



SA No. 312 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.11.2025

Pronounced on : 30-01-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 312 of 2016 &
C.M.P.No.5839 of 2016**

Mani
S/o.Kumarasami Naidu,
Devepandalam Village,
Sankarapuram Taluk

..Appellant(s)

Vs

1. Palanisami
S/o. Kumarasami Naidu,
A.Pandalam Village,
Sankarapuram Taluk.
2. Meenakshi
W/o. Kannaiyan,
A.Pandalam Village,
Sankarapuram Tk.
3. Dhanalakshmi (died)
W/o. Kumarasami Naidu,
Devapandalam Village,
Sankarapuram Taluk
R3 Died, R1 Already On Record As Legal heir
of Deceased R3, Vide Court Order Dated
28.07.2023 Made in SA.No.312/2016 By
TVTSJ. R3 died, sole appellant and R1 and
R2 already on record and recorded as legal
heirs of the deceased R3 vide court order
dated 24/01/2025 made in S.A.No 312 of 2016
and C.M.P.No.5839 of 2016 (RNMJ)

..Respondent(s)



SA No. 312 of 2016

Prayer:

WEB COPY

Second Appeal filed under Section 100 of Code of Civil Procedure as against the Judgment and Decree passed by the learned Principal District Judge, Villupuram dated 28.08.2014 in A.S.No.16 of 2006 confirming the Judgment passed the learned Subordinate Judge, Kallakurichi dated 25.08.2005 in O.S.No.316 of 1996.

For Appellant(s): Mr.P.Valliappan
Sr.Counsel for
Mr.S.M.S.Sriram Naryananan

For Respondent(s): Mr.N.Manokaran for R2
R1 – No appearance
R3 - Died

JUDGMENT

This Second Appeal has been preferred as against the Decree and Judgment passed in A.S.No.16 of 2006 on the file of the learned Principal District Judge, Villupuram dated 28.08.2014, wherein the respondents 1 and 2 herein have filed a suit in O.S.No.316 of 1996 as against the appellant and others for the relief of partition and the same was decreed on 25.08.2005. Aggrieved by the said Decree and Judgment, the appellant herein filed the First Appeal before the learned Principal District Judge, Villupuram. The First Appellate Court dismissed the appeal by confirming the Decree and Judgment passed by the trial Court.



2. For the sake of convenience and brevity, the parties are ranked as plaintiffs and defendants as ranked before the trial court.

3. The brief averments of the plaint are as follows:-

(i) The suit properties are joint family properties of the first plaintiff and the defendants. The first plaintiff and the second defendant are the sons of 1st defendant and 3rd defendant. The properties are Hindu undivided properties of 1st plaintiff and the defendants 1 and 2. The 1st defendant along with his brothers and father entered into registered partition deed dated 23.09.1975 and based on the income derived from the said properties allotted through partition and the hard earned money of the 1st plaintiff and the 2nd defendant, the other properties were purchased in the name of 1st and 3rd defendants. All the properties were treated as joint family properties. The suit 10th item of the property was purchased in the name of the 3rd defendant and in the suit properties buildings were constructed through joint family income. The properties are joint family properties of the 1st plaintiff and the defendants 1 and 2. Therefore, the 1st plaintiff and defendants 1 and 2 each are entitled to 1/3rd share over the suit properties. When the 1st plaintiff demanded the 1st defendant for partition, he refused and thereby filed the suit.



(ii) The 2nd plaintiff was already impleaded as 4th defendant and thereafter, she was transposed as 2nd plaintiff, therefore, the 1st plaintiff is entitled to 1/3rd share. The 2nd plaintiff is entitled to 1/12th share of Items 1 and 2 of suit properties and from Items 3 to 12, the 2nd plaintiff is entitled to 1/4th share over the properties.

4. The brief averments of the written statement filed by the 1st defendant are as follows:-

The suit is not maintainable either in law or on facts. The 1st and the 3rd defendants had another son, namely, Pachiappan and he died as bachelor in the year 1976. Therefore, the 3rd defendant is entitled to the share of the said Pachiappan. The 1st defendant purchased properties through sale deeds and those properties are self acquired properties, through partition deed dated 23.09.1975, only meagre portions are allotted to him. There is no surplus income from those properties. The eight bags of Paddy harvested from the property derived through partition is not even sufficient for the livelihood. The 1st defendant engaged in sale of agricultural goods and thereby he earned money and purchased other properties. There was a partition between the 1st plaintiff and the defendants 1 and 2 dated 04.03.1993, as per the said partition, a property in A.Pandalam village was allotted to the 1st plaintiff and in the remaining properties, he has no right over



the properties. Therefore, the share sought for in the plaint are unsustainable and the suit is liable to be dismissed.

