



A.S.No.212 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 17.11.2025
PRONOUNCED ON : 25.06.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

A.S. No.212 of 2019

V.Mohanraj
S/o. Late Venkidusamy At Venkitachala Gounder,
Mathampatti, Perur 641010, Coimbatore Dist.

..Appellant(s)

Vs

1. SUBBATHAL (Died)
W/o.Late Venkidusamy @ Venkitachala gounder,
12/129A, Andal Nagar,Mathampatti, Porur – 641
010, Coimbatore District..
R1 Died. LR's of the R1 i.e., Sole appellant is
already on record. Memo recorded vide court
order dated 24.06.2025 (Memo dated
24.06.2025) (RSVJ)
2. Saraswathi
W/o. Late Venkidusamy At Venkitachala
Gounder, Venkidusamy Gounder Thottam,
Madampatti-641010, Coimbatore Dist.
3. Muthulakshmi
W/o. Kuppusamy, 8/3, Mathampatti,
Madampatti 641010, Coimbatore District.
4. Shanmugasundaram
S/o. Late Venkidusamy @ Venkitachala Gounder,
56/49, Mamarathottak, Ganapathi 641006,
Coimbatore Dist.
5. Loganathan
W/o. Late Venkidusamy At Venkitachala



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Gounder, Venkidusamy Gounder Thottam,
Madampatti 641010, Coimbatore Dist.

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6. Devi @ Bakiyalakshmi
W/o. Palanisamy, Mathampattikarar Thottam,
Uliyampalayam, Thondamuthur 641109,
Coimbatore Dist

..Respondent(s)

PRAYER: Appeal suit filed praying to set aside the Judgment and decree dt.29.10.2018 made in OS No.112/2014 on the file of the Learned I Addl District Court, Coimbatore by allowing this First Appeal before this Honble Court.

For Appellant(s): R.Rajesh Vivekananthan
R.Sanjay-MS/5774/2021
Dayyan Shariff
T.S.Rajaram
S.Swetha

For Respondent(s): Mr.T.Murugamanickam, Senior Counsel
for M/s.K.Govi Ganesan
S.sriram
P.e.senthil Kumar
For R2, R4, R5 And R6
M/s.balaji Thirumoorthy
Gobigasri
M.p.bala Ganesh
For R3
R-1 Died (steps Taken) Memo Recorded

JUDGMENT

This first appeal is filed by plaintiff against the judgment and decree dated 29.10.2018 passed in O.S.No.112 of 2014 by the learned I
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Additional District Judge, Coimbatore, whereby the suit filed for partition and separate possession was dismissed.

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2. For convenience, the parties are referred to as they were arrayed before the trial Court.

3. The case of the plaintiff is that he is the son of the 1st defendant and late Venkidusamygounder @ Venkatachalagounder. According to the plaintiff, his father died intestate on 20.02.1997, leaving behind the plaintiff and the defendants as his legal heirs. The plaintiff has stated that apart from the 1st defendant, his father had two other wives, namely the 2nd defendant and one Valliammal, who died intestate in the year 2006. The 3rd defendant is stated to be the daughter of the said Valliammal, while defendants 4 to 6 are the children of the 2nd defendant through late Venkidusamygounder @ Venkatachalagounder.

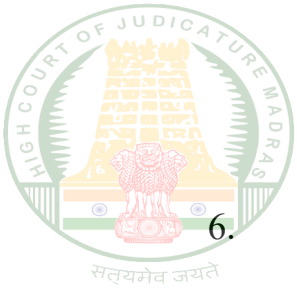
4. The plaintiff further states that the suit property is an ancestral agricultural property which was allotted to the share of his father under a registered partition deed dated 12.02.1952. It is his case that his father



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was enjoying the suit property as the sole surviving coparcener and that, after his death, the property devolved upon all his children along with his widows. The plaintiff claims that he is entitled to 1/6th share, equivalent to 3/18th share, in the suit property. According to him, the three widows together became entitled to 1/6th share, and after the death of Valliammal, her share devolved upon the 3rd defendant. The plaintiff has pleaded that the suit property continues to be in the joint possession and enjoyment of the plaintiff and the defendants.

