



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.312 of 2023
and CMP.No.9292 of 2023

1.Venkatesan
2.Punithavathi

... Appellants

VS.

1.Jayalakshmi
2.Thangamani
3.Thailammal
4.Velumani
5.Dharman
6.Pullyappan
7.Sivasamy

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 04.01.2023 passed in A.S.No.9 of 2019 on the file of the Additional District and Sessions Judge (Fast Track Court), Mettur, thereby confirming the Judgment and Decree dated 31.01.2018 in O.S.No.36 of 2009 on the file of the Subordinate Judge, Mettur.

For Appellants : Mr.T.Saikrishnan

For Respondents :Mr.J.Sathish for R1 and R2
No Appearance for R3 to R5
unserved for R6 & R7



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The defendants 1 and 2 are the appellants.

2. The respondents 1 and 2 filed a suit for partition and seeking 2/3rd share and also permanent injunction restraining the defendants from altering the physical features of suit property. The suit was decreed in respect of prayer for partition in suit 'A' and 'C' schedule properties and the prayer for permanent injunction was negatived. The First Appellate Court affirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent findings, the defendants 1 and 2 have come before this Court.

3. According to the appellants, the 2nd plaintiff is the daughter of the 1st plaintiff, the 1st plaintiff is the wife of one Natesan. He married one Thangammal about 40 years back. The defendants 1 and 2 are the children of Natesan through his 1st wife Thangammal. It is also stated that 1st wife Thangammal died 37 years back. Two years after death of 1st wife, Natesan married the 1st plaintiff. The above said Natesan died on 01.02.2009 leaving behind the plaintiffs and the defendants 1 and 2 as persons entitled to succeed to his estate. Natesan was employed as Superintendent in the Agricultural Department and retired on 31.05.1994 and in the service records and other papers, the 1st plaintiff has been shown as wife of Natesan. The A & B suit schedule properties are self acquired properties of Natesan. He had two divided brothers namely Raju and the 7th defendant. The defendants 3 to 6 are legal heirs are deceased Raju. Since suit A&B schedule properties are self acquired properties of Natesan, the plaintiffs are entitled to equal share along with defendants 1 and 2.



4. It is further pleaded in the plaint that there was a dispute between legal heirs of deceased Natesan and defendants 3 to 7 and as per the Panchayat Muchalikka, the suit 'B' schedule properties were exchanged with suit C schedule properties. Therefore, the plaintiffs sought for alternative prayer seeking partition of 'C' schedule properties in stead of 'B' schedule property, along with the 'A' schedule properties.

5. The appellants/defendants filed written statement denying status of 1st plaintiff as wife of Natesan. The status of 2nd plaintiff as daughter of Natesan has also been denied in the written statement. It was their case as the plaintiffs were not legal heirs of deceased Natesan, they were not entitled to sue for partition in respect of the suit properties. The Panchayat Muchalikka pleaded in the plaint was also denied by the defendants. On these pleadings, the defendants sought for dismissal of the suit.

6. Before the Trial Court, the 2nd plaintiff was examined as PW.1 and two other witnesses were examined as PW.2 and PW.3. On behalf of the plaintiffs, thirty eight documents were marked as Exs.A1 to A38. The 2nd defendant has been examined as DW.1 and three other witnesses were examined as DW.2 to DW.4. On behalf of the defendants eight documents were marked as Exs.B1 to B8. The Panchayat Muchalikka relied on was marked as Ex.C1. Further through PW.2- Exs.X1 and X2 were marked and through DW.4-five documents were marked as Exs.X1 to X5

7. On appreciation of evidence available on record, the trial Court came to the conclusion that the Muchalikka pleaded by the plaintiffs was true and hence the plaintiffs were entitled to partition of 1/4th share each in schedule 'A' and 'C' of the suit properties. Aggrieved by the same, the defendants 1



and 2 filed the First Appeal in A.S.No.9 of 2019, on the file of the Additional District and Sessions Judge, Mettur. The First Appellate Court affirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent findings, the defendants 1 and 2 have come before this Court.

8. The learned counsel appearing for the appellants would submit that in the plaint averment, the plaintiffs have not pleaded the date on which marriage of the 1st plaintiff with Natesan was solemnized. In the absence of specific averment by mentioning the date of marriage, the Courts below have committed serious error in accepting the status of the 1st plaintiff as legally wedded wife of Natesan.

9. The close scrutiny of the plaint averment would indicate that the plaintiffs have stated that Natesan married Thangammal about 40 years back and said Thangammal died about 37 years back. After two years from the date of death of Thangammal, Natesan married 1st plaintiff. Therefore, it is clear, as per the plaint pleadings, Natesan married 1st plaintiff about 35 years back. The said suit was filed in the year 2009. Therefore, it can be easily presumed that as per the averment contended the plaintiffs, the 1st plaintiff married Natesan somewhere in 1974. Merely because the specific date of marriage has not been mentioned in the plaint, we cannot deny the status of 1st plaintiff.

10. The Courts below by taking into consideration the official documents Exs.X1 to X5 and Exs.A8 to A13 which have been admitted by DW.4 came to the conclusion that marriage of 1st plaintiff with Natesan



stood proved. The official witness namely Officer of the treasury who has been examined as PW.2 clearly deposed that in the deceased Natesan's pension papers, the name of 1st plaintiff has been shown as wife. It is also stated by him that the 1st plaintiff has been receiving family pension as wife of deceased Natesan. The documents relating to family pension have been marked as Exs.X1 and X2. Therefore, both the Courts below on proper appreciation of oral and documentary evidence on record came to the conclusion that the 1st plaintiff is the legally wedded wife of Natesan. I do not find anything to interfere with the said finding.

11. It is seen based on sale deeds marked as Exs.A13, A14, A23 and A24 and also Exs.B1 to B6, the Courts below came to the conclusion that the suit properties were self acquired properties of Natesan and hence the plaintiffs were entitled to equal share in suit 'A' and 'B' schedule properties and decreed the suit.

12. I do not find any perversity in the final conclusion reached by the Courts below that the plaintiffs are entitled to 1/4th share each. Finding no substantial question of law arising for consideration in this second appeal, the same is dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

28.04.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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S.A.No.312 of 2



S.SOUNTHAR, J.

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To

1.The Additional District and Sessions
Judge (Fast Track Court), Mettur.

2.The Subordinate Judge, Mettur.

S.A.No.312 of 2023

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