



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.10.2025

Pronounced on : 12.02.2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

**SA No. 16 of 2014 and
MP.Nos.1 and 2 of 2014 and
CMP Nos. 5267 and 6494 of 2020**

Murugan Asari

..Appellant/Appellant/1st Defendant
Vs

1. Chinnammal
2. Vayyapuri
3. Rukmani
4. Pounambal
5. Palaniyammal(died)
6. Rajendhiran

..1st Respondent/1st Respondent/Plaintiff

Respondents/2nd to 6th Respondent/
2nd to 6th Defendants

R5-Died. Appellant is exempted from substituting the legal heirs of the 5th Respondent by Order dated 06/11/2019 made in CMP.No.23592/2019 In S.A.No.16/2014 (RSMJ).

Prayer in SA.No.16 of 2014: Second Appeal filed under 100 of CPC against the judgment and decree of the Subordinate Judge's Court at Kallakurichi dated 10.07.2013 in AS.No.4 of 2011 confirming the judgment and decree of the second Additional District Munsif Court at Kallakurichi dated 22.10.2010 in O.S.No.269 of 2006.

Prayer in CMP 5267 of 2020: Petition to permit the petitioner to raise additional grounds as well as additional substantial questions of law in the second appeal



in S.A.No.16 of 2014.

Prayer in CMP.No.6494 of 2020: Petition to receive the document viz., settlement deed dated 26.04.2001 executed in favour of Vaiyapuri, the 2nd respondent herein, annexed with the petition, as additional evidence in the above second appeal in SA.No.16 of 2014.

Prayer in MP.No.1 of 2014: Petition to stay all further proceedings in OS.No.269 of 2006 on the file of the Second Additional District Munsif Court at Kallakurichi dated 22.10.2010 pursuant to the judgment and decree of the Subordinate Judge's Court, Kallakurichi dated 10.07.2013 in AS.No.4 of 2011 pending disposal of the above second appeal.

Prayer in M.P.No.2 of 2014: Petition to receive the three sale deeds annexed hereunder as additional evidence in the second appeal filed against the judgment and decree of the subordinate Judge Court at Kallakurichi dated 10.07.2013.

For Appellant: Mr.P.Valliappan, Advocate

For Respondent: Mr.A.Arunbabu, Advocate for R1.

JUDGMENT

This Second Appeal is filed by the first defendant challenging the judgment and decree of the Subordinate Judge's Court at Kallakurichi dated 10.07.2013 in AS.No.4 of 2011 confirming the judgment and decree of the second Additional District Munsif Court at Kallakurichi dated 22.10.2010 in O.S.No.269 of 2006.



2. The suit was laid for partition and separate possession. The Trial Court granted a preliminary decree declaring that the plaintiff is entitled to 1/7th share in the suit properties. The same was confirmed by the First Appellate Court. Aggrieved thereby, the present Second Appeal has been preferred.

3. For the sake of convenience, the parties are referred to as they were arrayed before the trial court.

4. The relationship between the parties is admitted. The appellant is the first defendant. He has two sons, namely, the second and sixth defendants, and three daughters, namely, the plaintiff and defendants 3 and 4. The fifth defendant is the sister of the first defendant.

5. The case of the plaintiff is that the suit properties are ancestral joint family properties. In respect of Item No.1, it is pleaded that the first defendant sold an ancestral property in S.No.33/3, Malliyakarai Village, with well and electricity service connection, and out of the sale proceeds purchased Item No.1 at Indhili Village, as evidenced by the recitals in the sale deed dated 28.02.1973 (Ex. A4). In respect of Item No.2, it is pleaded that it is ancestral property situated at Malliyakarai Village. The plaintiff further pleaded that the first defendant



executed a settlement deed dated 26.04.2001 in favour of the second defendant in respect of Item No.2 without authority and that such unilateral disposition cannot defeat her lawful share. After issuance of notice dated 29.01.2006 and receipt of reply, the suit came to be filed.