5. It is further the case of the plaintiff that, despite repeated demands, the defendants did not come forward to divide the suit property. Hence, the plaintiff issued a legal notice dated 18.03.2014 calling upon the defendants to partition the suit property and allot his 1/6th share separately. Though the said notice was received by the defendants, no reply was issued and no partition was effected. Therefore, the plaintiff has filed the present suit seeking a preliminary decree for partition of the suit property into 18 equal shares and for allotment of 3 such shares to him separately. He has also prayed for future mesne profits, costs of the suit, and other appropriate reliefs.



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6. The defendants 4 and 5, whose written statement was adopted by defendants 2 and 6, resisted the suit contending that the suit for partition is false, frivolous and not maintainable either in law or on facts. They denied the plaintiff's status as the son of late Venkidusamygounder @ Venkatachala Gounder and further denied that the 1st defendant Subbathal was his wife. According to them, the plaintiff and the 1st defendant are strangers to the family of Venkidusamygounder @ Venkatachala Gounder and have no right, title, interest or share in the suit properties.

7. Their further case is that Venkidusamygounder @ Venkatachala Gounder had only two wives, namely Valliammal and the 2nd defendant Saraswathi. The 3rd defendant Muthulakshmi is the daughter through Valliammal, and defendants 4 to 6 are the children through the 2nd defendant Saraswathi. Though they admitted that the suit properties were originally allotted to Venkidusamygounder @ Venkatachala Gounder under the registered partition deed dated 12.02.1952, they denied that he was enjoying the properties as the sole surviving coparcener.



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8. According to defendants 4 and 5, even during the lifetime of Venkidusamygounder @ Venkatachala Gounder, a lawful registered partition deed dated 05.05.1987 was executed between him and defendants 4 and 5. Pursuant to the said partition, they claim that the parties were enjoying their respective shares separately. They further contend that Venkidusamygounder @ Venkatachala Gounder was in possession of his allotted share by leasing it out to them till his death, and after his death, as per the recitals of the said partition deed, defendants 4 and 5 took over his share and became the absolute owners of the suit properties.

9. The said defendants also pleaded that Valliammal and the 3rd defendant Muthulakshmi had earlier filed O.S.No.1598 of 1990 before the Sub Court, Coimbatore, questioning the partition and claiming maintenance, and that the plaintiff was also a party to the said suit. According to them, the said suit was dismissed, and the plaintiff, though fully aware of the partition deed dated 05.05.1987, had deliberately suppressed the same in the present plaint. They therefore contend that no property is available for partition and that the plaintiff was never in joint

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possession of the suit properties. They also pleaded that the suit is barred by limitation, that there is no cause of action, and that the suit has not been properly valued for the purpose of court fee and jurisdiction.

10. The 1st defendant, on the other hand, filed a written statement supporting the plaintiff's claim. She contended that she is the wife of Venkidusamygounder @ Venkatachala Gounder and that the plaintiff is her son through him. She admitted that Venkidusamygounder @ Venkatachala Gounder had three wives, namely herself, the 2nd defendant Saraswathi and Valliammal. According to her, the suit properties are ancestral properties allotted to her husband under the registered partition deed dated 12.02.1952, and her husband died intestate on 20.02.1997.

11. The 1st defendant further pleaded that after the death of Venkidusamygounder @ Venkatachala Gounder, his five children, namely the plaintiff and defendants 3 to 6, became entitled to 1/6th share each, while the three widows together became entitled to 1/6th share. She claimed that she is entitled to 1/18th share in the suit properties and stated



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that she had no objection for partition. According to her, defendants 2 to 6 alone were postponing the partition. She also pleaded that in O.S.No.1598 of 1990, the alleged partition deed dated 05.05.1987 was declared void and unenforceable, and therefore the suit properties were available for partition among the legal heirs.

12. The 3rd defendant filed a separate written statement contending that she is the only daughter of Venkidusamygounder @ Venkatachala Gounder through his legally wedded wife Valliammal. She stated that the plaintiff is the son of Venkidusamygounder @ Venkatachala Gounder through the 1st defendant Subbathal, and that defendants 4 to 6 are his children through the 2nd defendant Saraswathi. However, she contended that the plaintiff and defendants 4 to 6 are illegitimate children.

