



SA No. 12 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-02-2026

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 12 of 2022

AND

CMP NO. 294 OF 2022,CMP NO. 289 OF 2022,SA NO. 13 OF 2022

1. M.P.Rajagopalan

S/o.Late G.Perumalsamy Gowder,
32/37 A, Dasampalayam Road, Mani
Nagar, Mahadevapuram Post,
Mettupalayam Tk. and 2 Others

2.R.Shakila

D/o.M.P.Rajagopalan, 32/37 A,
Dasampalayam Road, Mani Nagar,
Mahadevapuram Post, Mettupalayam
Post.

3.R.Remala

W/o.Uma Shankar, 13/31, Jayammal
Road, Thenampettai, Chennai 18.

Appellant(s)

Vs

1. N.Saraswathi

W/o.P.D.Natarajan, D.No.199/9d, Anna
Nagar, Sirumugai Post, Mettupalayam
Tk, Mathammal (died).

2.R.Kandasamy

S/o.V.Rangaiya Gowder, Godown
Thottam, Therampalayam Post,
Mettupalayam Tk.

3.Palanisamy-died

S/o.R.Kandasamy, Godown Thottam,
Therampalayam Post, Mettupalayam
Tk.



4.Amuthavalli

W/o.Ramamoorthy, Godown Thottam,
Therampalayam Post, Mettupalayam
Tk.

5.Indrani-died

W/o.V.N.Muthusamy,
Vachinampalayam, Illuppapalayam
Post, Sirumugai Via Mettupalayam Tk.

6.Suseela

W/o.M.Selvaraj, Mandela Nagar,
Mani Nagar, Mahadevapuram Post,
Mettupalayam Tk.

7.The Tahildar Mettupalayam

Sirumugai Road, Mettupalayam 641
301.

8.Rajeswari

W/o.L.Sivanappan, No.9,
Purusothaman Nagar, Dhasampalayam
Road, Mettupalayam 641 301.

9.Vijaya,

W/o.Palanisamy K., Godown Thottam,
Therampalyam Post, Mettupalayam
Taluk.

10.Abhinaya,

D/o.Palanisamy K., Godown Thottam,
Therampalyam Post, Mettupalayam
Taluk.

11.Dev Anand

S/o.Palanisamy K., Godown Thottam,
Therampalyam Post, Mettupalayam
Taluk.

12.Muthusamy

, H/o.Indrani, Vachinampalayam,
Illupapalayam Post, Sirumugai Via,
Mettupalayam Taluk.

13.MOHANRAJ, S/o.Indrani,



Vachinampalayam, Illupapalayam Post,
Sirumugai Via, Mettupalayam Taluk.

14.NITHYA, D/o.Indrani,
Vachinampalayam, Illupapalayam Post,
Sirumugai Via, Mettupalayam Taluk.
R3 died. RR 9 to 11 B/R as LR's of the
deceased R3 viz., PALANISAMY and
R5 died, RR 12 to 14 B/R as LR's of the
deceased R5 viz., INDRANI vide Court
order dt 20/11/2025 made in CMPs
24853,24854,24856,24858,24861,
24862/2025 in SA 12/2022 KGTJ

Respondent(s)

SA No. 13 of 2022

1. M.P.Rajagopalan
S/o.Late G.Perumalsamy Gowder,
32/37 A, Dasampalayam Road, Mani
Nagar, Mahadevapuram Post,
Mettupalayam Tk.

2.R.Shakila
D/o.M.P.Rajagopalan, 32/37 A,
Dasampalayam Road, Mani Nagar,
Mahadevapuram Post, Mettupalayam
Post.

3.R.Remala
W/o.Uma Shankar, 13/31, Jayammal
Road, Thenampettai, Chennai 18.

Appellant(s)

Vs

1. N.Saraswathi
W/o.P.D.Natarajan, D.No.199/9d,
Anna Nagar, Sirumugai Post,
Mettupalayam Tk, Mathammal (died).

2.R.Kandasamy
S/o.V.Rangaiya Gowder, Godown
Thottam, Therampalayam Post,
Mettupalayam Tk.



3.Palanisamy-died
S/o.R.Kandasamy, Godown Thottam,
Therampalayam Post, Mettupalayam
Tk.