5. The brief averments of the written statement filed by the 2nd defendant are as follows:-

The suit is not maintainable, after demise of Kumarasami naidu in the year 2002, the 3rd defendant executed deed in favour to the 2nd plaintiff in respect of the property situated in S.F.No.7/6 to an extent of 1.23 acres at Kolathur Village. In the family with the consent of 2nd defendant, on 11.09.2003, partition was effected, therefore, the 2nd plaintiff has no locustandi to conduct the suit and the 2nd plaintiff is not entitled to any relief.

6. The brief averments of the written statement filed by the 3rd defendant are as follows:-

The suit is not maintainable. The 1st defendant is the husband of the 3rd defendant. The son namely, Pachiappan was also born to the 1st and 3rd defendants and he died 20 years back without any marriage, therefore, the 3rd defendant is entitled to the share of Pachiappan and she is entitled to 1/4th share of the property. The 1st defendant purchased the properties through



joint family funds and thereby in all the properties, the 2nd defendant is entitled to 1/4th share over the properties. In the year 1991 and 1992, the plaintiffs and the 2nd defendant, requested the 1st defendant, to construct houses for them thereby he permitted them to construct the houses and the properties are still under the joint possession and no partition have taken place. The 3rd defendant also paid court fees for her 1/4th share.

7. The brief averments of the written statement filed by the 4th defendant are as follows:-

The averments that the properties purchased out of the income from the ancestral properties and out of joint exertion, the properties in the name of the defendants 1 and 3 were purchased are denied. Under the partition deed dated 23.09.1975, the 1st defendant was allotted properties. Those properties are very meagre in extent and they were not even sufficient for providing food for family members, these properties did not form any joint family nucleus so as to make purchases. The 1st defendant was able to make large profit out of his business and has purchased items 3 to 11. The items 1 and 2 alone are joint family properties. The other properties are separate and self acquired properties of the 1st defendant. This defendant is entitled to 1/12 the share in Items 1 and 2 and ¼ share in Items 3 to 11 of the properties.



8. Based on the above said pleadings and the evidence adduced on both sides, the trial court has framed the following issues:-

"1. Whether the plaintiff is having share in the properties purchased by the 1st defendant?

2. Whether the plaintiff is having share in the suit properties?

3. Whether the plaintiff is estopped from filing the present suit due to the partition deed dated 04.03.1993?

4. Whether the suit is maintainable?

5. Whether the suit is maintainable due to the family arrangement pleaded by 1st defendant?

6. To what other reliefs, if any?

Further, the trial court has also framed the following additional issues:

1. Whether the 2nd plaintiff legally having right to claim partition?

2. Whether the suit of the 2nd plaintiff is maintainable?

3. Whether the partition deed dated 11.09.2003 would bind 2nd plaintiff and whether the 2nd plaintiff is barred from claiming partition?

4. Whether the ratio claimed by the 2nd plaintiff is correct?

5. To what reliefs?

Issues recasted as follows:-

1. Whether the 2nd plaintiff legally having right to claim partition?

2. Whether the suit of the 2nd plaintiff is maintainable?

3. Whether the partition deed dated 11.09.2003 would bind 2nd plaintiff and whether the 2nd plaintiff is barred from claiming partition?

4. Whether the ratio claimed by the 2nd plaintiff is correct?

5. To what other reliefs if any?"

9. Before the trial court, on the side of the plaintiffs, P.W.1 and 2 were examined and marked Exhibits A.1 to A.5. On the side of the defendants, D.W.1 was examined and no documents were marked. After



analysing oral and documentary evidence adduced on both sides, the trial court decreed the suit and passed preliminary decree by dividing the suit property in items 1 and 2 properties into 12 equal shares and allotted one such share to the 2nd plaintiff and Items 3 to 11 were ordered to be divided into four equal shares and to allot one such share to the 2nd plaintiff. Aggrieved by the said decree and judgment of the trial court, the 2nd defendant has preferred the appeal in A.S.No.16 of 2006 on the file of the learned Principal District Judge, Villupuram. The First Appellate Court framed the following points for determination :-

"1. Whether the findings given by the lower court that items 3 to 11 are the self acquired property of the 1st defendant is sustainable under law?

2. Whether the findings given by the lower court that items 1 and 2 are only ancestral properties out of which no income was generated to purchase items 3 to 11 by the 1st defendant is sustainable under law?

