WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-11-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 844 of 2014 & M.P.No.1 of 2014
CNR:{HCMA011093372014}
and
SA NO. 907 OF 2014
& M.P.No.1 of 2014
CNR:{HCMA014010302014}

Case QR

S.A.No.844 of 2014

1. Thangammal
   W/o Ramasamy Gounder

2. Easwari
   W/o Marappa Gounder

..Appellants

Vs

1. Loganathan(Died)
   S/o Ramasamy Gounder

2. Gandhimathi
   W/o Palanisamy

3. Thulasimani
   W/o Ramasamy Gounder

4. Dhanalakshmi
   W/o Loganathan

5. Rajeswari
   D/o Loganathan

6. Minor Janani
   D/o Loganathan Rep By Her Mother And
   Next Friend. Dhanalakshmi
   R1 Died, R3 To R6 Are Brought On

https://www.mhc.tn.gov.in/judis

WEB COPY

Record As Lrs Of the Deceased R1 Vide Court Order Dated 05/08/2026 made In MP.No.2 of 2014 in S.A.No.844 of 2014 (PDBJ)

..Respondent(s)

SA No. 907 of 2014

1. Loganathan(died),
   S/o Ramasamy Gounder

2. L.Dhanalakshmi,
   W/o. Late R. Loganathan

3. L.Rajeswari,
   D/o. Late R. Loganahtan

4. Minor.L.Janani,
   D/o. Late R. Loganathan
   (minor Rep By Her Mother Dhanalakshmi cum Guardian)
   [Appellants 2 to 4 brought on record as legal heirs of the deceased sole appellant, viz., Loganathan, vide court order dated 24.11.2021 made in C.M.P.No.9654, 9655 and 9656 of 2017 in S.A.No.844 & 907 of 2014) (TKRJ)

..Appellant(s)

Vs

1. Thangammal
   W/o Ramasamy Gounder

2. Eswari
   W/o Marappa Gounder

3. Gandhimathi
   W/o Palanisamy

..Respondent(s)

https://www.mhc.tn.gov.in/judis

WEB COPY

Prayer in S.A.No.844 of 2014: Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree passed in A.S.No.92 of 2013 by the learned Principal District Judge, Erode dated 12.02.2014 with respect to the first item of the suit properties alone, modifying the Judgment and Decree passed by the Sub Judge, Perundurai in O.S.No.81 of 2009 dated 07.02.2013 and to allow the Second Appeal.

Prayer in S.A.No.907 of 2014: Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree passed in A.S.No.92 of 2013 by the learned Principal District Judge, Erode dated 12.02.2014 partly modifying the Judgment and decree dated 07.02.2013 made in O.S.No.81 of 2009 on the file of the learned Subordinate Court, Perundurai by allowing the Second Appeal.

SA No. 844 of 2014

For Appellant(s): Mr.V.S.Kesavan

For Respondent(s): R1 - Died
Mr.Kaithamalai Kumaran for R2
Mr.N.Manokaran for R3 to R6

SA No. 907 of 2014

For Appellant(s): Mr.N.Manokaran

For Respondent(s): Mr.V.S.Kesavan for R1 and R2
Mr.Kaithamalai Kumaran for R3

https://www.mhc.tn.gov.in/judis

WEB COPY

COMMON JUDGMENT

The appellants in S.A.No.844 of 2014 are the plaintiffs, who filed the suit in O.S.No.81 of 2009 on the file of the Sub Court, Perunthurai, Erode for the relief of partition and permanent injunction. The said suit was partly decreed in respect of partition and with regard to permanent injunction, the suit was dismissed. Aggrieved by the said Decree and Judgment, the defendants 1 and 2 have preferred an appeal in A.S.No.92 of 2013 on the file of Principal District Judge, Erode. The said appeal was partly allowed by modifying the decree and judgment passed by the trial court, wherein, dismissed the suit in respect of Item No. 1 of the suit property and granted decree in respect of Item Nos. 2 and 3 of the suit properties. Aggrieved by the said Decree and Judgment, the plaintiffs have preferred the Second Appeal No.844 of 2014 and 1st defendant has preferred S.A.No.907 of 2014.