13. The 3rd defendant further pleaded that the suit property originally came to the share of her father under the registered partition deed dated 12.02.1952 and that, since he had no male issue through his legally wedded wife Valliammal, the property became his separate property. She claimed that she is a co-owner of the suit property and prayed that a



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decree for partition may be passed in accordance with the law applicable to the separate property of her father.

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14. The trial Court framed following issues :

1. Whether the plaintiff is the son of Venkidusamy Gounder / Venkatachala Gounder and whether the 1st defendant is legally wedded wife of Venkidusamy Gounder / Venkatachala Gounder?
2. Whether there were any partition deed dated 5.5.1987 and if so whether it is true , valid and binding on the plaintiff?
3. Whether the suit properties are available for partition?
4. Whether the plaintiff is entitled for 1/6th share in the suit property and 1st defendant 1/18th share in it ?
5. What other relief the plaintiff is entitle for?

15. Before the trial Court, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A39. Ex.A1 is the registered partition deed dated 12.02.1952, Ex.A2 is the death certificate of Venkatachala Gounder, Ex.A3 is the legal notice dated 18.03.2014, Ex.A10 is the reply notice, Ex.A11 and Ex.A12 is the decree and judgment dated 07.07.1993 in O.S.1598 of 1990 , Exs.A13 to A25 are the voter identity card, Aadhaar card and other related identity documents, Ex.A26 is the death certificate of Venkatachala Gounder, and Ex.A39 is the birth certificate . On the side

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of the defendants, D.W.1 to D.W.3 were examined and Exs.B1 to B14

were marked. Ex.B1, the registered partition deed dated 05.05.1987,

Ex.B2, the plaint in O.S.No.1598 of 1990, Ex.B3 patta, Ex.B4, the

written statement in O.S.No.1598 of 1990, Ex.B5 order issued by the

Tamil Nadu land survey and settlement officer and Tahsildar dated

12.07.1993 ,Exs.B6 and B7, the judgment and decree in O.S.No.36 of

1995, Exs.B8 and B13, the revenue/register extracts, and Exs.B9 to B14,

the photographs.

16. The learned Trial Judge, on considering the oral and documentary evidence, held that the plaintiff had failed to establish his status as the son of late Venkidusamygounder @ Venkatachala Gounder through acceptable evidence. The Trial Court observed that the burden was upon the plaintiff to prove the pleaded relationship and that the identity documents and birth records relied upon by him, by themselves, were not sufficient to prove paternity or the alleged marital relationship between the 1st defendant and late Venkidusamygounder @ Venkatachala Gounder. The Trial Court also took note of Ex.B1, the registered partition deed dated 05.05.1987, relied upon by the contesting defendants, and found that the earlier proceedings relied upon by the plaintiff did not

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result in setting aside the said partition deed, since Exs.B6 and B7 showed that the earlier suit was dismissed for default. On that basis, the Trial Court concluded that the suit properties were not available for partition as claimed by the plaintiff and that the plaintiff was not entitled to claim 1/6th share in the suit properties. Accordingly, the suit was dismissed.

17. Aggrieved by the judgment and decree the plaintiff has preferred contents in the grounds of appeal that the Trial Court failed to properly appreciate the oral and documentary evidence and that the finding denying his status as the son of late Venkidusamy @ Venkatachala Gounder is contrary to Exs.A11 to A39, wherein he has been described as the son of the said Venkidusamy @ Venkatachala Gounder. It is further contended that while defendants 4 to 6 have been recognized as the heirs of late Venkidusamy @ Venkatachala Gounder, the same status has been erroneously denied to the plaintiff. The appellant also challenges the reliance placed on Ex.B1, the partition deed dated 05.05.1987, contending that the said document is void, self-serving and the result of fraud, and that the dismissal of O.S.No.1598 of 1990 for default would not bar the present suit for partition, as the cause of action for partition is continuing



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in nature. It is also urged that the Trial Court rejected Exs.A11 to A25 and Exs.A27 to A38 as self-serving documents, but adopted a different standard while accepting Ex.B1. The appellant further pleads that the long cohabitation of the 1st defendant Subbathal with late Venkidusamy @ Venkatachala Gounder and the recognition of their relationship by relatives and others give rise to a presumption under Section 50 of the Evidence Act. On these grounds, the appellant seeks to set aside the judgment and decree of the Trial Court and prays for allowing the suit for partition.

