



WEB COPY

SA No. 292 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 22-04-2026**

CORAM

**THE HON'BLE MR.JUSTICE S. SOUNTHAR**

**SA No. 292 of 2026 and  
CMP.No.10176 of 2026**

Dhandapani  
S/o.Shanmugam,  
No.4/11 Balagurunatha Jothidar Street,  
Sulur Town and Tk.

.. Appellant /  
15<sup>th</sup> Defendant

Vs

1. Kamalam  
W/o.Rajagopal,  
No.84, P.M.Samy Colony,  
1st Cross, Rathinapuri,  
Coimbatore 27.

2. Saraswathy  
W/o.Subramaniam,  
Ramakrishna Mills,  
Sivanandapuram,  
Coimbatore.

... Respondents 1 & 2 /  
Plaintiffs

S.R.Ramasamy (died).

3. S.R.Karupannan  
S/o.Rakiappa Asari (Late),  
No.30 Thirukannapuram Trichy Road,  
Sulur, Coimbatore Dist.

4. S.R.Palaniappan  
S/o.Rakiappa Asari,  
No.30 Thirukannapuram,  
Trichy Road,  
Sulur, Coimbatore Dist.



5. Lakshmi  
W/o.Saravanan,  
No.51 Kannaiyan Maistry House,  
2nd Street,  
Elangovan Nagar,  
Sulur, Coimbatore.

6. Dhanalakshmi  
W/o.Karuppusamy,  
No.30 Thirukannapuram,  
Trichy Road,  
Sulur, Coimbatore Dist.

7. Tamilselvi  
W/o.Mani,  
No.30 Thirukannapuram,  
Trichy Road,  
Sulur, Coimbatore Dist.

8. S.Subramaniam  
Prop.M/s. Anbu Finance,  
No.30 Thirukannapuram,  
Sulur, Coimbatore Dist.

9. Bavani Studio  
Proprietor,  
No.30 Thirukannapuram,  
Trichy Road,  
Sulur, Coimbatore Dist.

10.Pavithra Frame Works  
No.30 Thirukannapuram,  
Trichy Road,  
Sulur, Coimbatore Dist.

11.S.T.S.Shanmugam  
S/o. Tirupathi Thevar,  
No.30 Thirukannapuram,  
Trichy Road,  
Sulur, Coimbatore Dist.

12.Pechiannan  
No.30 Thirukannapuram,



Trichy Road, Sulur,  
Coimbatore Dist.

13. Kannammal  
W/o.S.R.Ramsamy,  
No.30 Thirukannapuram,  
Trichy Road,  
Sulur, Coimbatore Dist.

14. S.R.Murugesan  
S/o.Ramasamy,  
No.30 Thirukannapuram,  
Trichy Road,  
Sulur, Coimbatore Dist.

15. S.R.Sivaji  
S/o.S.R.Ramasamy,  
No.30 Thirukannapuram,  
Trichy Road,  
Sulur, Coimbatore Dist.

..Respondents 3 to 15 /  
Defendants 1 to 14

PRAYER : Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 24.09.2025 made in A.S.No.119 of 2024 on the file of the Learned I Additional Subordinate Judge, Coimbatore District, confirming the judgment and decree dated 27.09.2024 made in O.S.No.1169 of 2017 on the file of the District Munsif Court, Sulur, Coimbatore.

For Appellant(s): Mr.S.Gunaseelan

### **JUDGMENT**

This Second Appeal has been filed to set aside the judgment and decree dated 24.09.2025 made in A.S.No.119 of 2024 on the file of the Learned I Additional Subordinate Judge, Coimbatore District, confirming the judgment



and decree dated 27.09.2024 made in O.S.No.1169 of 2017 on the file of the District Munsif Court, Sulur, Coimbatore.

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2. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

3. The 15<sup>th</sup> defendant is the appellant herein. The respondents 1 & 2 / plaintiffs filed a suit for partition claiming 1/8<sup>th</sup> share in the suit property against the other respondents and the appellant. The suit was decreed by the Trial Court by granting 1/10<sup>th</sup> share. Aggrieved by the same, 15<sup>th</sup> defendant filed a First Appeal in A.S.No.119 of 2024 and the same was also allowed. Challenging the concurrent findings of the Courts below, 15<sup>th</sup> defendant is before this Court.

4. For the sake of convenience, the parties are referred to as per their ranking in the suit.

5. The plaintiffs and the defendants 1 to 6 are siblings. The defendants 7 to 10 are tenants. 11<sup>th</sup> and 15<sup>th</sup> defendants are purchasers of the suit property from the defendants 2 & 3. The defendants 12 to 14 are the legal heirs of the deceased first defendant. The plaintiffs and the defendants 4 to 6 are the daughters of one Rakiappan. The defendants 1 to 3 are the sons of Rakiappan.



6. It is the case of the plaintiffs that the suit property was the absolute property of Rakiappan. He died intestate in the year 1975. According to the plaintiffs, each of his children are entitled to 1/8th share in the suit property. It was also pleaded that the plaintiffs later acquired knowledge about the partition entered into among the sons of Rakiappan and the alienation made by them ignoring the share of the plaintiffs. In the said circumstances, the above suit was filed seeking partition and claiming 1/8th share each in the suit property. Subsequently, the plaintiffs amended the plaint and included a prayer to set aside the partition deed dated 20.12.1978 entered into among the sons of Rakiappan and to set aside the sale deeds dated 05.12.1996, 03.01.2007 and 20.11.2006 executed by the defendants 1 to 3 in favour of the defendants 11 and 15.

