



S.A.No.506 of 2016  
and C.M.P No.8915 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2026

CORAM:

**THE HONOURABLE MR. JUSTICE P.DHANABAL**

**S.A.No.506 of 2016**  
**and C.M.P. No.8915 of 2016**

Kaliyaperumal

... Appellant

VS

1.Pachaiyammal  
2.Sathya  
3.Dhanalakshmi  
4.Jayagandhi

.... Respondents

**Prayer :** Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 06.11.2015 passed in A.S. No.17 of 2013, on the file of the Additional Subordinate Court, Tindivanam, upholding the decree and judgment dated 16.11.2012 passed in O.S.No.48 of 2005, on the file of the Principal District Munsif Court, Tindivanam.

|               |                                            |
|---------------|--------------------------------------------|
| For Appellant | : Mr.N.Suresh                              |
| For R1 & R2   | : Mrs.T.Jayalakshmi<br>for M/s.Paul & Paul |
| For R3 & R4   | : No appearance                            |



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## **JUDGMENT**

The second appeal has been preferred as against the judgment and decree dated 06.11.2015 passed by the Additional Subordinate Court, Tindivanam in A.S.No.17 of 2013. The respondents 1 and 2 herein have filed the main suit for the relief of partition as against the appellant and the respondents 3 & 4 herein and the suit was decreed by granting partition in favour of the plaintiffs. Aggrieved by the said decree and judgment, the first defendant has preferred an appeal in A.S.No.17 of 2013. The First Appellate Court also dismissed the appeal confirming the judgment of the Trial Court. Aggrieved over the said decree and judgment, the present second appeal has been filed by the first defendant.

2. For the sake of convenience, the parties are referred to as per their rank in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.



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

The plaintiffs are the daughters of the first defendant. The father of the plaintiffs and the first defendant had own ancestral properties at Marur Village. The first item of the suit property is ancestral property of the first defendant and the second item of the suit property has been purchased through the income of the ancestral property in the name of the first defendant. Therefore, both the properties are Hindu Undivided Joint Family properties of the plaintiffs and the first defendant. Apart from these properties, the plaintiffs' grandmother, namely, Muniyammal possessed the second item of the suit properties and other properties. The said Muniyammal had two sons, namely, Subramaniya Mudaliar and Arumugam. After the demise of the said Muniyammal, her two sons inherited the said properties. Subramaniya Mudaliar was doing business in Trichy and he settled there and died 25 years back leaving behind his wife and three daughters as his legal heirs. The first defendant out of the funds derived from the sale of ancestral property at Marur village purchased the second item of the suit property through sale deed dated



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28.07.1993 and all the suit properties are under common and joint possession and enjoyment of the plaintiffs and the first defendant. The first defendant left Marur village 25 year back and settled at Peramandur village. Therefore, the plaintiffs each are entitled to 1/3<sup>rd</sup> share and the first defendant is entitled to 1/3<sup>rd</sup> share of the suit properties. The first defendant deserted his wife and now living with another woman for past seven years at Tindivanam. Therefore, the plaintiffs demanded their lawful share. But the first defendant evaded to partition over the properties. Therefore, filed the suit.

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

It is true that the plaintiffs are daughters of the first defendant. It is false to state that he deserted his first wife and living with another woman. It is false to state that the first item of the suit property is ancestral property and through ancestral property, income was derived and through that income the second item of the suit property was purchased. In fact, the first defendant from his tender age was doing



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Mason work and thereby purchased the second item of the suit property.