3. Whether the decree and judgment passed by the lower court that 2nd plaintiff / respondent is entitled for 1/12 share in items 1 and 2 of suit properties and 1/4th share in the items 3 to 11 suit properties is sustainable under law?

4. Whether the Appeal and Cross Appeal filed by the 2nd defendant is maintainable under law?

5. To what other reliefs if any 2nd defendant / appellant is entitled to?"

After analysing the oral and documentary evidences, the First Appellate court dismissed the suit by confirming the Judgment and Decree passed by the trial court. Aggrieved by the said decree and judgment, the present appeal has been preferred.



10. This Court, at the time of admitting the Second Appeal on 30.03.2016, formulated the following Substantial Questions of Law:-

“(a) When the appellant and the 1st respondent are entitled to 5/12th share each as per Sections 6 and 8 of the Hindu Succession Act, 1956 and the respondent is entitled to only 2/12th share as per the said provisions, are the courts below correct in law in granting 1/12th share to the 2nd respondent in respect of suit items 1 & 2 and 1/4th share in respect of suit items 3 to 11?

(b) Whether the Courts below are correct in law in concluding that the suit items 3 to 11 are the separate properties of the deceased 1st defendant Kumarasami Naidu especially when the oral and documentary evidence on record established the fact that suit items 3 to 11 were acquired out of nucleus from ancestral properties?”

11. The learned counsel appearing for the appellant would submit as follows:-

(i) The suit properties are joint family properties of the plaintiffs and the defendants. During the pendency of the suit, the 1st defendant, who is the father of the 1st plaintiff and the 2nd defendant died. Thereafter, the 2nd respondent was impleaded as 4th defendant and the 4th defendant is the sister of the appellant. After the demise of the father of the appellant / 2nd defendant,



family arrangement was made among the parties, pursuant to that arrangement, the 3rd respondent, mother of the appellant, had executed settlement deed dated 05.05.2003 in favour of the 2nd respondent herein conveying land in S.F.No.7/6 Kolathur village measuring 1.23 acres, which is not the subject matter of the suit and as per the arrangement between the parties, the suit properties were divided between the appellant and 1st respondent in equal moieties. Consequently, the 1st respondent ceased to prosecute the suit, while the 2nd respondent, despite having received the properties exclusively in lieu of her alleged share in the suit properties sought to transpose herself as the 2nd plaintiff. In view of the family arrangement, the suit was not contested by the original plaintiff or by the 3rd defendant.

(ii) The 2nd defendant has filed a written statement stating that she is entitled to 1/12th share in Items 1 to 3 and thereafter, she was transposed as 2nd plaintiff in the suit. This appellant filed written statement stating that Items 1 and 2 properties are ancestral properties and 3 to 11 properties are acquired from ancestral nucleus derived from Items 1 and 2 and the 2nd respondent is not entitled to any share as already she received the property under the settlement deed dated 05.05.2003. The trial court held that Items 1 and 2 were ancestral properties of late Kumarasami Naidu and Items 3 to 11 were the self acquired properties thereby granted 1/12th share in Items 1 and



2 and $\frac{1}{4}$ share in items 3 to 11 to the 2nd respondent. thereafter, she is transposed as 2nd plaintiff in the suit. The appellant preferred an appeal as against the said judgment in A.S.No.16 of 2016 before the learned Principal District Judge, Villupuram and the 2nd respondent has not preferred any appeal. The appellate court confirmed the Judgment of the trial court. The 2nd respondent during her cross examination, admitted that after the demise of father of the appellant and the respondents 1 and 2, they entered into family arrangement and the property stands in the name of the mother of the appellant and the respondents 1 and 2 has to be allotted to the 2nd respondent and the suit properties have to be divided between the appellant and the 1st respondent, thereby the settlement deed was executed by the mother of the 2nd defendant based on the Panchayat. Therefore, the trial court failed to consider that the admission made by P.W.2 and erroneously decreed the suit. The appellate court also failed to consider the same and dismissed the appeal by confirming the Judgment and decree of the trial court. The admission is the best evidence and the admitted fact need not be proved and the court can pass decree at any stage based on admission made by parties. However, the trial court as well as appellate court have not appreciated the facts of the case in a proper perspective manner and erroneously decreed the suit and therefore, Judgments and decrees passed by both the courts are liable to be set aside.