6. The first defendant denied the joint family character and contended that Item No.1 is his self-acquired property purchased out of his earnings as a carpenter and not from any ancestral nucleus. He further contended that the alleged sale proceeds were insufficient after discharge of debts. He also raised objections regarding partial partition and pleaded that the plaintiff had been given sufficient *seervarisai* at the time of her marriage. He relied upon a Will dated 27.06.1999 and the settlement deed dated 26.04.2001.

7. On the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A4 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and Exs.B1 and B2 were marked. The other defendants remained ex parte.

8. The Trial Court, on appreciation of evidence, held that both items are ancestral joint family properties and granted a preliminary decree for partition. The First Appellate Court confirmed the same.



9. In the Second Appeal, the first defendant contended that he inherited the properties from his father Periyasamy Asari who died in the year 1954 and that such inheritance did not make the properties ancestral; that the properties are his separate properties; and that the plaintiff cannot claim partition during his lifetime. It was also contended that one son of the first defendant died bachelor and that the first defendant would be entitled to that share.

10. At the time of admission, the following substantial questions of law were framed:

- 1. When the properties inherited by the appellant from his father are his absolute properties and cannot be termed as ancestral properties in view of Section 8 of the Hindu Succession Act, 1956 are the Court below correct in law in holding that the suit properties are ancestral properties (vide 2012 7 MLJ 414)?*
- 2. Whether Courts below are correct in law in not considering the difference between ancestral properties and separate properties, oblivious provision of the Hindu Succession Act, 1956?*
- 3. When the appellant's son Periyasamy had died a bachelor twenty five years prior to the suit and if the suit properties are assumed to be ancestral properties, the appellant would be entitled to the share of Periyasamy, whether the share claimed by the first respondent is tenable in law?*



4. *Whether the suit is bad for non-joinder of Palaniammal, the sister of the appellant, especially since the appellant had inherited the suit properties from his father Periyasamy?*

11. Pending the Second Appeal, the first defendant filed M.P. No.2 of 2014 to receive additional sale deeds dated 01.03.1932, 22.02.1944 and 07.02.1961. He also filed C.M.P. No.6494 of 2020 to receive the settlement deed dated 26.04.2001 and C.M.P. No.5267 of 2020 to raise additional grounds.

12. The plaintiff opposed the petitions contending that the documents are unrelated, that no due diligence was shown, and that the petitions are an attempt to fill up lacunae.

13. Brief contents of the affidavits filed in support of the miscellaneous petitions: The plaintiff, who is the daughter of the first defendant, filed the suit for partition contending that the suit schedule properties are ancestral joint family properties. The consistent stand of the first defendant is that the suit properties are his *separate and self-acquired properties*. In support of the said contention, reliance is placed on three sale deeds dated 01.03.1932, 22.02.1944 and 07.02.1961, which stand in the names of the first defendant's father, Periyasamy Asari, and the first defendant himself.



14. It is averred that upon the death of the first defendant's father in the year 1954, the first defendant succeeded to the properties in accordance with the law then in force, and consequently, the suit properties became his *absolute properties*. It is further stated that, despite due diligence, the said documents could not be produced before the courts below, and that they were only recently traced from an old box kept in the first defendant's house.

15. It is contended that the documents are more than 30 years old, and therefore, the presumption under Section 90 of the Indian Evidence Act, 1872 is attracted.

16. With regard to the settlement deed, it is averred in a separate affidavit that the settlement deed dated 26.04.2001 was admitted by the plaintiff both in the plaint and in her proof affidavit. The first defendant claims that he was under the impression that a document need not be produced or marked unless its execution is disputed. Subsequently, he was advised that even an admitted document ought to have been produced and marked as an exhibit. For the above reasons, the petitions are sought to be allowed.

