



A.S. No.55 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2025
PRONOUNCED ON : 30.01.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

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1. S.Brindha

D/o.Ravi

Rajapalayam,

Karkudalpatti Post,

Rasipuram Taluk,

Namakkal District.

2. Minor Navitha

D.o.Ravi

Rajapalayam, Karkudalpatti Post,

Rasipuram Taluk, Namakkal District,

Natural Guardian (Mother Parameshwari)

W/o.Ravi

Rajapalayam, Karkudalpatti Post,

Rasipuram Taluk, Namakkal District.

...Appellants/Plaintiffs

Vs.

D.K.Natesan (died)

S/o.M.S.Kuppusamy Gounder

Devasthanam Puthu,

Sirapalli Post, Rasipuram Taluk,

Namakkal District.

1. Kamallam

W/o.Natesan

Devasthanam Puthu,

Sirapalli Post, Rasipuram Taluk,

Namakkal District.



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2. Kandhasubaramaniam
S/o.Natesan
Devasthanam Puthu
Sirapalli Post, Rasipuram Taluk,
Namakkal District

3. Ravi
S/o.Natesan
Rajapalayam, Karkudalpatti Post,
Rasipuram Taluk,
Namakkal District.

4. Jayalakshmi
W/o.Ramakrishnan
Devasthanam Puthu
Sirapalli Post, Rasipuram Taluk,
Namakkal District.

5. Gugan
S/o.Ramakrishnan
Devasthanam Puthu,
Sirapalli Post, Rasipuram Taluk,
Namakkal District.

6. Suseela
W/o.Kandhasubaramaniam
Devasthanam Puthu,
Sirapalli Post, Rasipuram Taluk,
Namakkal District.

7. T.R.Rangaraja
S/o.Ramasamy Gounder,
Anadagoundapalayam,
Aalampalayam Post,
Rasipuram Taluk,
Namakkal District.

... Respondents/Defendants



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PRAYER in A.S.: Appeal Suit filed under Section 96 of CPC to allow this appeal and to set aside the judgment and decree in O.S.No.83 of 2010 of the Additional District Judge, Namakkal dated 10.08.2017 and to decree the said suit as prayed for.

For Appellants : Mr.V.Raghupathi

For Respondents : Mr.T.Dhanyakumar
for R1, R2 & R6
M/s.R.Aswini
for R7
R3 to R5 served no appearance

J U D G M E N T

This Appeal Suit is filed by the plaintiffs against the judgment and decree dated 10.08.2017 passed in O.S. No.83 of 2010 on the file of the Additional District Court, Namakkal, whereby the suit for partition was dismissed.

2. For the sake of convenience, the parties in the appeal are referred to as referred in the suit.

3. The case of the plaintiff: The plaintiffs are the daughters of the 4th defendant. According to the plaintiffs, the first item of the suit schedule



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properties was derived from the estate of late M.S. Kuppusamy Gounder and, thereafter, under a registered partition deed dated 23.06.1992, the A-Schedule properties were allotted to the branch consisting of D1, D3, D4 and the husband of D5, who were stated to be in joint possession and enjoyment.

4. The plaintiffs further pleaded that the second and third items of the suit schedule properties are also joint family properties.

5. It is the plaintiffs' case that the 3rd defendant, taking advantage of the situation in the family, procured a General Power of Attorney dated 07.10.2008 through D2 (as guardian/curator of D1) and also from D4, both for himself and as guardian representing the then minor plaintiffs. On the strength of the said power deed, the 3rd defendant executed alienations in favour of his wife, namely the 7th defendant.

6. According to the plaintiffs, the said transactions are vitiated and not binding on their shares. The plaintiffs therefore sought partition and allotment of 8/96 share each by way of a preliminary decree, with costs.



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7. The case of the defendant: The 3rd defendant, whose written statement was adopted by defendants 2 and 7, admitted the relationship and the partition deed dated 23.06.1992, but disputed the plaintiffs' case regarding joint possession and the character of the suit properties. It was contended that certain properties were added to Item No.1 apart from those allotted under the partition deed and that some items had been sold long prior to the suit. It was further denied that Items 2 and 3 were joint family properties, and it was pleaded that the 4th defendant had undergone major surgery and that the 3rd defendant alone had met the medical expenses.