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

3. The case of the plaintiffs before the trial court is that the 1st plaintiff is the wife of Ramasamy Gounder and the 2nd plaintiff is the

https://www.mhc.tn.gov.in/judis

WEB COPY

daughter of the 1st plaintiff and Ramasamy Gounder. The defendants are the illegitimate children of Ramasamy Gounder through one Thulasimani. The suit properties are the ancestral properties of Ramasamy Gounder. The said Ramasamy Gounder and his brother, Periyasamy Gounder, divided the family properties orally in the year 1974 and they have taken separate possession. Both of them have not questioned the oral partition and the suit properties are allotted to the share of Ramasamy Gounder through the said partition. There was good income from the said lands, from and out of the income from the said joint family properties, the said Ramasamy Gounder purchased Item No.2 of the suit properties through sale deed dated 29.01.1975 and Item No.3 was purchased on 13.06.1978. The said Ramasamy gounder had no other source of income except from the joint family properties. The Item Nos.1 and 2 were thrown into hotchpot and was enjoyed as a joint family properties, therefore, the 2nd plaintiff is a co-parcenor and she is entitled to ½ share. The remaining share belonged to Ramasamy Gounder, after the demise of Ramasamy Gounder, the plaintiffs and defendants are entitled to share the property of Ramasamy Gounder, therefore, the 1st plaintiff is entitled to 1/8 share, 2nd plaintiff is entitled to 5/8 share, the defendants each are entitled to 1/8 share over the suit properties, therefore, filed the suit.

https://www.mhc.tn.gov.in/judis

WEB COPY

4. The case of the 1st defendant is that the relationship between the parties are admitted, however, the said Ramasamy Gounder during his life time married one Thulasimani and the defendants 1 and 2 are born through the 2nd wife. After the second marriage, the plaintiffs left from the family of Ramasamy Gounder and they are residing separately. The said Ramasamy Gounder executed settlement deed in favour of the 1st defendant in respect of the First Item of the suit property on 03.02.1972 and thereby he has been in possession and enjoyment of the First Item of the property. The Second Item of the properties are separate properties of Ramasamy Gounder and he executed settlement deeds dated 20.12.2005 in favour of 1st defendant, thereby the 1st defendant is the absolute owner of the Item Nos.1 and 2 of the suit properties. Except the 1st defendant, neither the 2nd defendant, nor the plaintiffs are entitled to the share of Ramasamy gounder. The plaintiffs are not in joint possession of the properties, now after 34 years, the plaintiffs only to grab the properties, filed the suit, therefore, the suit is liable to be dismissed.

4.1. Further, the case of the 1st defendant by way of additional written statement is that the framing of the suit itself is not maintainable and the same is liable to be dismissed. There are other co-sharers to

https://www.mhc.tn.gov.in/judis

WEB COPY

the suit property and they have not been impleaded as parties and thereby the suit is bad for non-joinder of necessary parties. The suit is also bad for partial partition and some of the properties have not been included in the suit. The house, as well as electricity service connection and other appurtenances are not shown as properties in the plaint, therefore, the value of the suit is not correct. The father of the defendants already executed registered settlement deed dated 20.12.2005 in favour of the 1st defendant in respect of the Item No. 3 of the suit schedule property and the 1st defendant also accepted the settlement deed and he is enjoying the properties as absolute owner. The plaintiffs suppressed the earlier partition took place on 23.02.1979 and based on the said partition, numerous documents have been executed among the parties. The allegation that from and out of the income of the Item No.1 of the suit properties, the said Ramasamy Gounder purchased, the Item Nos.2 and 3 of the suit properties are not correct. It is also not correct that the entire properties put into common hotchpot. The said Ramasamy gounder executed a registered settlement deed dated 03.02.1972 in favour of 1st defendant in respect of self acquired properties and thereafter, mutation also effected, as per settlement deeds, the plaintiffs have no share at all in the suit properties, therefore, the plaintiffs are not entitled to any share over the properties.

https://www.mhc.tn.gov.in/judis

WEB COPY

5. Based on the above said pleadings and after hearing both sides, the trial court has framed the following issues for trial:-

"(1) Whether the plaintiffs are entitled to 6/8th share in the suit properties as prayed for?

(2) Whether the plaintiffs are entitled to the relief of permanent injunction restraining the defendants from encumbering the properties until partition is effected?

(3) Whether it is true that the Item Nos.1 and 2 belong to the 1st defendant under the settlement deeds executed by Ramasamy Gounder dated 03.02.1972 and 20.12.2005?

(4) To what other reliefs the plaintiffs are entitled to?"

Further, the trial court framed the following additional issues for trial on 28.09.2010:-

"(1) Whether the suit is bad for non joinder of necessary parties?

(2) Whether the suit is bad for partial partition?

(3) Whether the court fee is incorrect?

(4) Whether the suit is bad for non-joinder of parties?"