7. The appellant / 15th defendant filed a written statement denying various averments contained in the plaint. It was his case that the suit property was ancestral property and hence, the plaintiffs cannot lay any claim over the same. It was the further case of the 15<sup>th</sup> defendant that he purchased the property under sale deeds dated 20.11.2006 and 03.01.2007 from the defendants 2 and 3 and he was a *bonafide* purchaser. In such circumstances, the suit filed by the plaintiffs against the 15<sup>th</sup> defendant was not maintainable. He also pleaded that the present suit filed by the plaintiffs is a collusive one to defeat the right acquired by the 15<sup>th</sup> defendant under the registered sale deeds.



8. Before the Trial Court, the first plaintiff was examined as P.W.1 and 31 documents were marked on their side as Exs.A1 to A31. On the side of the defendants, the defendants 2, 5 and 15 were examined as D.W.1 to D.W.3 respectively and the third defendant was examined as D.W.4. On behalf of the defendants, 38 documents were marked as Exs.B1 to B38.

9. The Trial Court, on appreciation of the oral and documentary evidence available on record, came to the conclusion that the suit property was a self-acquired property of Rakiappan and also held that the plaintiffs were entitled to 1/10th share each. Accordingly, the suit was decreed and the sale deeds entered in favour of the appellant / 15<sup>th</sup> defendant were declared invalid. Aggrieved by the same, the appellant / 15<sup>th</sup> defendant filed a first appeal in A.S.No.119 of 2024, on the file of I Additional Sub-ordinate Judge, Coimbatore. The First Appeal was also allowed, confirming the judgment and decree of the Trial Court. Aggrieved by the concurrent findings of the Courts below, 15<sup>th</sup> defendant has filed this Second Appeal.

10. The learned counsel for the appellant / 15<sup>th</sup> defendant submitted that the suit property is ancestral property. Therefore, under Section 23 of Hindu Succession Act as it stood at the time of filing of suit, the plaintiffs' suit for partition could not be entertained. The learned counsel further submitted that the



appellant is a *bonafide* purchaser of the suit property from the defendants 2 and 3 and the present suit is a collusive one, intended to defeat the rights acquired by the appellant. The learned counsel also submitted that the plaintiffs filed a suit with false averments, as if the suit property is a self-acquired property of Rakiappan.

11. It is seen from the typed set of papers that the suit property was purchased by Rakiappan's mother Muthakkal under Ex.A23 on 01.09.1919. Thereafter, Muthakkal sold the property to Rakiappan under the sale deed dated 23.02.1937 which was marked as Ex.A24. Therefore, it is clear that the suit property is not ancestral property and the same is a self-acquired property of Rakiappan. In such circumstances, the plaintiffs being the daughters of Rakiappan, are entitled to equal share along with other heirs. Therefore, the partition deed entered among the sons of Rakiappan dated 27.12.1978, without impleading the female heirs, is an invalid document and the same was rightly rejected by the Courts below.

12. The sale deed dated 05.12.1996 executed by the second and third defendants in favour of 11<sup>th</sup> defendant, the sale deed dated 03.01.2007 executed by the third defendant in favour of 15<sup>th</sup> defendant and the sale deed dated 20.11.2006 executed by the second defendant in favour of 15<sup>th</sup> defendant on the strength of the partition deed dated 27.12.1978 are null and void, as it ignores



the right of the female heirs. Further, the sale deeds executed in favour of 15<sup>th</sup> defendant dated 03.01.2007 and 20.11.2006 came into existence during the pendency of the partition suit and hence, it is hit by Section 52 of the Transfer of Property Act. The 15<sup>th</sup> defendant being a *pendente lite* purchaser, cannot claim himself as a *bonafide* purchaser. In view of Section 52 of Transfer of Property Act, any decree passed in the suit is binding on the 15<sup>th</sup> defendant. Being a *pendente lite* purchaser, he cannot take a defence as a *bonafide* purchaser.

13. Section 23 of the Hindu Succession Act, as it stood at the time of filing of the suit, only suspended the right of partition available to a female heir until the male heirs chose to divide the property. In the case on hand, the male heirs of Rakiappan had decided to divide the property even in the year 1978. In such circumstances, the argument of the learned counsel for the appellant on the strength of Section 23 of the Hindu Succession Act, is not acceptable to this Court. Further, Section 23 of Hindu Succession Act is now repealed and the benefit will enure to the plaintiffs.

14. It is also submitted by the learned counsel for the appellant that the two daughters of the first wife of Rakiappan have not been included in the present suit and the Trial Court taking into consideration the said fact, allowed 1/10 share in favour of the plaintiffs. The learner counsel further submitted that



when the other sharers were not impleaded, the Trial Court ought to have dismissed the suit.

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15. It is seen from the pleadings that the plea of non-joinder of other sharers has not been raised by the 15<sup>th</sup> defendant or by any other defendants in the suit. In any event, in cases of non-joinder, the sharers can be impleaded at any point of time before the passing of the final decree and a fresh preliminary decree can be passed taking into consideration the right of the other sharers. Further, the 15<sup>th</sup> defendant is not a sharer and he is only a purchaser from one of the sharers. Hence, he is not entitled to raise a plea of non-joinder at the second appellate stage. In view of the discussion made earlier, I do not find any error in the findings arrived at by the Courts below, granting a decree for partition in favour of the plaintiffs. There is no substantial question of law arising for consideration to entertain this Second Appeal.

16. Accordingly, this Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed. It is open to the appellant to work out equities in the final decree proceedings as against his vendors.

**22-04-2026**

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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SA No. 292 of 2



**S.SOUNTHAR, J.**

**GSK**

To

1. I Additional Subordinate Judge, Coimbatore.
2. The District Munsif Court, Sulur, Coimbatore.

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CMP.No.10176 of 2026**

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