8. The power of attorney executed by the 4th defendant for himself and as natural guardian of the minor plaintiffs was sought to be justified, and it was contended that the sale deed and settlement deed dated 25.09.2009 executed in favour of the 7th defendant were valid and binding, as the properties dealt with were not joint family properties.

9. The 4th defendant, in his written statement, alleged that the 3rd defendant had acted fraudulently and against his interest by obtaining the power deed and executing sale deeds in favour of his wife and by creating a lease in favour of the 8th defendant without his knowledge.



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10. The 8th defendant pleaded that the suit was filed at the instigation of the 4th defendant, that the factory was unfunctional, that a lease deed was executed to discharge bank loans, and that a sum of Rs.20,00,000/- was paid as lease amount and further amounts were spent for machinery, all for family necessity, rendering the transaction binding on the plaintiffs.

11. The Trial Court framed necessary issues and examined the first plaintiff and the guardian of the plaintiffs as P.W.1 and P.W.2 and marked Exs.A1 to A9. The defendants, except defendants 5 and 6 who were set ex parte, entered appearance through counsel but did not cross-examine the plaintiffs' witnesses, did not examine themselves or any other witnesses, and did not advance oral arguments. The Trial Court, without setting the remaining defendants ex parte, decided the suit on merits based on the available materials and dismissed the suit, holding that (i) during the lifetime of the father the daughters could not claim partition, and (ii) the plaintiffs ought to have sought a declaration regarding the alienations made by the father as guardian.

12. Aggrieved, the plaintiffs have filed the present appeal contending,



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inter alia, that the Trial Court erred in treating the mere existence of the father as an absolute bar without deciding the nature of the suit properties; failed to adjudicate the issues relating to the power deed, alienations and lease; ignored settled principles governing alienations affecting minors; and wrongly dismissed the suit for want of a declaratory relief without considering whether the relief could be moulded.

13. Points for Consideration:

- (i) Whether the Trial Court was right in holding that, since D4 is alive, the plaintiffs cannot maintain the suit for partition?
- (ii) Whether, in a suit for partition, a separate relief for declaration/cancellation in respect of the power deed and alienations made by the father of the minor coparceners is mandatory?
- (iii) Whether the judgment and decree of the Trial Court are liable to be set aside?

14. Point No.1: The plaintiffs have instituted the suit claiming that all the three items of suit properties are ancestral joint family properties and asserting their rights as coparceners consequent to the Hindu Succession (Amendment) Act, 2005.



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15. Though the defendants filed written statements, they neither entered the witness box nor cross-examined the plaintiffs' witnesses. It is a settled principle that pleadings are not evidence, and where a party fails to step into the witness box or cross-examine the opposing witnesses, an adverse inference has to be drawn under Section 114(g) of the Evidence Act. Equally well-settled is the rule that unchallenged testimony must ordinarily be accepted as true.

16. The Trial Court dismissed the suit on the ground that during the lifetime of the father the daughters could not seek partition. This approach is legally unsustainable. Under Hindu Mitakshara law, a coparcener acquires a right by birth in ancestral coparcenary property, and every coparcener is entitled to demand partition at any time. After the 2005 amendment to the Hindu Succession Act, daughters stand on the same footing as sons as coparceners, as authoritatively declared by the Supreme Court in **Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1**.

17. The decision relied upon by the Trial Court, namely **Samandhi v. Arumugam and others, reported in 2017 (3) L.W.108**, lays down that where the plaintiff fails to establish that the suit property is ancestral or joint



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family property, the property must be treated as the separate/self-acquired property of the father, in which event, during his lifetime, the son or daughter has no right to seek partition. The said principle has no application to the facts of the present case, where the plaintiffs have specifically pleaded that all the suit properties are ancestral, and the defendants have not adduced any evidence to the contrary. The Trial Court therefore erred in applying *Samandhi's case* without first determining the nature and character of the suit properties. Accordingly, Point No.1 is answered in favour of the appellants/plaintiffs.