Before the trial court, on the side of the plaintiffs, witnesses, P.W.1 was examined and Exhibits A.1 to A.18 were marked and on the side of the defendants, witnesses, D.Ws.1 and 2 were examined and marked Exhibits B.1 to B.5. After considering the evidences adduced on both

https://www.mhc.tn.gov.in/judis

WEB COPY

sides, the trial court decreed the suit in respect of partition and granted 6/8 share in respect of the Item No.1 of the suit properties and 2/4 share in respect of Item Nos.2 and 3 of the suit properties and dismissed the suit in respect of permanent injunction.

6. Aggrieved by the said Decree and Judgment, the defendants have preferred an appeal in A.S.No.92 of 2013 on the file of learned Principal District Judge, Erode on various grounds. The First Appellate Court framed the following points for determination:-

"1) Whether the suit is bad for non joinder of necessary parties?

2) Whether the Item Nos. 2 and 3 of the suit properties are joint family properties and the same are purchased out of joint family nucleus?

3) Whether the Settlement deeds dated 03.02.1972 and 20.12.2005 are valid in law and binding on the plaintiffs?

4) Whether the appellants have perfected their title by adverse possession?

5) To what relief?"

Thereafter, the First Appellate Court modified the Decree and Judgment passed by the trial court and the suit in respect of Item No.1 of the suit property was dismissed, as bad for non-joinder of necessary parties by

https://www.mhc.tn.gov.in/judis

WEB COPY

granting liberty to file a fresh suit in respect of Item No.1 of the suit property and granted decree in respect of Item Nos.2 and 3 of the suit properties that the 1st plaintiff is entitled to 1/8 share and the 2nd plaintiff is entitled to 5/8 share and the defendants 1 and 2 each are entitled to 1/8 share through its Judgment and Decree dated 12.02.2014.

7. As against the said Decree and Judgment, the plaintiffs have preferred S.A.No.844 of 2014 and the 1st defendant has preferred S.A.No.907 of 2014. This Court, on 24.11.2025, admitted the Second Appeal No.844 of 2014 on the following Substantial Question of Law:-

"Whether the First Appellate Court erred in law in proceeding on P.W.1's admission that Item no.1 has co-sharers while ignoring D.W.1's contrary evidence that there is no co-sharer in Item No.1"

Further, this Court, on 05.09.2014, admitted the Second Appeal No.907 of 2014 on the following Substantial Questions of Law:-

"a. Whether the First Appellate Court has committed an error in permitting the plaintiffs to file a fresh suit for partition in respect of the first item of the suit properties after holding that the suit is bad for non-joinder of the necessary parties?

b. Whether the courts below erred in law in disbelieving the settlement deeds dated 03.02.1972 (Ex.B.1) and 20.12.2005 (Ex.B.2

https://www.mhc.tn.gov.in/judis

WEB COPY

and Ex.B.3) for want of proof for handing over possession, particularly in view of the specific recitals made therein as per Section 126 of the Transfer of Property Act?

c. Whether the First Appellate Court is correct in permitting the respondents / plaintiffs to attack any part of the decree passed by the trial court in the appeal filed by the appellants / defendants, in the absence of any cross objection under Order 41 Rule 22(1) C.P.C.,?

d. Whether the courts below are right in holding that the suit for partition without a prayer for setting aside the settlement deeds marked as Ex.B.1, Ex.B.2 and Ex.B.3 is maintainable in law?"

8. The learned counsel appearing for the appellants in S.A.No.844 of 2014 and respondents 1 and 2 in S.A.No.907 of 2014 would submit that the appellants in S.A.No.844 of 2014 and respondents 1 and 2 in S.A.No.907 of 2014, are the plaintiffs, who filed the suit in O.S.No.81 of 2009 for the relief of partition and permanent injunction. In fact, the suit property originally belonged to one Ramasamy Gounder, who is the husband of the 1st plaintiff and father of the 2nd plaintiff. The 1st plaintiff is the first wife of Ramasamy Gounder and the defendants are the illegitimate children of Ramasmy Gounder through Thulasimani. The suit properties are ancestral properties of Ramasamy Gounder and his