4.Amuthavalli
W/o.Ramamoorthy, Godown Thottam,
Therampalayam Post, Mettupalayam
Tk.

5.Indrani-died
W/o.V.N.Muthusamy,
Vachinampalayam, Illuppapalayam
Post, Sirumugai Via Mettupalayam Tk.

6.Suseela
W/o.M.Selvaraj, Mandela Nagar,
Mani Nagar, Mahadevapuram Post,
Mettupalayam Tk.

7.The Tahildar Mettupalayam
Sirumugai Road, Mettupalayam 641
301.

8.Rajeswari
W/o.L.Sivanappan, No.9,
Purusothaman Nagar, Dhasampalayam
Road, Mettupalayam 641 301.

9.VIJAYA,W/o.Palanisamy
K., Godown Thottam, Therampalyam
Post, Mettupalayam Taluk.

10.ABHINAYA,D/o.Palanisamy
K., Godown Thottam, Therampalyam
Post, Mettupalayam Taluk.

11.DEV ANAND, S/o.Palanisamy
K., Godown Thottam, Therampalyam
Post, Mettupalayam Taluk.

12.Muthusamy,
H/o.Indrani, Vachinampalayam,
Illuppapalayam Post, Sirumugai Via,
Mettupalayam Taluk.



13.MOHANRAJ, S/o.Indrani
, Vachinampalayam, Illupapalayam
Post, Sirumugai Via, Mettupalayam
Taluk.

14.NITHYA, D/o.Indrani
, Vachinampalayam, Illupapalayam
Post, Sirumugai Via, Mettupalayam
Taluk. R3 died. RR 9 to 11 B/R as LR
of the deceased R3 viz.,
PALANISAMY and R5 died, RR 12 to
14 B/R as LR of the deceased R5 viz.,
INDRANI vide Court order dt
20/11/2025 made in CMPs 28106,
28109, 28110, 28119, 28120,
28121/2025 in SA13/2022 KGTJ

Respondent(s)

SA No. 12 of 2022

PRAYER

To set aside the Judgment and Decree dated 27-08-2021 made in A.S.No.40/2020 on the file of the IV Additional District and Sessions Court, Coimbatore modifying the Judgment and Decree dated 30-06-2020 made in O.S.No.123/2017 on the file of Subordinate Court, Mettupalayam.

SA No. 13 of 2022

PRAYER

To set aside the Judgment and Decree dated 27-08-2021 made in A.S.No.39/2020 on the file of the IV Additional District and Sessions Court, Coimbatore modifying the Judgment and Decree dated 30-06-2020 made in O.S.No.123/2017 on the file of Subordinate Court, Mettupalayam.

For Appellant(s): Mr.M.S.Krishnan Senior Counsel
For M/s.Sarvabhauman
Associates

For Respondent(s): Mr.S.Prabhu For R2,4 And 6, R9
To R14 R3 and 5 - Died (steps
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JUDGEMENT

The appellants have filed these appeals prays to set aside the Judgment and Decree dated 27-08-2021 made in A.S.Nos.40 of 2020 & 39 of 2020, respectively, on the file of the IV Additional District and Sessions Court, Coimbatore modifying the Judgment and Decree dated 30-06-2020 made in O.S.No.123/2017 on the file of Subordinate Court, Mettupalayam.

2. For the sake of convenience, the parties herein are referred to as they are ranked in the suit.

3.The brief facts of the case as follows: The plaintiff is one of the daughters of late G. Perumalsamy Gowder, who died intestate on 28.07.2004, leaving behind his wife Senthil Mathammal (1st defendant), one son Rajagopalan (2nd defendant), three daughters including the plaintiff, Indirani and Seela (9th defendant), and the husband and two children of his predeceased daughter, arrayed as defendants 5 to 7. Late Perumalsamy Gowder left behind valuable ancestral and self-acquired properties situated in S.Nos.262/1, 263/1, 270/1, 270/4, 870/A, 870/25, 35/1, 36/2, 37/1 and 10/2 of Cikkadampalayam Village. The properties originally belonged to the plaintiff's grandfather Govindasamy Gowder under a Partition Deed dated 06.11.1920, under which he obtained an extent of Ac.8.05 cents along with 1/6th share in a common well. During his lifetime, portions were sold and the remaining extents form Items 2 to 5 of the suit properties. Item-1 was acquired by Govindasamy Gowder

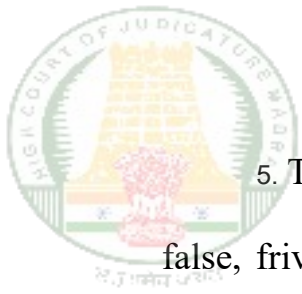


independently. After his death, his sons Perumalsamy and Krishnasamy succeeded to the estate and enjoyed the properties separately for convenience.