18. The learned counsel for the appellant/plaintiff submitted that the Trial Court failed to properly appreciate the oral and documentary evidence adduced on the side of the plaintiff. According to the learned counsel, in Ex.A11, the 3rd defendant and her mother had arrayed the plaintiff as the 4th defendant and had specifically described him as the son of Venkidusamy @ Venkatachala Gounder, represented by his mother and guardian Subbathal. It is further submitted that even in the written statement and proof affidavit, the 3rd defendant had admitted that the 1st defendant was the third wife of Venkidusamy @ Venkatachala Gounder and that the plaintiff is the son born to them. The learned counsel would also submit that the 1st defendant entered the witness box

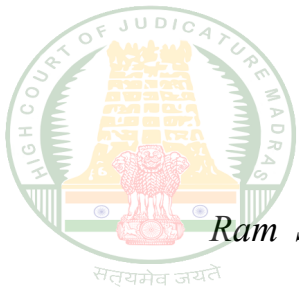
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and clearly deposed about her marriage with Venkidusamy @ Venkatachala Gounder and their joint living as husband and wife.

Therefore, according to the appellant, there was no further necessity to prove the marriage independently, particularly when the relationship had been recognized in the earlier proceedings and documents. It is further contended that on the date of Ex.B1 partition deed dated 05.05.1987, the plaintiff was only a minor and was not made a party to the said partition deed, and hence the same is not binding upon him. Since the suit property is ancestral in nature, the plaintiff is entitled to seek partition and allotment of his lawful share. The learned counsel further submitted that the earlier suit in O.S.No.1598 of 1990 would not bind the plaintiff and would not operate as a bar to the present suit for partition. It is also contended that the plaintiff has proved, through oral and documentary evidence, that he is the legal heir of Venkidusamy @ Venkatachala Gounder, but the Trial Court erroneously rejected the said evidence and, based on the deposition of D.W.3, wrongly concluded that the plaintiff was not in joint possession of the suit property. In support of his submissions, the learned counsel relied upon the decisions in *K.P. Natarajan and another v. Muthalammal and others*, reported in (2021) 15 SCC 817; *Muthalammal and others v. K.P. Natarajan and another*, reported in 2022 SCC OnLine Mad 22347; *Subhash Chandra Singh v.* 13/27



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Ram Singar Singh, reported in 1997 Supreme (Pat) 824; R. Hareesh

Babu v. Anju Hariharan, reported in 2024 Supreme (Ker) 70; K.S.

Shivappa v. K. Neelamma, Civil Appeal No.11342 of 2013; Veerappan

and others v. Selladurai and others, S.A.No.421 of 2009;

Chandrabhagabai Ganapati Karwar and others v. Sambhaji Narhari

Karwar and others, reported in 2007 (6) Mh.L.J.; S.P.S.

Balasubramanyam v. Suruttayan and others, reported in 1992 Supp (2)

SCC 804; and Kavitha v. Damodaran and others, A.S.Nos.891 of 2012

and 203 of 2019. . On these grounds, the appellant seeks to set aside the

judgment and decree of the Trial Court and prays for allowing the suit for

partition.

19. The learned counsel for the respondent R2,4 to 6 submits that the plaintiff, having filed the suit for partition, must first establish an inherent right in the suit property. According to the said respondents, the plaintiff claims such right only on the basis that he is the son of late Venkidusamy Gounder through the 1st defendant Subbathal, who is alleged to be the third wife of Venkidusamy Gounder. It is contended that there is neither proper pleading nor proof regarding the factum of marriage between the 1st defendant and late Venkidusamy Gounder, and that the 1st defendant, being the best person to prove such marriage, has not adduced acceptable