https://www.mhc.tn.gov.in/judis

WEB COPY

brother Periyasamy Gounder while so they orally partitioned the properties in the year 1974 and the suit properties were allotted to Ramasamy Gounder through the said oral partition. Thereafter, through the income of Item No.1 of the suit properties, the said Ramasamy Gounder purchased Item Nos.2 and 3 of the suit properties and those properties are also treated as joint family properties and thereby the 1st plaintiff is entitled to 1/8 share and the 2nd plaintiff is entitled to 5/8 share over the properties. The trial court, after considering the evidences only granted 6/8 share in the Item No.1 of the suit properties and 2/4 share in the Item Nos.2 and 3 of the suit properties and dismissed the suit for permanent injunction. Aggrieved by the said Decree and Judgment, the defendants have preferred an appeal in A.S.No.92 of 2013 on the file of the learned Principal District Judge, Erode and the First Appellate Court dismissed the suit in respect of the Item No.1 of the suit property by holding that the suit is bad for non-joinder of necessary parties, as all the share holders have not been impleaded as parties and modified the decree, in respect of Item Nos.2 and 3 by holding that Item Nos.2 and 3 were purchased through the income of the Item No.1 of the property and thereby the said properties are also ancestral properties and thereby granted 1/8 share to the 1st plaintiff, 5/8 share to the 2nd plaintiff and 1/8 share to each of the defendants. The First Appellate Court failed to

https://www.mhc.tn.gov.in/judis

WEB COPY

consider that already the properties were partitioned between Ramasamy Gounder and his brother, Periyasamy Gounder and the same has not been denied by the defendants, however, the First Appellate Court dismissed the suit for non-joinder of necessary parties. The First Appellate Court without discussing the Judgment of the trial court and without giving reasons, dismissed the suit in respect of Item No.1 of the suit properties, therefore, the Judgment and Decree passed by the First Appellate Court dismissing the suit in respect of Item No.1 of the Suit property is liable to be set aside by allowing the S.A.No.844 of 2014 and the Second Appeal No.907 of 2014 filed by the 1st defendant is liable to be dismissed.

9. The learned counsel appearing for the respondents 3 to 6 in S.A.No.844 of 2014 and appellant in S.A.No.907 of 2014 would submit that the oral partition between the said Ramasamy Gounder and Periyasamy gounder has not been proved. The Item Nos.2 and 3 of the properties are not joint family properties and they are the self acquired properties of Ramasamy Gounder and there are no pleadings and evidences to prove that the Item no.1 of the property yielded good income. There are no pleadings and evidences that there were ancestral properties and what was the income derived from the Item

https://www.mhc.tn.gov.in/judis

Order QR
WEB COPY

No.1 of the property and whether the income was surplus and through that income only, the Item Nos.2 and 3 were purchased by Ramasamy Gounder. There are pleadings and evidence that the Item Nos. 2 and 3 properties are separate properties of Ramasamy Gounder and he also settled the properties in favour of the 1st defendant, while so, the trial court granted partition by allotting 6/8 share in the suit properties and 2/4 share in the Item Nos.2 and 3 of the suit property. The plaintiffs have not preferred an appeal as against the findings and allotting shares in Item Nos.2 and 3 of the suit properties, however, the First Appellate Court without any appeal or cross objections modified the decree and Judgment in respect of the Item Nos.2 and 3 of the suit properties, therefore, the Judgment and Decree passed by the First Appellate Court are liable to be set aside and appeal in S.A.No.844 of 2014 is liable to be dismissed.

10. This Court heard the learned counsel appearing on both sides and perused the documents placed on record.

11. In this case, there is no dispute in respect of the relationship between the parties. The 1st plaintiff is the wife of Ramasamy gounder and 2nd plaintiff is the daughter of Ramasamy Gounder and 1st plaintiff. The defendants are the children of Ramasamy gounder born through the second wife, Tulasimani. It is also not disputed that the Item No.1 of the

https://www.mhc.tn.gov.in/judis

WEB COPY

suit properties are ancestral properties of Ramasamy Gounder and he along with his brother partitioned the properties orally and these suit properties were allotted to the share of Ramasamy Gounder. Initially, the defendants have not denied the partition between Ramasamy Gounder and his brother, Periyasamy gounder, later, through additional written statement, denied the oral partition in the year 1974 and also they denied that Item Nos.2 and 3 of the properties were purchased through joint family income and according to the defendants, the said properties are self acquired properties of Ramasamy Gounder.

