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AS No. 409 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

AS No. 409 of 2021

K. Ravikumar

..Appellant(s)

Vs

1. K. Suguneeswari

2. Saraswathi

3. K. Muralikrishnan

..Respondent(s)

This Appeal filed under Order 41 Rule 1 r/w Section 96 of CPC, to set aside the Judgment and Decree dated 15.07.2020 made in OS No.483 of 2012 on the file of the III Additional District and Sessions Court, Coimbatore by allowing this Appeal.

For Appellant(s):

Mr.M.N.Balakrishnan

For Respondent(s):

Mr.A.E.Ravichandran for R1
No appearance for R2 and R3



WEB COPY

AS No. 409 of 2



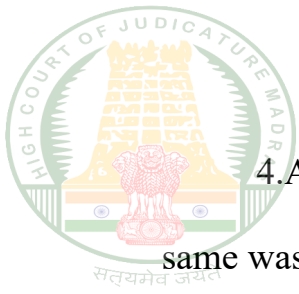
ORDER

(Order of the Court was made by C.V.Karthikeyan J.)

The 3rd defendant in O.S.No.483 of 2012 on the file of the III Additional District and Sessions Court, Coimbatore, is the appellant herein, aggrieved by the judgment and decree dated 15.07.2020, by which judgment, a preliminary decree was passed allotting an undivided 1/4th share to the plaintiff and the three defendants in the suit, with respect to the suit schedule property.

2.The plaintiff is the daughter of the 1st defendant and Kalidas. The 2nd and 3rd defendants are the brothers of the plaintiff.

3.In the plaint, it had been contended that the father Kalidas had obtained the suit property by way of bequeath under a Will dated 21.07.1965 executed in his favour. He also got released from the other co-heirs. It had been stated that Kalidas died on 16.06.2007. He died intestate. There were only four Class-I legal heirs namely, his widow who is the 1st defendant, the daughter who is the plaintiff and two sons who are the 2nd and 3rd defendants. The properties as described in the plaint are claimed to be absolute property of Kalidas. Since he died intestate, the plaintiff sought partition and separate possession of her undivided 1/4th share. She had issued notice on 02.02.2012 in this regard.



4. A written statement had been filed by the 1st defendant / mother and the same was adopted by the 3rd defendant. The 2nd defendant remained ex parte.

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5. In the written statement, it had been contended that there was another self acquired property of her husband Kalidas at Pollachi and that had been gifted to the plaintiff. It had been further stated that Kalidas had acquired the suit schedule property without any building and thereafter, he had constructed the building. She further contended that she had taken a loan of Rs.10,00,000/- from the 3rd defendant by executing a mortgage in favour of the 3rd defendant by mortgaging her 1/3rd share in the suit schedule property. She stated that there were still amounts due and payable to the 3rd defendant. It had been contended that the plaintiff is aware of these transactions within the family and claimed that the plaintiff was not entitled for any share as she already been bequeathed with substantial properties. It had therefore been prayed that the suit should be dismissed.

6. On the basis of the above pleadings, the learned trial Judge had framed the following issues:

“1. Whether the plaintiff is entitled for partition of $\frac{1}{4}$ share in the suit schedule property?

2. Whether the defendants are in joint possession of the suit property?

3. Whether the suit cause of action is false?



4. Whether the court fee paid is correct?

5. To what reliefs?"

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7. While answering Issue No.1, whether the plaintiff was entitled to undivided 1/4th share in the suit schedule property, the learned Trial Judge had traced the title of the property and had held that the property was the absolute property of the father Kalidas. Further aspect regarding the loan was examined namely, the loan from Valparai Urban Cooperative Bank. The evidence of DW-1 was noted that Kalidas had borrowed a sum of Rs.4,00,000/- in the year 2004, which had risen up to Rs.9,00,000/- and it was discharged by the 1st defendant by borrowing a sum of Rs.10,00,000/- from the 3rd defendant, by executing a mortgage deed with respect to her undivided 1/3rd share. The receipts had also been produced. It was also stated that the 3rd defendant had claimed that he had repaid the loan from the Indian Bank at Rs.4,50,000/- as full and final settlement.

8. The learned Trial Judge noted that there was no source for payment of Rs.10,00,000/- by the 3rd defendant and it was opined that the only possible source was the rental income of the property. It was held that since it was only paid from the rental income neither the 1st defendant or the 3rd defendant can state to have incurred loss from personal earnings. The evidence of DW-1 was also noted that he had repaid the loan from the Indian Bank by pledging jewels



of his wife, but again documents were not produced with respect to the same.

With respect to the settlement deed giving the plaintiff a separate property, it had been stated that the same would not prevent the plaintiff from claiming the share in the suit property as daughter of her father.

9.Holding as above, a preliminary decree was passed granting 1/4th share to the plaintiff and an equal 1/4th share to each one of the three defendants.

10.Challenging that particular judgment and decree passed of the preliminary decree, the 3rd defendant is in appeal before the Court.

11.We have heard the learned counsel for the appellant and the learned counsel for the respondents. We have also perused the material records.

12.This is a suit for partition filed by a daughter in the family seeking an undivided 1/4th share with respect to the property left behind by her father. The father Kalidas died intestate. That fact is not in dispute. The fact that the property belonged to the father is not in dispute. The fact that there are only four sharers to the property is again not in dispute. The four sharers are the plaintiff and the three defendants. The 1st defendant is the mother of the plaintiff and the mother and the 2nd and 3rd defendants.

13.The only issue is that a loan had been raised under the property and the same had been repaid by the defendants. That would not disentitle the plaintiff from claiming a share in the property. Whether the plaintiff comes forward to pay a portion of her share towards the loan is an issue which had not been framed and had not been addressed. But however, the suit is restricted only to a



share in the property. Since there is no dispute about the shares, we find no hesitation in confirming the shares as determined by the trial Court.

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14. With respect to the amounts discharged towards loan, we would direct that in the final decree proceedings, if necessary documents are produced, then necessary accounts could be drawn up relating to the same. Simultaneously, accounts could also be drawn up relating to the rental income from the property since it is contended on behalf of the learned counsel for the 1st respondent / plaintiff that the property earns substantial rent as the rooms are let out as lodge. The statement of both the accounts namely, the rental income and the amount discharged to the loan, if documents are available may be produced and equity can be worked out while passing the final decree.

15. Observing as above, the judgment and decree of the trial Court dated 15.07.2020 stands confirmed. Accordingly, this Appeal Suit stands dismissed. No costs.

(C.V.K.,J.) (K.R.S.,J.)
27-04-2026

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



WEB COPY

AS No. 409 of 2



**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

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