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evidence. It is further submitted that unless the factum of marriage is proved, the plaintiff cannot invoke any presumption or claim the benefit

of Section 16 of the Hindu Marriage Act for claiming a share in the property. The respondents also contended that equity cannot be applied when the statutory provisions under Section 16(1) and 16(3) of the Hindu Marriage Act prescribe specific requirements. In support of this contention the Learned counsel relied on *Kumarayya Chettiar & another vs Cheyyalachi & others reported in 1972 TNLJ 464, Alagammal and others vs Rakkammal reported in AIR 1982 MADRAS 354, Mohan & another vs Santha Bai Ammal and others reported in 1989 II LW 197, K.Munuswami Gounder and another vs M.Govindaraju and 4 others reported in 1995 1 L.W.487*. It was further argued that under Ex.B1 partition deed dated 05.05.1987, executed between Venkidusamy Gounder and defendants 4 and 5, the plaintiff was not recognized as a son and no share was allotted to him. Therefore, without seeking a relief to set aside Ex.B1 partition deed, the present suit for partition itself is not maintainable. In support of this contention the Learned counsel relied on *Md.Noorul Hoda vs Bibi Raifunnisa and others reported in (1996) 7 SCC 767*. On these grounds, respondents 2, 4 to 6 prayed for dismissal of the appeal and for confirmation of the judgment and decree passed by the Trial Court.

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20. The learned counsel appearing for the 3rd respondent/3rd defendant submitted that the 3rd defendant has admitted that the 1st defendant is the third wife of Venkidusamy @ Venkatachala Gounder and that the plaintiff is the son of Venkidusamy @ Venkatachala Gounder. It is further submitted that at the time of execution of the partition deed dated 05.05.1987, the 3rd defendant did not have coparcenary right, as her marriage had taken place prior to 1989. However, the condition incorporated in the said partition deed that after the death of Venkidusamy @ Venkatachala Gounder, his share would devolve upon defendants 4 and 5, is unsustainable in law. According to the learned counsel, under Mitakshara Hindu law, a partition can be effected only among coparceners, and after the Hindu Succession (Amendment) Act, 2005, the 3rd defendant, being a daughter, is also entitled to be treated as a coparcener and to claim share in the suit property. Therefore, the partition deed dated 05.05.1987 cannot defeat her lawful right in the ancestral/coparcenary property. It is further contended that the Trial Court failed to consider the legal position governing the right of a daughter in coparcenary property and hence the judgment and decree of the Trial Court are liable to be set aside. The learned counsel therefore prayed that the 3rd defendant's share in the suit property may

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also be declared and allotted in accordance with law. In support of the said submissions, the learned counsel relied upon the decisions in *Azhar Barid v. Mazambi*, reported in (2022) 5 SCC 334; *Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat*, reported in (1969) 2 SCC 74; *S.V. Muthu v. Veerammal*, reported in 1980 SCC OnLine Mad 152; *Revanasiddappa v. Mallikarjun*, reported in (2023) 10 SCC 1; *Mallesappa Bandeppa Desai v. Desai Mallappa*, reported in 1961 SCC OnLine SC 270; *Vineeta Sharma v. Rakesh Sharma*, reported in (2020) 9 SCC 1; and *Lakkireddi Chinna Venkata Reddi v. Lakkireddi Lakshmama*, reported in AIR 1963 SC 1601.

21. Points for consideration are:

1. Whether the plaintiff is entitled for partition of the suit schedule property?
2. Whether the deceased Venkidusamy @ Venkatachala Gounder died intestate leaving the suit property?
3. Whether the Judgment and decree of trial court are liable to be set aside?

Point No.1:

22. The plaintiff claims partition in the suit property as the son of deceased Venkidusamy @ Venkatachala Gounder . According to the

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plaintiff, the suit property was acquired by deceased Venkidusamy under the family partition deed dated 12.02.1952 (Ex.A1). It is the case of the plaintiff that though the property was ancestral in origin, deceased Venkidusamy had no male issue through his legally wedded wife and therefore enjoyed the property as his separate property. After the death of Venkidusamy on 20.02.1997, the plaintiff claims entitlement to a share as an illegitimate son along with defendants 4 to 6, claiming that the property devolved upon the heirs of deceased Venkidusamy including Valliammal, the legally wedded wife, and the 3rd defendant, his daughter born through the said marriage. On such basis, the plaintiff claims 1/6th share.

23. The admitted and proved facts reveal that deceased Venkidusamy @ Venkatachala Gounder married Valliammal, through whom the 3rd defendant was born. The evidence further discloses that Valliammal survived Venkidusamy and died only in the year 2006. D.W.3, namely the 3rd defendant, deposed that she was born in the year 1950 and that when she was studying in the sixth standard, her father contracted another marriage. Her evidence probabalises that the second marriage of deceased Venkidusamy with the 2nd defendant was contracted sometime around



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the year 1960, admittedly during the subsistence of the first marriage with

Valliammal.