11.1. The defendants had taken a plea that the suit is bad for partial partition and non joinder of necessary parties. According to the defendants, the 1st defendant denied the partition between the said Ramasamy Gounder and his brother in the year 1974 and the plaintiffs suppressed the earlier partition took place on 23.02.1979 between the predecessors of the plaintiffs, thereafter, numerous documents have been executed among the parties. The said Ramasamy Gounder executed registered settlement deed dated 03.02.1972 in favour of 1st defendant in respect of self acquired properties and thereafter, settled the properties through settlement deed dated 20.12.2005. Once the defendants denied the nature and character of the Item Nos.2 and 3 of

https://www.mhc.tn.gov.in/judis

WEB COPY

the properties, it is the duty of the plaintiffs to prove that Item Nos.2 and 3 of the properties were purchased from the income of the joint family properties. Though there are pleadings that through the income of Item No.1 of the property, the Item Nos. 2 and 3 were purchased, there is no evidence that what was the income derived from Item No.1 of the property and whether income was surplus and through the surplus income, the properties in Item Nos.2 and 3 were purchased. The competent person to speak about the nature and character of the properties is the father of the 2nd plaintiff, namely, Ramasamy Gounder, he had executed settlement deed in respect of Item No.1 of the property in favour of the 1st defendant through settlement deed dated 03.02.1972 and thereafter, again, in respect of other properties executed settlement deed dated 20.12.2005. The above said conduct of the said Ramasamy Gounder while executing settlement deed itself shows that he dealt with the properties as his separate properties and the plaintiffs have to prove that the Item Nos.2 and 3 of the properties were purchased through the joint family income, however, there is no evidence.

12. It is well settled law that mere existence of joint family itself is not sufficient to prove the joint family property. Even according to the plaintiffs, the joint family properties were partitioned between the 2nd

https://www.mhc.tn.gov.in/judis

WEB COPY

plaintiff's father, Ramasamy Gounder and his brother, Periyasamy Gounder in the year 1974. The Item No.2 of the properties were purchased on 29.01.1975, which is very short span of time from the partition between the brothers.

13. As far as Item No.3 is concerned, it was purchased on 13.06.1978, once the properties purchased in the name of an individual, it is a presumption that it was purchased by him/her and the same is a separate property, unless the contrary is proved. It is also well settled law that a person, who asserts that it is a joint family, has to prove that the property has been purchased through the income of the joint family, but the plaintiffs failed to prove that the Item Nos.2 and 3 of the properties were purchased in the name of an individual, through the income of the Item No.1 of the property, therefore, the Item Nos.2 and 3 of the properties are not joint family properties.

14. There is no dispute in respect of the relationship between the parties, as the Item No.1 of the properties are ancestral properties, the 2nd plaintiff, who is the daughter of Ramasamy Gounder born through the 1st wife, is entitled to share, however, the 1st defendant is claiming that Item No.1 of the property is settled in his favour by his father on

https://www.mhc.tn.gov.in/judis

WEB COPY

03.02.1972. It is an admitted fact that the Item No.1 of the property is a joint family property and according to the plaintiffs, in the year 1974, partition was effected between the father of the 2nd plaintiff and Periyasamy Gounder. According to the defendants, the partition was effected in the year 1979, while so, the settlement deed cannot be executed in respect of co-parcener property without consent of the other co-parcener and thereby the settlement deed dated 03.02.1972 executed in favour of the 1st defendant by the said Ramasamy Gounder, in respect of Item No.1 of the suit property, is not valid in the eye of law. Therefore, the Item No.1 of the property, which is ancestral property, the 2nd plaintiff and the said Ramasamy Gounder are equally entitled to half share, as she is co-parcener, after Hindu Succession (Amendment) Act, 2005**.** It is also not disputed that there was no any partition between the said Ramasamy gounder and his legal heirs, therefore, after the demise of Ramasamy Gounder, his share devolved upon the plaintiffs and defendants, thereby the 1st plaintiff is entitled to 1/8 share and the 2nd plaintiff is entitled to 5/8 share and the defendants each are entitled to 1/8 share in respect of Item No.1 of the suit property.

15. As far as Item Nos.2 and 3 are concerned, this Court in the previous paragraphs held that those properties are separate properties of Ramasamy gounder and thereby each the plaintiffs and defendants