17. The plaintiff contends that the three sale deeds sought to be received do not relate to the suit schedule properties. It is further contended that even if the said documents are marked, they would not alter the character of the suit properties.



The explanation offered by the first defendant for non-production of the documents before the courts below is stated to be wholly unbelievable.

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18. It is further alleged that the first defendant deliberately withheld the documents in order to deprive the plaintiff of an opportunity to cross-examine the witnesses. According to the plaintiff, the first defendant has failed to satisfy the mandatory requirements of Order XLI Rule 27 CPC, and the attempt to produce documents at the stage of second appeal is impermissible. Hence, the petitions are liable to be dismissed.

19. Order XLI Rule 27 CPC governs the reception of additional evidence in appellate proceedings. A plain reading of the provision makes it clear that parties are *not entitled as a matter of right* to produce additional oral or documentary evidence before the appellate court, except in the circumstances specifically enumerated therein. The provision is not intended to enable a party to fill up lacunae or patch up weak points in the case at the appellate stage, which would be against the spirit and scheme of the Code.

20. The circumstances contemplated under Order XLI Rule 27 CPC are:

- (i) where the court below has refused to admit evidence, which ought to have been admitted; or



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(ii) where the party seeking to adduce additional evidence establishes that, notwithstanding due diligence, such evidence was not within his knowledge or could not be produced at the time when the decree appealed against was passed; or

(iii) where the appellate court itself requires such evidence to enable it to pronounce judgment; or

(iv) for any other substantial cause.

21. In the case on hand, it is not the first defendant's case that the trial court or the first appellate court refused to admit the documents sought to be produced. Hence, clause (i) of Order XLI Rule 27 CPC is clearly not attracted.

22. Further, the first defendant has failed to establish that he exercised due diligence in producing the documents earlier. The explanation that the documents were recently discovered from an box kept at home is wholly insufficient and does not satisfy the requirement of "due diligence" contemplated under clause (ii) of the Rule.

23. It is also evident that this Court does not require the said documents for the purpose of pronouncing judgment. Therefore, clause (iii) is also inapplicable.



24. The only remaining ground for consideration is whether the case falls within the expression “any other substantial cause” under Order XLI Rule 27 CPC.

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25. Apart from the statutory requirements, the Hon’ble Supreme Court, in **Civil Appeal No.10458 of 2010, *Iqbal Ahmed (Dead) by LRs & another v. Abdul Shukoor*, judgment dated 22.08.2025**, has held that the appellate court is required to examine the pleadings of the parties before adjudicating an application filed under Order XLI Rule 27 CPC. It has been specifically held that the appellate court must consider whether the additional evidence sought to be produced is in consonance with the pleadings already on record.

26. On the side of the first defendant, reliance was placed on **Union of India v. K.V. Lakshman and others, reported in (2016) 13 SCC 124**, the Supreme Court emphasised that a first appeal is a valuable right and should not be disposed of in limine. The additional documents were public documents and there was no opposition to the application filed in the first appeal.

27. The first defendant in his written statement, has categorically pleaded that the first item of the suit property was purchased by him out of his own earnings derived from carpentry work and has specifically claimed that the said property is his self-acquired property.



28. However, in the affidavit filed in support of the petitions to receive additional documents, the first defendant has taken a diametrically opposite stand by asserting that the sale deeds dated 01.03.1932 and 22.02.1944 stand in the name of his father, Periyasamy Asari, and that upon the death of his father in the year 1954, (as stated by the first defendant in the grounds of appeal No.6) he inherited the said property by succession. On that basis, it is now contended that the property inherited by him from his father under succession became his separate individual property, and therefore, the plaintiff has no right to seek partition during his lifetime.

29. The plea that a property is self-acquired by one's own earnings and the plea that a property is acquired by inheritance from one's father and thereby treated as separate property are conceptually and legally distinct pleas, founded on entirely different sources of title. While the former is based on independent acquisition by personal effort, the latter rests on devolution of property through succession. These two pleas are mutually destructive and cannot co-exist.