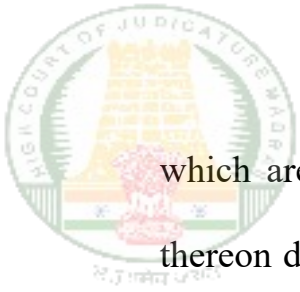
After the death of Krishnasamy, his wife Attakkal and daughter Subbulakshmi orally partitioned the properties with Perumalsamy, followed by mutation of revenue records pursuant to survey sub-division proceedings dated 06.11.2003. Perumalsamy Gowder, who was employed as a Lineman in the Electricity Board, had strained relations with his son, the 2nd defendant, who had been living separately for more than 15 years prior to Perumalsamy's death and consistently compelled the plaintiff and her sisters to execute a release deed. During the end of 2003, Perumalsamy suffered from paralytic stroke and was not in a sound disposing state of mind until his death on 28.07.2004. After his demise, the plaintiff issued legal notices and objected to revenue mutations, but the defendants failed to cooperate for an amicable partition and instead acted collusively by creating alleged family arrangement and settlement deeds. Several litigations followed, including O.S.Nos.39 of 2005, 21 of 2006 and 59 of 2006, which culminated in a compromise decree dated 14.09.2007, rendering the alleged relinquishment and subsequent settlement deeds invalid and not binding on the plaintiff. During the pendency of the suit, the 1st defendant died in January 2011, leaving the plaintiff and defendants 2 and 5 to 9 as her legal heirs, thereby entitling the plaintiff to 1/5th share in the suit properties. Hence, the suit has been amended accordingly and filed for partition and consequential reliefs.



4. The learned counsel for the defendants 2 to 4 contended that the suit is false, frivolous, vexatious and unsustainable in law and on facts. While it is admitted that the plaintiff is one of the daughters of late Perumalsamy Gowder, who died on 28.07.2004 leaving behind his wife Mathammal, this defendant, the plaintiff, defendants 8 and 9 and the legal heirs of predeceased daughter Kannammal (defendants 5 to 7), it is emphatically denied that the suit properties belonged to the deceased or that the plaintiff has any share therein. An oral partition took place on 23.05.2000 between Perumalsamy Gowder and this defendant, under which the entire suit properties were allotted to this defendant, which was subsequently confirmed by a Deed of Confirmation of Family Arrangement dated 21.08.2000, following an earlier Panchayat Muchalika dated 06.01.1988. Ever since, this defendant has been in exclusive possession and enjoyment of the properties, and his title was also declared by a decree dated 10.02.2004 in O.S.No.225 of 2003. The allegations regarding strained relationship, illness, unsoundness of mind of Perumalsamy, joint possession of the plaintiff, and alleged instigation by third parties are all false. The settlement deed dated 13.08.2004 executed in favour of defendants 3 and 4 is valid and binding. The plaintiff is not in possession and has failed to pay proper court fee under Section 37(1) of the Tamil Nadu Court Fees Act. Hence, the suit is liable to be dismissed with costs.