https://www.mhc.tn.gov.in/judis

WEB COPY

are entitled to ¼ share over the Item Nos.2 and 3 of the suit properties. The trial court in the Judgment correctly appreciated the facts and law and decreed the suit by granting 6/8 share to the plaintiffs and 2/4 share in the Item Nos.2 and 3 of the properties. Though the defendants relied upon the settlement deed dated 20.12.2005, in respect of Items 2 and 3 of the properties, the said settlement deed has not been proved in accordance with law. The evidences of attesting witnesses are also not clear and thereby came to a conclusion that settlement deeds have not been proved. However, the First Appellate Court without any Cross Appeal or Cross objection as against the findings of the trial court, which granted decree for 2/4 share to the plaintiffs, set aside the said Judgment and Decree of the trial court, by relying upon the **Judgment of Hon'ble Supreme Court in Anil Kumar Gupta and Others Vs. Municipal Corporation and Others reported in (2000) 1 Supreme Court Cases 128** that without any Cross Appeal, the defendants can very well attack such findings. Even as per the said Judgment, the Hon'ble Supreme Court held that it was open to the respondents to assail the adverse findings arrived at or observations made by the Court even if they have not filed any separate appeal against that part of the Impugned Judgment. However, in that case, the Hon'ble Supreme Court has also condoned the delay in filing the Special Leave Petition and

https://www.mhc.tn.gov.in/judis

WEB COPY

thereby rendered findings, therefore for both the reasons it will be open to them to attack the said findings in the appeals of the appellants or as the appellants in their own Civil Appeal arising out of Special Leave Petition. However, **the Hon'ble Supreme Court in the State of Andhra Pradesh and Others Vs.B.Ranga Reddy(D) by Lrs. & Others reported in CDJ 2019 SC 899** held in Paragraph Nos.18 and 19 as follows:-

> *" 18) This Court while considering the amendments made in the Code in the year 1976, held that even under the amended provisions of Order XLI Rule 22 of the Code, a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objections. However, by an amendment in Order XLI Rule 22 of the Code, it is permissible to file cross objections against the finding. The respondent may defend himself without filing any cross objections to the extent to which decree is in his favour. The Court held as under:*
>
> > *"10. The CPC amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross-objection against a finding. The*

https://www.mhc.tn.gov.in/judis

WEB COPY

difference which has resulted we will shortly state. A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross-objection. The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent.

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post-amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the

https://www.mhc.tn.gov.in/judis

WEB COPY

amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objections to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelt out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default, the cross-objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent."

19) The present is a case where the decree is of dismissal of suit therefore, entirely in favour of the State and not executable.Though an issue has been decided against the State as falling within second and third situation delineated by this Court. This Court held that in the absence of cross appeals or cross objections,.the First Appellate Court did not have the jurisdiction to modify the decree that is to grant decree for specific performance which was not granted by the trial court."

https://www.mhc.tn.gov.in/judis

WEB COPY

Therefore, from the above said Judgments it is clear that in the absence of Cross Appeal or Cross Objection, the First Appellate Court does not have jurisdiction to modify the Decree, ie.., to grant decree, which was not granted by the trial court.

16. In the case on hand also, the plaintiffs have not preferred any appeal as against the granting of 2/4 share over to the plaintiffs, however, without any cross objection or cross appeal, the First Appellate Court has modified the decree and thereby, the decree and judgment passed by the First Appellate Court is liable to bet set aside in respect of Item Nos.2 and 3 of the suit properties

17. As far as Item No.1 is concerned, the First Appellate Court declined to grant decree and set aside the Decree and Judgment, as the suit is bad for non-joinder of necessary parties, though the defendants have taken a plea that all the sharers have not been impleaded as parties, through evidences, they admitted that there was a partition took place between the said Ramasamy gounder and Periyasamy gounder and thereafter, so many alienations were made in respect of the properties. Though in the plaint schedule property in the Item No.1, the Pariyankadu property has been mentioned as undivided share of 1.58

https://www.mhc.tn.gov.in/judis

WEB COPY

acres out of 9.4 acres, all other properties were partitioned between the brothers. Once they partitioned the properties and the Item No.1, namely,Pariyankadu alone was kept as common, even now, that can be kept as common with other share holders and in respect of other properties, the First Appellate Court ought to have granted partition and instead dismissed the entire Item No.1 of the suit properties. Once the First Appellate Court came to a conclusion that Item No.1 of the property, which is ancestral in nature, was not divided between the parties, how could arrive that from the said Item No.1 of the property, the Item Nos.2 and 3 of the properties were purchased, therefore, the First Appellate Court ought not have arrived at a conclusion that the Item Nos.2 and 3 of the properties are purchased through ancestral properties.