30. Therefore, the stand now taken by the first defendant in the affidavit filed in support of the applications to receive additional documents is not in consonance with his original pleadings contained in the written statement. Permitting the first defendant to introduce additional documents on the basis of such a shift in the foundational plea would amount to allowing him to set up a new case at the



appellate stage, which is impermissible in law, particularly in the context of an application under Order XLI Rule 27 CPC.

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31. Accordingly, the inconsistency between the pleadings and the reasons now put forth for receiving additional documents strikes at the very root of the first defendant's claim and disentitles him from any indulgence under Order XLI Rule 27 CPC.

32. In the above circumstances, both the petitions, namely M.P. No.2 of 2014 and C.M.P. No.6494 of 2020, filed for receiving additional documents, are dismissed. Even though the first defendant filed a petition C. M. P. No.5267 of 2020 seeking leave to raise additional grounds and an additional substantial question of law, no such grounds or questions have been specifically stated either in the petition or in the affidavit filed in support thereof. The petition is therefore devoid of merits. However, it is recorded that both sides were afforded full opportunity to advance all their contentions and grounds at the time of final arguments. In such circumstances, the petition does not merit acceptance. Consequently, the petition to raise additional grounds, C.M.P. No., 5267 of 2020 also stands dismissed.



33. Adverting to the substantial questions of law No.1 and 2; the admitted fact is that the father of the first defendant died in the year 1954, prior to the commencement of the Hindu Succession Act, 1956.

34. Section 8 of the Hindu Succession Act, 1956 applies only where the death of a male Hindu occurs after 17.06.1956. Since the succession in the present case opened in 1954, the devolution is governed by the Mitakshara law as it stood prior to codification.

35. Under the pre-1956 Mitakshara law, when a Hindu male died intestate leaving self-acquired property and was survived by a son, such property devolved upon the son by survivorship and in the hands of the son it assumed the character of ancestral property vis-a-vis his issue. Upon the birth of a son, a coparcenary came into existence. The Hindu Succession Act, 1956 is not retrospective and does not divest vested rights.

36. In the present case, the property devolved upon the first defendant in 1954 and became ancestral in his hands vis-a-vis his children. A coparcenary came into existence upon the birth of his son. The coparcenary subsisted on the date of commencement of the Hindu Succession (Amendment) Act, 2005. Therefore,



the plaintiff-daughter acquired coparcenary rights by operation of Section 6, as amended.

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37. It is relevant to extract the passage from the Mulla's Hindu Law, Twenty-fifth Edition, synopsis (Article) No.211 illustration (a) which is as follows: --

(a) Prior to the coming into force of the Hindu succession Act 1956, if *A* who had a son *B*, *inherited property from his father, it became ancestral property in his hands, and B became coparcener with his father. Though A as head of the family was entitled to hold and manage the property, B was entitled to an equal interest with his father A, and to enjoy it in common with him, B could therefore restrain his father from alienating it except in the special cases where such alienation was achieved by law and he could enforce partition of it against his father. On his father's death. B took the property by right of survivorship and not by succession.*

(b) *It is, however the other way as to separate property. A person was the absolute owner of the property inherited by him from his brother, uncle etc. His son did not acquire any interest in it by birth and on his death if passed to the son not by survivorship but by succession. Thus, if A inherited property from his brother it was his separate property, and it was absolutely at his disposal. His son B acquired no interest in it by birth and could not claim partition of it, nor could he restrain A from alienating it . The same rule applied in case of self-acquired property of a Hindu, who died prior to the coming into force of the Hindu Succession Act, 1956.It*



is, however, important to note that separate or self-acquired property once it descends to a male issue of the owner, became ancestral in the hands of the male issue who inherited it. Thus, if A owned separate or self-acquired property, it passed on his death to his son B, as his heir. However the result of the separation of the doctrine of ancestral property and a son taking interest in it simply by birth, was that if B had a son C the latter (C) took interest in it by reason of his birth and became a coparcener with B in respect of the same. C could restrain B from alienating it and could enforce a partition of it against B. The doctrine has been materially affected by operation of Section 8 of the Act of 1956.