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24. The defendants 2 and 4 to 6 also admitted that the 2nd defendant lived as the second wife of deceased Venkidusamy . Their specific defence is that such marriage was performed with the consent of the first wife, Valliammal, owing to absence of a male issue. However, such consent, even if assumed to be true, does not validate a marriage contracted during the subsistence of an earlier valid marriage after the commencement of the Hindu Marriage Act, 1955. Therefore, any such marriage with the 2nd defendant after 1956 would only be a void marriage in law.

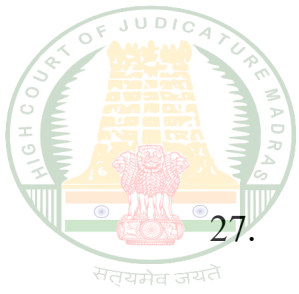
25. D.W.3 also supported the plaintiff's case to the extent that deceased Venkidusamy subsequently lived with the 1st defendant and the plaintiff was born through her. However, the plaintiff has failed to establish that there was any form of marriage, valid or void, between the 1st defendant and deceased Venkidusamy. Except the oral assertion of cohabitation, no acceptable evidence is placed to show that the 1st defendant was married



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to deceased Venkidusamy. Ex.A39, the birth certificate, may probabilise or even establish that deceased Venkidusamy @ Venkatachala Gounder was the biological father of the plaintiff. However, mere proof of biological paternity, by itself, would not confer legal status upon the plaintiff to claim succession rights in the property of the deceased.

26. This distinction assumes legal significance. Under Section 16 of the Hindu Marriage Act, a child born through a void or voidable marriage is treated as legitimate for the limited purpose of succession to the property of his or her parents. However, such statutory benefit presupposes proof of a marriage, though void in law. Mere proof of paternity or cohabitation, without proof of marriage, will not attract Section 16. Therefore, even assuming that the plaintiff is the biological son of deceased Venkidusamy , in the absence of proof that he was born through a marriage, albeit void, with the 1st defendant, the plaintiff cannot invoke Section 16 of the Hindu Marriage Act to claim a share in the property of deceased Venkidusamy .



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27. Accordingly, the plaintiff is not entitled to claim partition in the suit property as a legal heir of deceased Venkidusamy. Hence, Point No.1 is answered against the plaintiff.

Point No.2:

28. The plaintiff and the 3rd defendant contended that deceased Venkidusamy @ Venkatachala Gounder died intestate leaving the suit schedule property. Per contra, defendants 2 and 4 to 6 contended that deceased Venkidusamy , along with defendants 4 and 5, entered into a registered partition deed dated 05.05.1987 marked as Ex.B1, under which A-schedule property was allotted to deceased Venkidusamy and B- and C-schedule properties were allotted respectively to defendants 4 and 5. According to them, by virtue of the said document, the deceased had already made disposition of the properties and therefore did not die intestate in respect of the suit property.

29. On perusal of Ex. B1 partition deed dated 05.05.1987 , reveals that the document recites the suit property as ancestral property. However, defendants 4 and 5, being children born through a 2nd defendant, could not have been treated as coparceners entitled to claim a share by birth in



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ancestral property. Therefore, the recital in Ex.B1 describing the suit property as ancestral property jointly available for partition between deceased Venkidusamy and defendants 4 and 5 is legally inaccurate to that extent. At the same time, it is relevant to note that even the legitimate daughter, namely the 3rd defendant, was not a coparcener as on the date of Ex.B1, the document having been executed prior to the advent of the Hindu Succession (Amendment) Act, 2005.

30. On a careful reading of Ex.B1 partition deed dated 05.05.1987, it is evident that the document is not a mere partition deed simpliciter, but partakes the character of a settlement as well. Though A-schedule property was allotted to deceased Venkidusamy for his enjoyment during his lifetime, the document specifically recites that after his demise the said property shall devolve upon defendants 4 and 5 equally. Thus, Ex.B1 contains a clear disposition in praesenti regarding the mode of devolution of A-schedule property and therefore assumes the character of a settlement deed in addition to a partition arrangement. By virtue of Ex.B1 partition deed dated 05.05.1987, deceased Venkidusamy allotted B- and C-schedule properties directly to defendants 4 and 5 and further settled the A-schedule property to devolve upon them after his lifetime. Hence,



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deceased Venkidusamy cannot be said to have left the suit schedule property for intestate succession.