17.1. Further, as far as Item No.1 of the property, one of the portion, namely, Paryankadu is concerned, though it has been mentioned as 1/6 undivided share, it was already partitioned between the parties, namely, Ramasamy gounder and Periyasamy gounder and therefore, it is for the parties to take appropriate steps in respect of that particular portion of the property at the time of final decree proceedings. Even as per schedule of properties, the 1st Item of properties were already sub-divided and thereby it is for the parties to work out their

https://www.mhc.tn.gov.in/judis

WEB COPY

remedy at the time of final decree proceedings in respect of the said undivided property mentioned in the Item No.1 of the property. Once the parties themselves have admitted the oral partition between Ramasamy Gounder and Periyasamy Gounder including 1st Item of the suit properties, merely because one of the property has been mentioned as common like other properties common Well and other common pathway properties, for that reason, the court cannot decline to grant partition and it is for the parties to identify the property for division at the time of final decree proceedings, as the predecessors of the parties had earlier partitioned the properties. Therefore, the Judgment and decree passed by the First Appellate court is liable to be set aside.

18. The First Appellate Court without considering the Written statement filed by the 2nd defendant wherein categorically denied about the nature and character of the Item Nos.2 and 3 of the suit properties and there is a specific denial that there is no sufficient income from the 1st item of the suit property and Item Nos.2 and 3 of the properties were not purchased through Item No.1 of the property, the First Appellate Court rendered findings that there is no specific denial and as per Order 8 Rules 3 to 5 of CPC came to a conclusion that the Item Nos.2 and 3 of the properties were purchased through joint family income.

https://www.mhc.tn.gov.in/judis

WEB COPY

19. As far as Substantial Questions of Law in S.A.No.844 of 2014, viz., *"Whether the First Appellate Court erred in law in proceeding on P.W.1's admission that Item no.1 has co-sharers while ignoring D.W.1's contrary evidence that there is no co-sharer in Item No.1 is* concerned, the Item No.1 of the suit properties contains several items, except one item in Parankadu to an extent of 1.58 acres, in all other properties, there is no mention about the other co-sharers, even that property was sub divided and as per the sub-divisions, the parties have to work out their remedy during the final decree proceedings. The defendants also have not disputed partition between Ramasamy gounder and his brother, Periyasamy gounder. Though the plaintiffs stated that oral partition took place in the year 1974, the defendants stated that oral partition took place in the year 1979, both the parties admitted the previous partition between Ramasamy Gounder and Periyasamy Gounder, therefore, merely in Item No.1, it has been mentioned undivided 1/6 share, the court cannot decline to grant partition and in respect of that property, at the time of final decree proceedings, the court can decide the issue, therefore, First Appellate Court erred in law in proceeding on D.W.1's Admission, therefore, the First Appellate Court is not correct in declining to grant partition for the entire properties. In view of the same, the substantial question of law is answered in favour of the

https://www.mhc.tn.gov.in/judis

WEB COPY

appellants and accordingly, the **Second Appeal No.844 of 2014 is allowed.**

20. As far as Substantial Questions of Law in S.A.No.907 of 2014 ***"a.*** *Whether the First Appellate Court has committed an error in permitting the plaintiffs to file a fresh suit for partition in respect of the first item of the suit properties after holding that the suit is bad for non-joinder of the necessary parties?* is concerned, the First Appellate Court after rendering findings that the suit is bad for non-joinder of necessary parties, granted decree in respect of other properties and granted liberty to file a fresh suit for partition in respect of Item No.1 of the suit properties. Once the appellate court came to a conclusion that the suit is bad for non-joinder of necessary parties, the court ought to have granted one opportunity to the plaintiffs to implead the necessary parties, however, dismissed the suit for want of necessary parties and permitted the plaintiffs to file a fresh suit for partition. The First Appellate court ought to have impleaded the parties suomotu, as per Order 1 Rules 9 and 10 of CPC, instead, granted permission to file a fresh suit. However, this Court in the previous paragraphs decided that the suit is not bad for non-joinder of necessary parties and only in respect of one property, that too after partition by their predecessors and sub-division, merely in the description, mentioned as 1/6 share, will not affect the

https://www.mhc.tn.gov.in/judis

WEB COPY

share of the plaintiffs and they need not file a fresh suit and the parties can work out the remedy at the time of final decree proceedings.