38. On behalf of the first defendant, it was contended that a property can assume the character of ancestral property only if it descends *undivided through three generations* from the original purchaser, and that since the 1st respondent/plaintiff is only the granddaughter, representing the third generation, she cannot seek partition during the lifetime of her father. In support of this submission, reliance was placed on the Division Bench judgment of this Court in **Minor S. Saran v. S. Thirumoorthy and others**, reported in **MANU/TN/1886/2024**, and the decision of the learned Single Judge in **S. Shanthinidevi and others v. V. Somasundaram and others, 2025 (3) MWN (Civil) 149**.



39. The reliance placed by the first defendant on the decision in *Minor S. Saran v. S. Thirumoorthy* is wholly misconceived. In the said case, the Court was dealing with a property which *never assumed the character of ancestral property*. The property therein was held to be the self-acquired property of Ramasamy Gounder, who died on 18.12.1973, i.e., long after the commencement of the Hindu Succession Act, 1956. The devolution of property in that case arose under an entirely different factual and legal regime, governed by Section 8 of the Hindu Succession Act, and not by survivorship.

40. In the present case, the factual matrix stands on an entirely different footing. The original owner admittedly died intestate in the year 1954, prior to the commencement of the Hindu Succession Act, 1956. Consequently, the property devolved upon his son by survivorship under the Mitakshara law. Under classical Hindu law, such property becomes ancestral in the hands of the son vis-a-vis his issue, and a coparcenary comes into existence upon the birth of a son thereafter. Therefore, the observations in *Minor S. Saran* with regard to the absence of three generations and denial of birthright cannot be mechanically applied to a case of pre-1956 devolution by survivorship. The said decision is thus clearly distinguishable both on facts and in law.

41. Similarly, the reliance placed on **S. Shanthinidevi v. V. Somasundaram**, 2025 (3) MWN (Civil) 149, is equally misplaced. In that case, this Court



proceeded on the admitted premise that the properties of Kuppusamy Chettiar devolved upon his sons under Section 8 of the Hindu Succession Act, 1956, and not by survivorship. On that statutory footing, it was held that the grandsons had no right to seek partition. The very invocation of Section 8 in that case necessarily implies that the devolution took place under the post-1956 statutory regime, wherein the sons inherit the property in their individual capacity, and the property does not retain any ancestral character vis-a-vis the next generation.

42. In the case on hand, however, the original owner died prior to 1956, and the devolution took place by survivorship under the Mitakshara law, whereby the property assumed ancestral character in the hands of the son vis-a-vis his issue. A coparcenary thus came into existence and admittedly subsisted on the date of commencement of the Hindu Succession (Amendment) Act, 2005. Consequently, the plaintiff-daughter acquired coparcenary rights by operation of Section 6, as amended, and is entitled to seek partition.

43. In respect of the settlement deed dated 26.04.2001, the plaintiff has admittedly acknowledged the execution of the said document in the plaint. However, the challenge is not to the *execution* of the settlement deed, but to the *competency and authority of the first defendant* to execute such a settlement in favour of the 2nd defendant, conveying the *entire extent of ancestral property*.



Therefore, the mere belated production of the settlement deed would not assist this Court in adjudicating the core issue, namely, whether the first defendant, in his capacity as Karta, possessed the legal competence to execute such a settlement. Hence, the petition to receive the settlement deed as an additional document deserved to be dismissed.