(iii) The learned counsel appearing for the appellant relied upon the following judgments:-

(i) Karam Kapahi & Ors. Vs. Lal Chand Public Charitable Trust reported in AIR 2010 SC2077

(ii) Vimal Dattaram Shirodkar Vs. Rajendra Dattaram Shirodkar reported in AIR Online 2023 Bombay 1223.

(iii) Taste Hotel Pvt., Ltd., Vs. Medisetty Jayasri reported in AIR 2012 Andhra Pradesh Page 4.

(iv) Pradip Chowdhury Vs. Dilip Chowdhury reported in AIR Online 2022 Cal 80.

12. The learned counsel appearing for the respondents would submit that originally the Items 1 and 2 of suit properties are the ancestral properties and the father of the appellant and the 1 and 2 respondents derived those properties through partition deed dated 23.08.1975 and thereafter, he purchased the property on his own earnings. The Items 3 to 11 properties are not ancestral properties. The plaintiff initially filed the suit for partition as against his father, brother and mother and after the demise of the father of the plaintiff, the 2nd respondent has been added as 4th defendant in the suit. The plaintiff abandoned the suit and thereby she filed an application to transpose



her as 2nd plaintiff and the same was allowed. Thereafter, 2nd respondent transposed as 2nd plaintiff and she conducted the suit. Since the properties, items 1 and 2 are ancestral properties, the plaintiff is entitled to 1/12th share in items 1 and 2 properties and the remaining 3 to 11 items, she is entitled to 1/4th share. During the pendency of the appeal, the 3rd respondent also died, therefore, the 2nd respondent is entitled to 1/3rd share in all the properties.

13. Heard the learned senior counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent and perused the documents placed on record.

14. In this case, there is no dispute that items 1 and 2 of the suit properties are ancestral properties of Kumarasamy Naidu, who is the father of the appellant and 1 and 2 respondents. According to the plaintiff, the items 3 to 11 are also joint family properties, since they have purchased through the income derived from the items 1 and 2 of the properties. The 1st defendant denied the nature and character of the items 3 to 11 and according to him, those properties are purchased by him on his own earnings, therefore, it is duty of the plaintiff to prove that Items 3 to 11 were purchased from and out of the income derived from the Items 1 and 2. There is no proper evidence adduced by the plaintiff to prove the same and after demise of the 1st



defendant, the 4th defendant was added and the said 4th defendant was transposed as 2nd plaintiff and she only contested the suit. According to her, the properties in items 3 to 11 are self acquired properties of her father. The 1st plaintiff, who filed the suit alleged that Items 1 and 2 properties are ancestral properties and Items 3 to 11 properties were purchased through joint family income in the name of the 1st defendant and has not entered into witness box and to substantiate his claim, thereby failed to produce any evidence and therefore, in the absence of any evidence, the court has to come to a conclusion that the properties were purchased by the 1st defendant, through his earnings and the 1st plaintiff failed to prove that those properties are joint family properties. Both the courts after analysing evidences on both sides, rendered concurrent findings that the Items 1 and 2 properties are ancestral properties and Items 3 to 11 properties are self acquired properties of the 1st defendant. Therefore, the courts below have allotted 1/12th share to the 2nd respondent in items 1 and 2 and 1/4th share in the items 3 to 11.

15. As far as Items 1 and 2 are concerned, since those properties are ancestral properties and the partition was not effected by including the 2nd plaintiff, as per judgment of **Hon'ble Supreme Court in Vineeta Sharma Vs Rakesh Sharma [AIR 2020 Supreme Court 3717]**, the 2nd plaintiff is equally entitled to share along with her brothers. Therefore, the plaintiffs 1 and 2 and



defendants 1 and 2 are equally entitled to share the property. It is also admitted fact that one Pachiappan was also born to the 1 and 3 defendants, therefore, the property have to be divided into five parts, the 1 and 2 plaintiffs, 1 to 3 defendants, each are equally entitled to.

16. The 1st defendant died intestate leaving behind 1 and 2 plaintiffs and 2 and 3 defendants. Thereafter, during the pendency of the suit, the 3rd defendant also died, therefore, in all the properties, the 2nd respondent / 2nd plaintiff is equally entitled share along with her brothers, i.e., she is entitled to 1/3rd share over the properties.

17. In fine, the plaintiffs 1 and 2 and the 2nd defendant are equally entitled to share over the suit properties. The both courts apportioned the share as 1/12 in the Items 1 and 2 property and 1/4 in Items 3 to 11 properties, as per Judgment of **Hon'ble Supreme Court in Vineeta Sharma Vs Rakesh Sharma [AIR 2020 Supreme Court 3717]** since there is no partition effected between the parties, all the parties are equally entitled to the property.