20.1. As far as Substantial Questions of Law in S.A.No.907 of 2014 ***(b)*** *Whether the courts below erred in law in disbelieving the settlement deeds dated 03.02.1972 (Ex.B.1) and 20.12.2005 Exs.B.2 and B.3 for want of proof for handing over possession, particularly in view of the specific recitals made therein as per Section 126 of the Transfer of Property Act,* and ***(d)*** *Whether the courts below are right in holding that the suit for partition without a prayer for setting aside the settlement deeds marked as Ex.B.1, Ex.B.2 and Ex.B.3 is maintainable in law,* are concerned, the courts below have granted partition, without prayer for setting aside the settlement deeds Exs.B.1 to B.3, the Ex.B.1 is in respect of ancestral properties and without consent of the one co-parcener, the other co-parcener cannot execute settlement deed in respect of the co-parcener property. As far as Ex.B.1 is concerned, the date of settlement deed is in the year 1972 but the partition between the settlor and his brother is subsequent to the settlement deed. As per plaint, the partition took place in the year 1974 and as per pleadings of the defendants, the partition took place in the year 1979, therefore, Ex.B.1 in respect of co-parcenary property is not valid. As far as Exs.B.2

https://www.mhc.tn.gov.in/judis

WEB COPY

and B.3 are concerned, the settlement deeds have not been proved in accordance with law. The suit is filed for partition, in the suit for partition, though many documents have been executed by third parties by impleading all the share holders, the share holders, who are not parties to the documents, can maintain the suit for partition without seeking prayer to setting aside the said deeds, therefore, the courts below are right in holding that the suit for partition without prayer for setting aside the settlement deeds, Exs.B.1 and B.2 is maintainable in law.

20.2. As far as settlement deed dated 03.02.1972, Ex.B.1 and Settlement Deeds dated 20.12.2005, Exs.B.2 and B.3 are concerned, the courts below have not disbelieved the settlement deeds on the ground for want of proof of handing over possession, the trial court disbelieved the settlement deed in respect of Ex.B.1, that the properties are ancestral properties and thereby without consent of the co-parcener settlement deed either in favour of co-parcener or third party, are not valid in the eye of law. As far as Exs.B.2 and B.3 are concerned, those settlement deeds are not proved by adducing proper evidence. The First Appellate Court came to a conclusion that in respect of joint family ancestral properties, without one co-parcener, cannot settle the property in favour of other co-parcener. Though there are recitals in respect of

https://www.mhc.tn.gov.in/judis

WEB COPY

handing over possession in the settlement deeds the execution and attestation of the deeds itself have not been proved, the courts below have not disbelieved the settlement deeds based on the want of proof for handing over possession. Further, the 1st defendant has not filed any original settlement deeds and only produced certified copy of the settlement deeds, without any reasons, they filed certified copies and the same is not in consonance with Section 65 of the Indian Evidence Act, therefore, the 1st defendant failed to prove the settlement deed dated 20.12.2005.

21. As far as Substantial Questions of Law in S.A.No.907 of 2014 ***(c)*** *whether the First Appellate Court is correct in permitting the respondents / plaintiffs to attack any part of the decree passed by the trial court in the appeal filed by the appellants / defendants, in the absence of any cross objection under Order 41 Rule 22 (1) C.P.C.,?* is concerned, as per Judgment of **Hon'ble Supreme Court reported in CDJ 2019 SC 899 [State of Andhrapradesh & Others Vs. B.Ranga Reddy (D) by Lrs and Others],** the plaintiffs, who are the respondents in the Appeal Suit, ought to have filed Cross Objections against the Judgment and Decree passed by the trial court in respect of Item Nos.2 and 3 of the properties, but they have not filed any Cross appeal or

https://www.mhc.tn.gov.in/judis

WEB COPY

Cross Objection, however, the First Appellate Court by relying upon the Judgment of Hon'ble Supreme Court in **reported in AIR 2000 SC 659 (Anil Kumar Vs. Municipal Corporation of Delhi)** held that it is open to the respondents / plaintiffs to attack the adverse findings arrived at or observations made by the lower court, even if the plaintiffs had not filed a separate appeal against that part of Judgment, is not correct and the said proposition is not applicable to the present facts of the case.

In view of the said discussions and answers to the Substantial Questions of Law, both the Second Appeals are allowed and the Judgment and Decree passed in A.S.No.92 of 2013 dated 12.02.2014 are set aside and the Judgment and Decree passed by the trial court in O.S.No.81 of 2009 dated 07.02.2013 are restored. Consequently, connected miscellaneous petitions are closed. No costs.

16-11-2026

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

To
1. The Principal Disrict Judge, Erode

2. The Sub Court, Perunthurai, Erode District

3. The Section Officer, VR Section, High Court, Madras

https://www.mhc.tn.gov.in/judis

WEB COPY

P.DHANABAL J.

ssd

SA No. 844 of 2014 and
SA No. 907 OF 2014

16-11-2026

https://www.mhc.tn.gov.in/judis