44. As already held, the 2nd item of the suit property was inherited by the first defendant as Karta of a Hindu Joint Family, not in his individual capacity, but for himself and the other coparceners. The admitted facts disclose that the suit properties are ancestral/coparcenary properties of a Mitakshara Hindu Joint Family consisting of the first defendant as Karta and the 2nd and 6th defendants as coparceners, as on the date of the settlement deed in the year 2001. It is further undisputed that the joint family owned only two items of properties, and that the Karta executed a gift/settlement deed conveying the *entire extent of the 2nd item of property* exclusively in favour of one coparcener, without the express or implied consent of the other coparcener.

45. Under Mitakshara law, the Karta is only the manager and representative of the joint family and does not possess an unfettered power of alienation over coparcenary property. His power is strictly limited to alienations made for legal necessity, benefit of estate, or indispensable duties. Even within these limited spheres, the power does not extend to making gratuitous transfers of joint family



property. A gift, being a transfer without consideration, lies wholly outside the scope of the Karta's authority, except in narrowly recognised exceptions, such as reasonable gifts for pious or charitable purposes or gifts to a daughter at the time of marriage.

46. A unilateral gift of the *whole or a substantial portion* of joint family property, or of *one entire item* out of a limited corpus of joint family properties, in favour of one coparcener, amounts to a virtual partition by gift, a concept wholly unknown to Hindu law. Such an act confers a disproportionate and exclusive benefit upon one coparcener, destroys the equal proprietary rights of the other coparcener, and therefore falls entirely beyond the competence of the Karta.

47. The Hon'ble Supreme Court has consistently held that a Karta has no authority to gift joint family property, except to the limited extent recognised by Hindu law, and that any gift made in excess of such authority is void and inoperative. In **Thamma Venkata Subbamma v. Thamma Rattamma**, reported in **(1987) 3 SCC 294**, the Supreme Court categorically held that a gift by the manager of joint family property, not falling within the recognised exceptions, is void. Similarly, in **GurammaBhratarChanbasappa Deshmukh v. Malappa Chanbasappa**, reported in **AIR 1964 SC 510**, it was held that a father or Karta cannot make a gift of joint family property so as to prejudice the



interests of other coparceners, except to the limited extent permitted under Hindu law.

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48. The legal position is succinctly stated in **Mulla's Hindu Law**, Twenty-Fifth Edition, Article 256, which reads as follows:

“Gift of undivided interest. — According to the Mitakshara law as applied in all the States, no coparcener can dispose of his undivided interest in coparcenary property by gift. Such a transaction being void altogether, there is no estoppel or other personal bar which precludes the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of the other coparceners.”

49. Thus, a settlement or gift of coparcenary property by the Karta in favour of one coparcener, without the consent of the others, is void ab initio and does not bind the non-consenting coparceners. A unilateral settlement by the Karta of joint family property in favour of one heir, to the exclusion of the other, is non est in law and can be safely ignored in a suit for partition.

50. On the side of the first defendant, it was contended that since the execution of the settlement deed dated 26.04.2001 by the first defendant is admitted by the plaintiff, and since the said transaction took place much prior to the advent of



the Hindu Succession (Amendment) Act, 2005, the alienation is protected under the proviso to Section 6 of the amended Act. It was argued that any alienation validly made by a coparcener prior to 20.12.2004, and which had taken effect before that date, stands protected, and that the rights of the alienee cannot be disturbed.

51. The said submission cannot be accepted. The proviso to Section 6 of the Hindu Succession (Amendment) Act, 2005, protects only those alienations which were valid in law at the time when they were effected. The legislative intent is to save bona fide and lawful transactions already concluded prior to 20.12.2004, so as to prevent unsettling vested rights. The proviso does not operate to confer validity upon transactions which were void or illegal ab initio, nor does it cure inherent defects relating to lack of authority or competence of the executant.

52. In other words, the statutory protection under the proviso to Section 6 cannot be extended to invalid or void transactions, even if they were executed prior to 20.12.2004. Where an alienation was beyond the authority of the person effecting it and was void in law on the date of its execution, the legal position remains unchanged, notwithstanding the amendment.