18. As far as Substantial Questions of Law“ (a) When the appellant and the 1st respondent are entitled to 5/12th share each as per Sections 6 and 8 of the Hindu Succession Act, 1956 and the respondent is



entitled to only 2/12th share as per the said provisions, are the courts below correct in law in granting 1/12th share to the 2nd respondent in respect of suit items 1 & 2 and 1/4th share in respect of suit items 3 to 11? and (b) Whether the Courts below are correct in law in concluding that the suit items 3 to 11 are the separate properties of the deceased 1st defendant Kumarasami Naidu especially when the oral and documentary evidence on record established the fact that suit items 3 to 11 were acquired out of nucleus from ancestral properties?" are concerned,

(i) According to the appellant oral partition was effected during pendency of the suit and after the demise of 1st defendant. Once the suit is pending for partition, how the oral partition was effected between the parties has to be explained by the appellant. In this context, the learned senior counsel appearing for the appellant would submit that after the demise of the father of the appellant, i.e., 1st defendant in the suit, there was a panchayat convened between the parties, as per panchayat, the property of the mother of the appellant, i.e., 3rd defendant was settled to the 2nd respondent / 2nd plaintiff in lieu of her share over the family properties and other family properties were divided between the appellant and 1st respondent. The 2nd respondent also admitted the said terms of partition. This Court also carefully perused the evidence of 2nd respondent, who was examined as P.W.1 and she admitted the panchayat. Even assuming that any oral arrangements made



between the parties there is no evidence as to whether any partition by metes and bounds and how the properties were shared and which properties were allotted specifically to the appellant and 1st defendant.

(ii) There are no pleadings about the alleged oral partition after impleadment of 4th defendant and transposition of 2nd plaintiff, no additional statement has been filed by the parties in respect of the subsequent events of alleged partition. It is well settled law that without pleadings, evidence cannot be adduced and in the absence of pleadings, no evidence can be looked into, without any pleadings about the oral arrangements, the evidence of P.W.1 cannot be considered as an admission. There is no explanation as to why the said oral partition has not been recorded before the trial court, while the said partition was effected during the pendency of the suit. Moreover, the 2nd respondent herein was impleaded as 4th defendant in the suit, after demise of her father and thereafter, she was transposed as 2nd plaintiff in the suit and then contested the suit. The appellant and the 1st respondent have not challenged the impleadment of 2nd respondent as 4th defendant and the transposition of 4th defendant as 2nd plaintiff on the ground that she was already allotted share through oral arrangements. Under the said circumstances, it is the duty of the appellant to prove the said oral partition. But no sufficient evidence adduced by the appellant to prove his contention,



thereby mere admission of P.W.1 about the panchayat is not sufficient that already partition was effected. When the suit is pending for partition, then, any settlement made out of Court, it should be recorded either in the court or in the form of registered document, but in this case, no such record has been made. Even according to the appellant, a settlement deed was executed by the 3rd defendant in favour of 2nd respondent / 2nd appellant, while so, as to why partition deed was not executed between the parties has to be explained by the appellant, but no proper explanation to that regard. Therefore, it is not appropriate to hold that oral partition was effected between the parties. As far as the nature of properties are concerned, both the courts rendered concurrent findings and there are no ground to interfere with the concurrent findings, as the findings are based on the available evidences. Since no partition has been effected between the parties, after the Amendment in the year 2005, in Hindu Succession Act, the 2nd respondent also entitled to equal share and as per the Judgment of **Hon'ble Supreme Court in Vineeta Sharma Vs Rakesh Sharma [AIR 2020 Supreme Court 3717]**, the appellant and the respondents 1 and 2 and 3rd defendant, who is the legal heir of Pachiyappan are equally entitled to the properties and thereby the 2nd respondent is entitled to $\frac{1}{4}$ share over the suit properties. As far as the share of deceased mother of appellant and the respondent, i.e., 3rd defendant is concerned, there is no evidence as to whether she died intestate or not and



SA No. 312 of 2016

the parties can workout their remedy through separate proceedings in respect of the share of 3rd defendant. Thus the Substantial Questions of Law are answered.

With the above said modifications, this Second Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. No costs.

30-01-2026

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

To

1. The Principal District Judge,
Villupuram

2. The Subordinate Judge,
Kallakurichi



WEB COPY



SA No. 312 of 2016

P.DHANABAL, J.

ssd

**Pre delivery Judgment in
SA No. 312 of 2016**

30-01-2026

Page 20 of 20