The averments in respect of the property belonged to Muniyammal is also denied as false. The first defendant has performed marriage to the first plaintiff in the year 1997 and he incurred huge expenses for the marriage and thereby he sold the first item of the suit property to one Sundaramurthy on 12.04.2005 and thereafter, second item of the suit property was also sold to one Govindaraji through sale deed dated 11.11.2005. The purchasers of the above said properties are also proper and necessary party and without impleading them, the suit is not maintainable. The plaintiffs are not entitled to any share over the properties and the suit is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides and perusing the records, the Trial Court framed the following issues

*"(i) Whether the plaintiffs are entitled to a preliminary decree for 1/3<sup>rd</sup> share over the suit properties?*

*(ii) Whether the plaintiffs are entitled to appoint of Advocate Commissioner to divide the properties into 1/3 share?*



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*(iii) Whether the plaintiffs are entitled for the relief of permanent injunction as against the defendants from alienating and encumbering the properties ?*

*(iv) Whether the defendants 2 & 3 are entitled for share over the properties ?*

*(v) To what other relief the plaintiffs are entitled ?”*

6. In order to prove the case, before the Trial Court, on the side of plaintiff, PW1 and PW2 were examined and marked Ex.A1 and Ex.A2. On the side of the defendants, DW1 to DW6 were examined and marked Ex.B1 and Ex.B2.

7. After analysing the evidence on both sides, the Trial Court decreed the suit. Aggrieved by the said decree and judgment, the first defendant has preferred an appeal in A.S.No.17 of 2013 on various grounds.



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8. The First Appellate Court, after hearing both sides and perusing the records, framed the following point for determination :

*(i) Whether the suit properties are separate properties of the appellant ?*

*(ii) If otherwise, whether the suit properties are available as joint family properties for partition ?*

*(iii) Whether the decree of the lower court for partition and consequential injunction is liable to be set aside ?*

9. After hearing both sides and perusing the records, the First Appellate Court dismissed the appeal by confirming the decree and judgment of the Trial Court. Aggrieved by the said decree and judgment of the First Appellate Court, the present second appeal has been preferred by the appellant / first defendant.



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10. This Court at the time of admitting the second appeal framed the following substantial questions of law :

- i. Whether the courts below have rendered judgments and decree without considering the main plea that once partition was effected the properties allotted to each members becomes his separate property ?
- ii. Whether the Courts below have erred in not following the dictum laid down by the Hon'ble Supreme Court in the judgments rendered in ***Bhanwar Singh vs Puran and Others*** reported in ***(2008) 3 SCC 87*** ?

11. Heard Mr.N.Suresh, learned counsel appearing for the appellant and Mrs.T.Jayalakshmi, learned counsel appearing for the respondents 1 & 2.

12. The learned counsel appearing for the appellant would submit that the plaintiffs have filed the suit as against the first defendant who is the father. Originally the suit properties are self acquired properties of the appellant / first defendant and he purchased the properties through his



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own earnings through separate sale deeds on different dates. There are no ancestral properties to yield income to purchase those properties as alleged by the plaintiffs. In fact, the first defendant migrated from the native place of Marur village and settled at Peramandur village long back. The plaintiffs have not produced any document to show that there were ancestral properties and they yield income from the said income these properties were purchased. In fact, the first defendant was doing mason work from his tender age and through his own earnings he purchased the suit properties, thereby these properties are his separate properties. The plaintiffs failed to prove the income derived from the ancestral properties whereas the appellant / first defendant proved that both the suit properties were purchased through his own earnings. In fact, the ancestral properties are situate at Marur village and he migrated to Peramandur village long back and where he worked as Mason and earned money and purchased the second item of the suit property. The Courts below failed to consider that once the property purchased in the name of the individual that has to be considered as separate property.



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12.1. There is no evidence that there was ancestral properties and surplus income from the ancestral properties. There are no records produced by the plaintiffs to prove that the ancestral properties were sold and there are no details about the ancestral properties as to what extent and for what amount the properties were sold and which properties were sold and which year the properties were sold, whether those sale proceeds were utilized for purchase of the suit properties, absolutely there is no evidence. Even any ancestral properties are available then merely because of existence of ancestral properties there is no automatic proof that they yield much income. Without proper evidence the Courts below have erroneously held that the suit properties were purchased through earnings from the ancestral properties. Therefore, the Courts below erred in decreeing the suit. Therefore the decree and judgment passed by the Courts below are liable to be set aside by allowing this second appeal.