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31. The plaintiff disputed the genuineness of Ex.B1. However, as already answered under Point No.1, even in the absence of Ex.B1, the plaintiff has failed to establish that he is a child born through a void or voidable marriage between deceased Venkidusamy and the 1st defendant so as to claim any right under Section 16 of the Hindu Marriage Act.

32. The status of the 1st and 2nd defendants, the defendants 4 to 6, and the plaintiff is similar in nature, as all stand on the same footing, being the illegitimate wife and illegitimate children of the deceased Venkidusamy @ Venkatachala Gounder . The suit property in the hands of the deceased Venkidusamy @ Venkatachala Gounder was ancestral property. However, in the absence of any coparceners, the deceased Venkidusamy treated and enjoyed the same as his individual property. As such, he had every right to deal with the suit property independently. Accordingly, under Ex.B1 partition deed dated 05.05.1987, he settled the B and C Schedule properties in favour of the 4th and 5th defendants



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absolutely and allotted the A Schedule property to himself for enjoyment during his lifetime, with succession thereafter in favour of the 4th and 5th defendants. Thus, the 4th and 5th defendants became entitled to the suit property by virtue of Ex.B1 and consequent inheritance. In such circumstances, the plaintiffs have no right to claim partition of the suit property.

33. The 3rd defendant questioned the validity of Ex.B1. The materials on record reveal that earlier the 3rd defendant, along with her mother Valliammal, instituted O.S.No.1598 of 1990 challenging the validity of Ex.B1. The said suit was initially decreed ex parte on 07.07.1993 by the learned Subordinate Judge, Coimbatore, and the certified copy of the ex parte decree is marked as Ex.A11. It is seen that subsequently the ex parte decree was set aside, the suit came to be restored and transferred to the Family Court, Coimbatore, where it was renumbered as O.S.No.36 of 1995. Ultimately, the said suit came to be dismissed for default on 19.12.1995 and the copy of the order is marked as Ex.B6.



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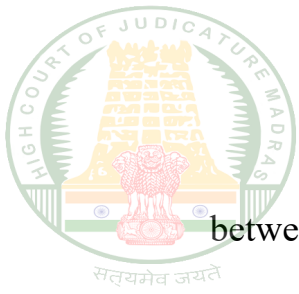
34. Though dismissal for non-prosecution does not operate as res judicata, it nevertheless resulted in the challenge to Ex.B1 not being pursued to its logical end and the document remained operative. In such circumstances, the 3rd defendant cannot now successfully contend that Ex.B1 stood invalidated. Therefore, it is answered that deceased Venkidusamy @ Venkatachala Gounder did not leave the suit schedule property for intestate succession, the same having already been dealt with under Ex.B1. Accordingly, this point is answered against the plaintiff.

Point No.3:

35. In view of the findings arrived at on the preceding points, this Court finds no valid ground or reason to interfere with the judgment and decree passed by the trial Court. The judgment and decree of the trial Court do not suffer from any infirmity warranting interference in this appeal.

36. In the result, the judgment and decree of the trial Court are confirmed and the appeal stands dismissed. Considering the relationship

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between the parties, there shall be no order as to costs. Consequently,
miscellaneous application(s), if any, shall stand closed.

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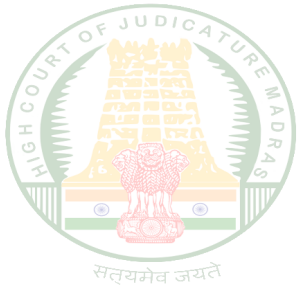
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

AY

To

1.The I Additional District Court, Coimbatore.

2. The Section Officer,
V.R.Records,
Madras High Court.



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A.S.No.212 of 2019

DR.A.D.MARIA CLETE, J.

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PRE-DELIVERY JUDGMENT MADE IN
AS No. 212 of 2019

25-06-2026