5. The learned counsel for the defendants 5 to 8 contended that the suit is false, frivolous, vexatious and not maintainable either in law or on facts, and except for the averments specifically admitted herein, all allegations in the complaint are denied and the plaintiff is put to strict proof thereof. The relationship between the parties, the nature of the suit properties, the strained relationship between the 2nd defendant and his sisters, his failure to attend family functions, the demand for amicable partition, his insistence on execution of a release deed, the illness and unsound state of mind of Perumalsamy during 2003 and his death on 28.07.2004, the pendency and outcome of litigations in O.S.Nos.21 of 2006, 39 of 2005 and 59 of 2006, the compromise decree dated 14.09.2007, the invalidity of the settlement deed dated 13.08.2004, the death of the 1st defendant during the pendency of the suit and the consequent entitlement of the plaintiff to 1/5th share are admitted; however, the allegations of collusion, illegal understanding and acting against the plaintiff are categorically denied. It is stated that Govindasamy Gowder left properties which devolved upon his sons Krishnasamy and Perumalsamy, that after the death of Krishnasamy, Perumalsamy orally partitioned the properties with Attakkal and Subbulakshmi, under which the suit properties fell to his share, and that Perumalsamy died intestate leaving behind his legal heirs as detailed in the plaint. It is further contended that the 2nd defendant neglected his father, initiated fraudulent litigations by misusing Perumalsamy's name, and attempted to deprive his sisters of their legitimate shares by executing sham and nominal documents,



which are not binding on these defendants and any revenue mutations based thereon do not confer title. The suit properties are joint family properties in the constructive possession of all coparceners, and these defendants reserve their right to file an additional written statement and pray for a decree for partition by dividing the suit properties into five equal shares, considering good and bad soil, and for allotment of two such shares jointly to defendants 5 to 8.

6. Before the trial Court both the parties adduced oral and documentary evidence. On the plaintiff side, Ex.A.1 to Ex.A22 documents were marked, and the plaintiff were examined as P.W.1. On the defendants side, D.W.1 to D.W.5 were examined and Ex.B.1 to Ex.B35 documents were marked and Ex.X1 series-Field Register and plan was marked.

7. Upon consideration of the oral and documentary evidence, the learned Trial Judge held that the plaintiff is entitled to a 1/10th share in the suit properties and accordingly partly decreed the suit in favour of the plaintiff. Aggrieved by the said judgment and decree, the plaintiff preferred A.S.No.39 of 2020, and the defendant 2 to 4 preferred A.S.No.40 of 2020, under Order XLI Rule 1 read with Section 96 of the Code of Civil Procedure, respectively, on the file of the IV Additional District and Sessions Judge, Coimbatore.

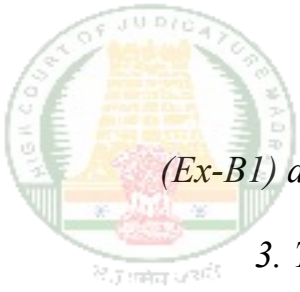


8. The learned First Appellate Judge, after analysing the entire facts and circumstances of the case, relied ratio laid down in **2020 SAR (Civ) 1030 - Veneeta Sharma Vs. Rakesh Sharma and others**, ultimately held that the plaintiff is entitled to 2/10th share, the 8th defendant is entitled to 2/10th share, and the defendants 6 and 7 are entitled to 1/10th share each in the suit properties. Since the plaintiff and defendants 6 to 8 had paid the requisite court fees for their respective shares, they were held entitled to a preliminary decree for partition. With regard to mesne profits, it was held that the plaintiff is at liberty to file a separate petition for rendition of accounts against defendants 2 to 4 in respect of the income earned and enjoyed by them from the suit properties, after taking possession of her share. Consequently, A.S.No.39 of 2020 filed by the plaintiff seeking enhancement of her share was allowed, and A.S.No.40 of 2020 filed by defendants 2 to 4 challenging the preliminary decree was dismissed. Aggrieved by the findings of the learned First Appellate Judge, the defendants 2 to 4 have preferred the present second appeals.

9. The learned counsel for the appellants challenged the findings of the 1st appellate court on following grounds:

“1. The Judgment and Decree of Courts below are against evidence, probabilities of the case and therefore is liable to be set aside.

2. The Courts below failed to consider the factum that the 1st Appellant became the owner of the Suit properties by virtue of the Panchayath Muchlika



(Ex-B1) and family arrangement (Ex-B34).

3. The Courts below failed to consider the factum that the 1^a Respondent in her cross examination accedes to the oral partition between Appellant and his father and also accedes to the factum of execution of Ex-B1.

4. The Courts below failed to consider the factum that since the 1 Respondent herself had admitted to the execution of Ex- B1, the Courts below ought not to have rejected Ex-B1 as inadmissible on the ground that the same is not a registered document.