13. The learned counsel appearing for the respondents would submit that the respondents 1 and 2 are daughters of the appellant who filed the



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main suit for the relief of partition. The suit properties are joint family properties of the plaintiffs and the first defendant and based on income derived from the ancestral properties the suit properties were purchased in the name of the first defendant. All the suit properties are Hindu Undivided Joint Family properties of the plaintiffs and the first defendant. Since both the item of the suit properties were purchased through the income derived from the ancestral properties, the plaintiffs are entitled share over the properties . In order to prove the case of the plaintiffs, they have examined PW1 and PW2 and marked Ex.A1 and Ex.A2. The Courts below have analysed the evidences in a proper perspective and correctly decreed the suit. Once the existences of the joint family is admitted and the first defendant is the Karta, it has to be presumed that all the properties purchased in the name of Karta are joint family properties and it is for the first defendant to prove that those properties are self acquired properties. But the first defendant failed to prove his contention. DW1 himself admitted the existence of the ancestral properties and the partition between his brothers. The Courts below have correctly arrived at a fair and conclusion and there is no any illegality or perversity in the decree and judgment passed by the Courts below. There are no substantial

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questions of law involved in this case.

13.1. The case law referred by the appellants ***Bhanwar Singh vs Puran and Others*** reported in ***(2008) 3 SCC 87*** has no way relevant to this case. Even in the above said case, the law was settled that so long as the property remains in the hands of a single person, the same was to be treated as a separate property, and thus such a person would be entitled to dispose of the coparcenary property as the same were his separate property, but, if a son is subsequently born to him or adopted by him, the alienation whether it is by way of sale, mortgage or gift, will nevertheless stand, for a son cannot object to alienations so made by his father before he was born or begotten. But once a son is born, it becomes a coparcenary property and he would acquire an interest therein. In this case, on the date of partition in favour of the first defendant, the plaintiffs were born therefore, they are also coparcenars and thereby the suit properties cannot be treated as separate properties of the first defendant. Therefore, the Courts below have correctly decreed the suit and the second appeal is liable to be dismissed.



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14. This Court heard both sides and perused the records.

15. In this case, there is no dispute in respect of the relationship between the parties and the plaintiffs are daughters of the first defendant. According to the plaintiffs, both items of the suit properties are ancestral properties and both the properties were purchased through the income of the ancestral properties, but in the pleadings of the plaintiffs there is no reference about the nature of the first item of the property. The first defendant also denied the nature of the properties and according to the first defendant, he purchased the properties and both the properties are his self acquired properties. In order to prove the case of the plaintiffs, they examined PW1 and PW2 and marked Ex.A1 and Ex.A2. On the side of the defendants, DW1 to DW6 were examined and marked Ex.B1 and Ex.B2. Once the plaintiffs filed the suit for partition stating that the properties are Hindu Undivided Joint Family properties and the defendant denied the nature and character of the properties, it is duty of the plaintiffs to prove the same. There are no records produced by the



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plaintiffs to show that the suit properties were purchased through the income from the ancestral properties and not even proved the existence of ancestral properties and the surplus income from the ancestral properties. They produced Ex.A1 and Ex.A2. Ex.A1 is the copy of the sale deed dated 28.07.1993 in favour of the first defendant and Ex.A2 is the patta in respect of S.No.332/4 i.e. in respect of the second item of the suit property. Ex.A1 / sale deed is in the name of the first defendant and Ex.A2 / patta is in the name of Muniyammal. As far as the first item of the suit property is concerned, the first defendant has produced the certified copy of the sale deed dated 29.05.1980.