53. In the present suit, as discussed supra, the succession opened in the year 1954, upon the demise of the first defendant's father. Consequently, the devolution of the suit properties was governed by the law in force prior to the commencement of the Hindu Succession Act, 1956, and Section 8 of the Hindu Succession Act, 1956 has no application to the facts of the case. Therefore, the very premise for invoking Section 8 does not arise.

54. In view of the above, the substantial questions of law Nos.1 and 2, which proceed on the assumption of applicability of Section 8 of the Hindu Succession Act, 1956, are wholly inapplicable to the facts and circumstances of the present case and are accordingly answered against the appellant/first defendant.

55. As regards the third substantial question of law, there is not even an iota of pleading with respect to the alleged demise of another son of the first defendant, namely Periyasamy. In the absence of any such pleading, there was no occasion for the courts below to advert to or adjudicate upon the said aspect. A substantial question of law cannot be founded on facts which were neither pleaded nor put in issue before the trial court.

56. Even otherwise, the factual assertion now sought to be projected does not advance the case of the first defendant. It is stated that the first defendant's son Periyasamy died about twenty-five years prior to the institution of the suit,



which would place his death around the year 1980, i.e., well after the commencement of the Hindu Succession Act, 1956. It is further stated that he died a bachelor and that his mother predeceased him. On that premise, the first defendant claims that he succeeded to the share of his deceased son as a legal heir under Class II of the Schedule to the Hindu Succession Act, 1956.

57. The said contention proceeds on a clear misconception of law. As already held, both the 1st and 2nd items of the suit properties are ancestral/coparcenary properties. The 1st item, though purchased subsequently, was acquired by sale of ancestral property and therefore retained its ancestral character, and the 2nd item is admittedly ancestral property. The succession in respect of the joint family property opened in the year 1954, on the death of the first defendant's father, under the law then in force, and the coparcenary thus constituted continued even after the advent of the Hindu Succession Act, 1956.

58. Under Section 6 of the Hindu Succession Act, 1956 (prior to the 2005 amendment), when a male coparcener dies leaving behind a surviving female heir specified in Class I of the Schedule, a notional partition is deemed to have taken place, and the share of the deceased coparcener devolves by succession upon such Class I heirs. However, where a male coparcener dies without leaving any surviving female heir, his interest in the coparcenary devolves by



survivorship upon the surviving coparceners, and not by succession under the Hindu Succession Act.

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59. In the present case, the deceased son of the first defendant, assuming the pleaded facts to be true, died without leaving any female heir. Therefore, his undivided interest in the coparcenary did not devolve by succession under the Hindu Succession Act so as to enable the first defendant to claim it as a Class II heir. Instead, such interest merged with the coparcenary by survivorship, to be enjoyed by the surviving coparceners in accordance with Mitakshara law.

60. Viewed from any angle, the claim of the first defendant to succeed to the alleged share of his deceased son—apart from being unsupported by any pleading—is legally unsustainable. The entire argument is founded on an erroneous understanding of the scheme of Section 6 of the Hindu Succession Act, 1956.

61. In such circumstances, the third substantial question of law is answered against the appellant/first defendant.

62. The fourth substantial question of law is not properly framed and is merely a reiteration of the grounds raised in the memorandum of appeal. The substantial question proceeds on the premise of non-joinder of the first defendant's sister,



Palaniammal. However, the records disclose that Palaniammal has already been arrayed as the 5th defendant in the suit. Therefore, the question of *non-joinder* does not arise at all. At best, the contention could only relate to an alleged mis-joinder, and not non-joinder, of parties.

