014, dated 12.02.2026 (iv) **Mani Vs. Palanisamy & Others**, S.A.No.312 of 2016 are distinguishable on facts. In those cases, the Second Appeals had already been



S.A.No.515 of 2013

admitted and were decided on merits after full hearing, and it was in that context that the shares were modified.

13. The decisions relied on by the appellant, including **M/s Hulas Rai Baij Nath v. Firm K.B. Bass and Co., AIR 1968 SC 111**, and **Anil Kumar Singh v. Vijay Pal Singh (2018) 12 SCC 584**, reaffirm that an appellant is ordinarily entitled to withdraw an appeal, and the opposite party cannot insist on an adjudication, except where independent rights would be affected. In the present case, no such exceptional circumstance devoid of remedy has been established.

14. It is true that, in **Vineeta Sharma v. Rakesh Sharma**, the Supreme Court held that a daughter is a coparcener by birth, and that the 2005 amendment applies to pending proceedings.

15. It is also well settled that, in a partition suit, the proceedings continue until a final decree is passed. In **S. Sai Reddy v. S. Narayana Reddy, (1991) 3 SCC 647**, the Supreme Court held that, until the final decree is passed and the parties are



S.A.No.515 of 2013

put in possession, the partition is not complete, and the shares may be varied having regard to intervening events.

16. In the present case, only a preliminary decree has been passed, and the final decree proceedings have not been completed. Therefore, the parties are at liberty to seek appropriate modification or re-determination of shares before the Trial Court in the final decree proceedings, in accordance with law.

17. Where an effective and appropriate remedy is available before the Courts below before the final decree is passed, the respondents cannot insist on continuing a Second Appeal that has not yet been admitted, merely to seek enhancement of share.

18. In view of the endorsement made by learned counsel for the appellant seeking withdrawal, the Second Appeal is dismissed as withdrawn. It is made clear that this dismissal will not preclude the parties from pursuing any remedy available



S.A.No.515 of 2013

to them before the appropriate forum. No costs. Any connected miscellaneous petition is closed.

27.02.2026

mfa

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No



WEB COPY



S.A.No.515 of 2013

To

1. The Principal District and Sessions Judge,
Principal District Court, Erode.
2. Subordinate Judge,
Subordinate Court,
Bhavani.
3. The Section Officer,
VR Section,
High Court of Madras,
Chennai.



WEB COPY



S.A.No.515 of 2013

DR. A.D. MARIA CLETE, J

mfa

**S.A.No.515 of 2013
and
M.P.No.1 of 2013**

27.02.2026