15.1. On careful perusal of the documents, they reveal that the first item of the suit property in SF No.84/1, out of 3.98 acres the first defendant purchased 64 cents in his name through sale deed dated 29.05.1980 and thereafter through Ex.B2 dated 27.03.1995, he sold the first item of the property to minor Dhanasekaran through guardian Padmavathi Ammal to an extent of 66 cents. Therefore from the documentary evidences, it is clear that the first item of the suit property



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was purchased by the second defendant through sale deed dated 29.05.1980, Ex.B1 and the same was sold by him through sale deed dated 27.03.1995, Ex.B2 and therefore, the first item of the suit property was not available for partition on the date of filing of the suit. The said purchaser of the first item of the suit property is also not a party to the suit. Therefore, the plaintiffs failed to prove that the property is Joint Family property available for partition on the date of presentation of the plaint.

15.2. The learned counsel appearing for the respondents would submit that DW1 himself admitted the existence of the ancestral properties and from the ancestral properties, he raised crops and earned money and therefore, these suit properties were purchased only through the income derived from the ancestral properties. In this context, the plaintiffs have not provided the particulars of the ancestral properties and the surplus income derived from the ancestral proceedings. Mere oral evidence is not sufficient and the plaintiffs have not filed any documents to show which are all the ancestral properties and what was the income



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derived from the ancestral properties and whether the income was surplus to purchase the suit properties. Even assuming that there were ancestral properties, no particulars provided as about those properties and no reference in the plaint as about the ancestral properties whether those properties are available or already sold. If those ancestral properties are available, the said properties are also have to be included. If the properties are available, then it is the duty of the plaintiffs to explain whether those properties were sold or not and if sold, the particulars have to be given by the plaintiffs. So they can establish the surplus income through the ancestral properties and the purchase of those suit properties through the income of ancestral properties. There is no any evidence in that regard. Moreover, the purchaser of the first item of the suit property is not a party to this proceedings. Even in the pleadings, there is no reference about the first item of the suit property, as to how it was purchased in the name of the first defendant. Therefore, without pleadings, the evidence of DW1 cannot be relied upon. Therefore, the plaintiffs failed to prove that the first item of the suit property are Joint Family property are available for partition.



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15.3. As far as the second item of the property is concerned, it is admitted fact that the property was purchased by the first defendant in his name through sale deed dated 28.07.1993. Once the property purchased in the name of the individual, it is the presumption that the property has been purchased by the individual and it is his separate property unless the contrary is proved. According to the plaintiffs, the ancestral properties were yield more income and already the ancestral property of the plaintiffs and the first defendant were sold by the first defendant and thereby he purchased the second item of the suit property. In order to prove the same, there is no proper evidence adduced by the plaintiffs. As per evidence of DW1, a property is situated at Marur village but the said property is not subject matter of this suit and the suit is filed only for the properties purchased in the name of the first defendant. The first defendant along with his family migrated from Marur village 25 years back and settled at Peramandur village. While so, how the first defendant derived income through the properties situated at Marur village has to be explained by the plaintiffs. But there is no evidence to prove that, what



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was the income derived from the property situated at Marur village and whether that income derived was surplus to purchase the second item of the suit property, has to be proved by the plaintiffs. Absolutely there is no evidence to prove the same. Moreover there are no particulars provided by the plaintiffs as about the Marur village property and without including the suit property the plaintiffs cannot seek partition for the suit properties. Whether the property situated at Marur village is still available or already sold has to be explained by the plaintiffs but there is no explanation to that regard.

16. Per contra the first defendant stated that he was doing Mason work from his tender age and earned some money and through those earnings he purchased the suit properties, therefore, in the absence of contra evidence, this Court has to presume that the suit properties are self acquired properties of the first defendant. Further the defendants have examined as DW1 to DW6 and thereby they proved that the property was purchased by the first defendant through his earnings and the plaintiffs failed to prove that the suit properties were purchased through the income



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derived from the ancestral properties. The Courts below have erroneously placed the burden on the first defendant that he has to prove his case. The Courts below ought to have placed the burden on the plaintiffs but erroneously placed the burden on the first defendant. However, the said burden also discharged by the first defendant. Merely because of admission of DW1 about the existence of the ancestral properties, without any evidence the Court cannot imagine about the existence of ancestral properties and the said properties fetched more income and had surplus income to purchase the suit properties. Therefore, the Courts below have committed error by holding that the suit properties were purchased through the income of the ancestral properties. Therefore, the Courts below have committed error and it is to that effect the decree and judgment passed by the Courts below are liable to be set aside.