5. The Courts below ought to have considered the factum that DW-3, attesting witness to Ex B-1 spoke about the execution of the document and satisfying the principle laid down under Section 3 of the Transfer of property Act, 1882.

6. The Courts below failed to consider the factum that the 1st Appellant's sisters) were married at the time of execution of the said partition deed (Ex R1) and before the commencement of TN Act 1/1990. As per the prevailing law then. the 1st Appellant's sisters were not coparceners and for that clear reasons they are not made parties to the Panchayath Muchalika dated 06.01.1988.

7. The Courts below failed to consider the factum that at the time of execution of Ex B-1, the daughters did not have a pre-existing right in the property and therefore were not parties to the document, Ex- B1.

8. In this regard, the Courts below failed to consider the factum that by virtue of Ex B-1, it is evident that there is severance of Joint family status and



thus the Respondents cannot claim any share in the Suit Schedule property.

9. The Courts below failed to consider the factum that after execution of Ex B-1, 1 Appellant was in possession and enjoyment of Suit Item No.1 property and was cultivating the said lands with the help of his father.

10. The Courts below failed to consider the factum that the 1" Appellant father's old age and inability to actively practice agriculture in Item-2 of the suit property which the Appellant and his father were jointly enjoying and due to recurrent misunderstandings on the right over the properties, the 1" Appellant and his father decided to partition the properties among them.

11. In this regard the Courts below ought to have considered the factum that Appellant and his father entered into an oral partition dated 23.05.2000 in and by which the Suit properties were allotted to the Appellant.

12. The Courts below failed to consider the factum that the oral partition dated 23.05.2000 was also confirmed by a family arrangement deed dated 12.08.2000 and the nomenclature of the said document in itself would show the same to be family arrangement and not a settlement deed.

13. The Courts below failed to consider the fact that the evidence of DW-2 and DW-3 would prove the execution and genuineness of exhibits Ex B-1 and Ex B-34 the Panchayat Muchalika dated 6.1.1988 and the Family arrangement dated 21.8.2000.

14. The Courts below failed to consider the factum that the family arrangement dated 12.08.2000 only recorded the earlier partition dated



23.05.2000 and therefore the same does not require registration.

15. The Courts below failed to consider the factum that the family arrangement is binding upon Appellant's father by virtue of the Judgment and Decree made in Suit O.S.No. 225/2003.

16. The Courts below failed to consider the factum that since the said Judgment and Decree binds Appellant and his father, it also binds his sisters, the Respondents herein as well.

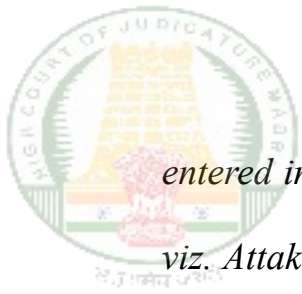
17. The Courts below ought not to have questioned the decree in O.S.No. 225/2003 moreso when the Appellant has categorically explained the circumstances leading to the compromise of the Suit.

18. The Courts below failed to consider the factum that the question regarding the validity of the said family arrangement cannot be gone into by the Courts below since the same was not specifically pleaded by the 1^a Respondent in her Complaint nor did she specifically deny or dispute the execution of Ex- B34.

19. The Courts below failed to consider the factum of the said oral partition and the subsequent family arrangement was also brought to the knowledge of the 1 Respondent in the reply to the legal notice sent to her.

20. The Courts below failed to consider the factum that the 1st Respondent's complaint is silent regarding the circumstances surrounding the execution of Ex-B34 (family arrangement) and ought not to have gone into the question relating to the circumstances leading to the execution of Ex-B34.

21. The Courts below failed to consider the factum that the partition



entered into between 1st Appellant's father and the legal heirs of Krishnasamy viz. Attakal and Subulakshmi allotting them additional portions of share in itet, no. 1 of suit property was against the earlier partition deed dated 06.01.1998.

22. The Courts below failed to consider the factum that the two suits with respect to the additional portion allotted to the legal heirs of Krishnasamy was subject matter of dispute in O.S.No. 21/2006 and O.S.No. 39/2005 and that the Suit were compromised and the additional portion in dispute therein was allotted to 1 Appellant's daughters.