63. Even assuming, for the sake of argument, that the first defendant inherited the suit properties from his father under the Hindu Succession Act, 1956, as projected in the fourth substantial question of law, the legal consequence would be that the first defendant's sister alone could claim a share in the suit properties along with the first defendant, and the children of the first defendant would have no right to seek partition. However, as already answered while dealing with the first substantial question of law, the succession in the present case opened in the year 1954, prior to the commencement of the Hindu Succession Act, 1956, and was governed by the law then in force.

64. Upon the demise of the first defendant's father, the coparcenary ancestral properties devolved upon the first defendant as the sole surviving coparcener by survivorship, and not by inheritance under the Hindu Succession Act, 1956. The 5th defendant, being the sister of the first defendant, is a non-coparcener and does not acquire any proprietary interest in the coparcenary property. Under the Mitakshara law as it stood in the year 1954, she was only entitled to



maintenance and marriage expenses out of the joint family properties, and not to a share therein.

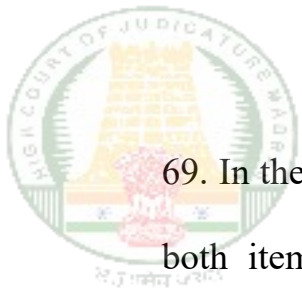
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65. Consequently, the 5th defendant is not a sharer in the suit properties. Nevertheless, she is a proper party to the suit. It is also relevant to note that the 5th defendant was set ex parte before the trial court, and significantly, the first defendant did not raise any plea of mis-joinder of parties in his written statement. The contention relating to mis-joinder has been raised for the first time in the second appeal, which is impermissible.

66. In any event, in view of Order I Rule 9 CPC, no suit shall be defeated by reason of mis-joinder or non-joinder of parties, except in the case of non-joinder of a necessary party. The arraying of the 5th defendant in the suit, even if assumed to be irregular, is not illegal or fatal to the proceedings.

67. Accordingly, the fourth substantial question of law is answered against the appellant/first defendant.

68. In view of the foregoing, Substantial Questions of Law Nos.1 to 4 are answered against the appellant/first defendant.



69. In the light of the foregoing discussion, the findings of the courts below that both items of the suit properties are ancestral/coparcenary properties stand confirmed. Consequently, the plaintiff, being a coparcener on and after the advent of the Hindu Succession (Amendment) Act, 2005, is entitled to claim her share in the suit properties.

70. As already held, the 5th defendant, who is the sister of the first defendant, is not a coparcener, either prior to the 2005 amendment or thereafter. Her presence in the suit is a case of mis-joinder, and she is not entitled to any share in the joint family properties consisting of the first defendant and his children. The coparcenary, as constituted in this case, comprises only the first defendant and his children, including the plaintiff.

71. Accordingly, the sharers in the suit properties are the plaintiff and defendants 1 to 4 and 6 alone, and not the 5th defendant. Once the 5th defendant is excluded from the computation, the share allotted by the courts below to the plaintiff requires modification. The plaintiff's entitlement is recalculated and enhanced from 1/7 to 1/6 share in the suit properties. On all other respects, the judgment and decrees of the courts below stand unaltered and are affirmed.

72. In the result, the judgments and decrees of the courts below are modified to the extent that the preliminary decree passed therein shall stand modified by



declaring that the plaintiff / 1st respondent is entitled to a 1/6th share in the suit schedule properties. On all other respects, the findings and decrees of the courts below are confirmed.

73. Accordingly, the Second Appeal, along with M.P. No.2 of 2014, C.M.P. No.5267 of 2020, and C.M.P. No.6494 of 2020, is dismissed with costs. Consequently, all other connected miscellaneous petitions, if any, shall stand closed.

12.02.2026

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

SHL

To

1. The Subordinate Judge's Court at Kallakurichi
2. The second Additional District Munsif Court at Kallakurichi



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SA No. 16 of 2



DR.A.D.MARIA CLETE J.

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**SA No. 16 of 2014 and
MP.Nos.1 and 2 of 2014 and
CMP Nos. 5267 and 6494 of 2020**

12.02.2026