17. As far as the suit items are concerned, the plaintiffs failed to prove that both the items of the suit properties were purchased by the first defendant in his name through the income derived from the ancestral properties. Therefore, they are not entitled to any relief in respect of the



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suit properties.

18. As far as substantial questions of law formulated by this Court are concerned, the plaintiffs have filed the suit alleging that the properties are Joint Family properties and the same were purchased through the income derived from the ancestral properties. But the plaintiffs have not filed any document to show that there were ancestral properties and they fetched surplus income and through that income, these properties have been purchased. Per contra the available documents shows that both the properties stands in the name of the first defendant and the first item of the property was sold in the year 1995 itself and the same was not available for partition and the second item of the suit property was purchased by the first defendant in the year 1993 and it was subsequently sold. Once the document is registered in the name of the individual, it has to be presumed that it is a self acquired property of the individual unless the contrary is proved. The plaintiffs failed to prove that there was Joint Family nucleus and from the nucleus, the properties were purchased. Though the first defendant admitted that there was a partition between his



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brothers, there are no particulars about the properties allotted to the first defendant through that partition and what are all the properties allotted to him and how much income derived from those properties, whether those properties are still available or not, if those properties were already disposed of, then those particulars have to be produced before this Court but no any documents were produced by the plaintiffs. Moreover there are no pleadings about the partition of the ancestral properties. It is well settled law that without pleadings if any evidence adduced the evidence cannot be looked into. Therefore the admission made by DW1 are immaterial as there are no pleadings to that effect. Per contra the available documents evidence show that the properties are self acquired properties of the first defendant. Even if any partition was effected, it is well settled law that once the partition is effected, each members are entitled to their respective shares in the property and those properties are their separate properties. But in the case on hand, there is no any material produced by the plaintiffs as about the alleged partition and there are no pleadings to that effect. Therefore, without any pleadings and evidence it cannot be presumed the same properties were derived through partition and thereby the question of coparcenary would not arise, in this case.

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properties and the same were purchased through Joint Family Nucleus and the particulars of partition are not available. No pleadings about the partition of ancestral properties and thereby the said case is no way relevant to this case. Therefore, the plaintiffs are not entitled to any share over the suit properties. However, the Courts below have failed to consider that the plaintiffs have failed to plead about the partition of the ancestral properties and failed to provide the particulars of the ancestral properties. Once the properties are stands in the name of the first defendant then the burden is on the plaintiffs to establish their case, but no proper pleadings and evidences to prove the case of the plaintiffs. Therefore, the findings of the Courts below are erroneous and the same are unsustainable. Therefore, it is a fit case to invoke Section 103 of CPC and by invoking Section 103 of CPC this Court is inclined to set aside the judgment and decree of the Courts below in addition to the substantial questions of law.

20. In view of the above said discussions and answers to the substantial questions of law, this Court is of the view that this second



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appeal is liable to be allowed.

21. In the result, the Second Appeal is Allowed and the decree and judgment passed by the Trial Court in OS No.48 of 2005 dated 16.11.2012 on the file of the Principal District Munsif Court, Tindivanam, as confirmed by the First Appellate Court in AS No.17 of 2013 dated 06.11.2015 on the file of the Additional Subordinate Court, Tindivanam, are set aside and the suit in OS No.48 of 2005 is dismissed. Interim order already granted shall stands vacated. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

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Index: Yes/No  
Internet: Yes/No  
Speaking/Non-Speaking order  
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To

1. The Additional Subordinate Court, Tindivanam.
2. The Principal District Munsif Court, Tindivanam.
3. The Section Officer, VR Section, High Court, Madras.



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**P.DHANABAL, J.**

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