18. Point No.2: The plaintiffs have pleaded that the 4th defendant executed a power of attorney in favour of the 3rd defendant, both in his individual capacity and as guardian of the minor plaintiffs, and that on the strength of the said power deed, alienations and a lease were created. The relevant documents have been marked as Exs.A3 to A8.

19. Even as the case of the plaintiff being that the suit properties are ancestral joint family properties, the father, as Karta and natural guardian, is competent to alienate joint family property for legal necessity or for the benefit of the estate. Such alienations are binding on the minor coparceners



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unless shown to be unsupported by necessity or benefit. Where a minor seeks to impeach such alienations, the law requires the minor to seek appropriate declaratory relief that the transactions are not binding on his or her share. A registered conveyance affecting the plaintiff's share cannot be simply ignored in a suit for partition without such a prayer. Recently the Hon'ble Apex court held in **Hemalatha (D) by LRS vs Tukaram (D) By LRS and others Civil Appeal No.6640 of 2010 Judgment dated 22.01.2026**, registered sale deed cannot be branded as 'sham' casually, the registration creates strong presumption of validity of document. On the plaintiff's side, no substantial evidence was produced, and no separate prayer was made for a declaration challenging the registered documents.

20. The plaintiffs relied on **Anathula Sudhakar v. P. Buchi Reddy [(2008) 4 SCC 594]** however, in the present case title is admitted and the ancestral character of the property stands confirmed for want of any contra evidence. The issue is whether the sales executed by the father on behalf of the minor daughters are valid and binding, which can be challenged by the minors only within three years of attaining majority with a prayer challenging the alienations made by father after paying necessary court fee. Hence, this citation is not relevant to the present case on this aspect.



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21. The contention raised in appeal that the alienations are void for want of permission of the competent court under Section 8 of the Hindu Minority and Guardianship Act, 1956, is misconceived. Section 8 applies to the alienation of the separate property of a minor by the natural guardian. In the case of joint family property, the Karta's power to alienate for necessity is governed by Hindu law principles. Even otherwise, an alienation made in contravention of Section 8 (2) is only voidable at the instance of the minor under Section 8(3) and not void ab initio. In the absence of a specific prayer to set aside or declare the impugned transactions as not binding, the suit for partition cannot be effectively granted.

22. It is also relevant to note that the lease deed dated 15.09.2008 executed under Ex A3 in favour of the 8th defendant was for a fixed term and, by efflux of time, the lease period has admittedly expired with 14.09.2021. Upon expiry of the term, the lease stands determined under Section 111(a) of the Transfer of Property Act, 1882, and no subsisting leasehold right survives in favour of the 8th defendant. However, the mere expiry of the lease by efflux of time does not, by itself, obliterate the effect of the registered lease deed or render the earlier alienations irrelevant for the



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purpose of granting a preliminary decree for partition, in the absence of a specific declaratory relief impeaching the transactions.

23. It is made clear that, in view of the determination of the lease by efflux of time under Section 111(a) of the Transfer of Property Act, 1882, it is open to the parties to work out their respective rights, if any, in accordance with law by initiating appropriate proceedings. Any such proceedings shall be decided on their own merits and in accordance with law, uninfluenced by any observations made in this judgment. Accordingly, Point No.2 is answered against the plaintiffs.

24. Point No.3: In view of the finding on Point No.2, though the Trial Court erred in its reasoning on Point No.1, the ultimate dismissal of the suit does not warrant interference. The judgment and decree dated 10.08.2017 passed in O.S. No.83 of 2010 by the Additional District Court, Namakkal, are therefore confirmed.



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25. In the result the Appeal Suit is dismissed. No order as to costs.

Civil miscellaneous petitions if any ordered to be closed.

30.01.2026

dpq

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

To

1. The Additional District Judge,
Namakkal



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment in

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