23. The Courts below failed to appreciate that order under Ex-B 36 that set asides the order made in Ex A-2 and therefore ought not to have placed reliance upon Ex A-2.

24. The Courts below ought to have considered the factum that Ex- B 36, the Thasildar, after conducting a detailed enquiry came to the conclusion that the Appellant's father did not have any right to mutate any revenue records in his favour as the property vested with the Appellant by virtue of Ex- B1 and Ex-B34 and in furtherance to the same had included the names of 1 Appellant's daughters (Appellants No. 2 and 3 herein) in the revenue records.

25. The Courts below failed to consider the factum that since there was an Oral partition and subsequent family arrangement, amendment to Section 6 of the Hindu Succession Amendment Act, 2005 will be not be applicable, and thus the Respondents cannot claim any share in the Suit property.

26. The Courts below ought to have considered the factum that the mode



of Oral partition if corroborated by a public contemporaneous document, Viz Ex- B1 and Ex B-34, Ex-B 36, Ex A-21 and Ex A-22) is valid mode of partition as per the Judgment of the Supreme Court in Vineetha Sharma Vs Rakesh Sharma coming within the ambit of Section 6(5) of the Hindu Succession Act, 1956 and therefore the Respondents are not entitled for any share in the Suit property.

27. The Courts below failed to consider the factum that the 1st Appellant's sisters were not parties to Ex B-34 for the reasons that they are not coparcener as on 2000, except after 2005 by virtue of amendment made to the Hindu Succession Act, 39/2005.

28. In any view, the Judgment and Decree of Courts below is erroneous and is liable to be set aside.

10. This Court admitted the second appeals on following substantial questions of law:

(A) Are the Courts below right in decreeing the Suit for Partition overlooking the factum that the Suit properties are absolutely vested with the Appellant by virtue of Ex B-1 and Ex B-34?

(B) Are the courts below right in examining the veracity and genuineness of Ex B-1 and Ex B-34 moreso when the 1st Respondent had not disputed about the said documents in her pleadings?



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(C) Are the Courts below right in decreeing the Suit and granting equal share to the Respondent by applying the ratio laid by the Hon'ble Supreme Court in Vineetha Sharma Vs Rakesh Sharma (2020 (9) SCC 1, overlooking the factum that the said judgment acknowledges oral partition as a valid form of partition if the same is supported by subsequently supported by public contemporaneous documents Viz. Ex.B34, Ex.B36, Ex.A21 and Ex.A.22, the present case?

11. The learned counsel for the appellants contended that the court below failed to consider the fact that the first appellant became the absolute owner of the entire suit property based on the Panchayat Muchilika marked as Exhibit B1 and the family arrangement marked as Exhibit B34. He further submitted that the said family arrangement was also confirmed by a valid civil court decree passed in O.S. No. 225 of 2003, wherein the father of the first appellant, namely Perumalsamy Gowder, had consented to the decree. However, the courts below erroneously disbelieved the documents marked as Exhibits A14 and A15 and ought not to have questioned the validity of the family arrangement and the decree passed in O.S. No. 225 of 2003.

12. The learned counsel for the appellants further argued that in the absence of any specific pleadings or prayer on the side of the plaintiff/first



respondent challenging the said documents, the courts below ought to have dismissed the relief claimed by the plaintiff/first respondent. Instead, the court granted a decree by allotting a share in her favour, which is perverse, illegal, and liable to be set aside. The learned counsel for the appellants also submitted that the learned first appellate judge travelled beyond the scope of the relief claimed by the plaintiffs by erroneously relying on the ratio laid down in *Vineeta Sharma v. Rakesh Sharma*, reported in SCC, while overlooking the fact that the properties had already been partitioned among the sharers and that no property remained available for division. Hence, the findings rendered by the courts below are based on a total misconception of both law and facts and are liable to be set aside.

13. By way of reply, the learned counsel for the respondents, namely the first plaintiff and the contesting first respondent, submitted that the appellants/defendants 2 to 4 claim absolute right over the entire suit property based on the alleged Panchayat Muchilika and family arrangements. He also contended that any conferment of right, title, or interest in immovable property requires valid registration and that, in the absence of registration, the appellants are not entitled to claim any right or title based on such unregistered documents. The courts below have rightly appreciated this legal position.



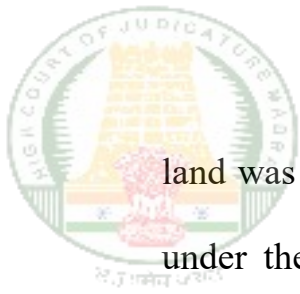
14. The learned counsel for the respondents further submitted that the witnesses examined on the side of the defendants did not support the alleged Panchayat or the execution of the family arrangement. Moreover, the documents are surrounded by suspicious circumstances and appear to have been created with a fraudulent intention by the second defendant to grab the entire property while ignoring the rights of the other legal heirs. He also contended that the decree passed in O.S. No. 225 of 2003 was obtained fraudulently, as the father of the parties was seriously ill and bedridden at the relevant time. Therefore, the courts below rightly held that Exhibits B1 and B34 and the said decree have no evidentiary value and are invalid in the eye of law, and hence the appeal deserves to be dismissed as devoid of merits.

15. Considering the submissions made on both sides, it is an undisputed fact that the plaintiffs, defendants 2, 8 and 9, and one deceased Kannammal are the five children of Perumalsamy Gowder and his wife, Mathammal (D1). The case of the plaintiffs is that the suit properties are both ancestral and self-acquired properties of their grandfather, Govindasamy Gowder, who died intestate leaving behind his two sons, namely Perumalsamy Gowder (father of the plaintiffs) and Krishnasamy Gowder. Krishnasamy Gowder also died intestate, leaving behind his wife Attakal and his only daughter Subbalakshmi as his legal heirs. Perumalsamy Gowder died on 28.07.2004, leaving behind his wife and five children as his legal heirs.



16. According to the plaintiffs, their grandfather Govindasamy Gowder was allotted an extent of 8.05 acres by virtue of a partition deed (Exhibit A1). Out of the said extent, 5 acres were sold, and the remaining lands are described as Items 2 to 5 of the suit properties. Item No.1 of the suit property was acquired by Govindasamy Gowder during his tenure as Village Munsif. After his demise, the entire properties devolved upon his two sons, Krishnasamy and Perumalsamy. He further alleged that both brothers divided the properties and enjoyed their respective shares conveniently. Thereafter, Perumalsamy and the legal heirs of Krishnasamy orally partitioned the properties, and mutation of revenue records was effected as per the sub-division dated 06.11.2003 (Exhibit A2). Thus, according to the plaintiffs, the entire suit properties were allotted to the share of Perumalsamy Gowder.

17. The defendants, in their written statement, also admitted that the properties originally belonged to Govindasamy Gowder as per the partition deed (Exhibit A1). Therefore, the suit properties and other properties originally stood in the name of Govindasamy Gowder, and it is rightly held that he possessed the ancestral properties. One of the suit properties is Government land, for which patta was issued in the name of Perumalsamy Gowder. In this regard, the resettlement register marked as Exhibit B35 was produced through the revenue officials, including the Town Surveyor (DW4). As per the revenue records, the



land was originally classified as “Sarkaru Tharisu Bhoomi” (Government land) under the Field Register Plan and Register Plan (X1 series). As per the X1 series, Survey Nos. 257/3, 258/2, and 248/1B, shown as Item No.1 of the suit property measuring an extent of 2.09 acres, were originally recorded in the land register extract of 1912 as Government land. As per the resettlement document (Exhibit B35), patta stood in the name of Perumalsamy Gowder and minor Krishnasamy Gowder. Thereafter, the lands were assigned Ward B, Block No.29, T.S. Nos.35, 36, and 37.

18. The contesting defendants/appellants contended that Item No.1 was Government land exclusively allotted to Perumalsamy Gowder and that, as per the Panchayat Muchilika, an extent of 2.59 acres in Item No.1 of the suit property was entirely allotted to the share of the second defendant, while the remaining 1.59 acres were allotted to the branch of Krishnasamy Gowder. Subsequently, a dispute arose regarding 50 cents between defendants 2 to 4 and the legal heirs of Krishnasamy Gowder, which culminated in a civil suit wherein the legal heirs of Krishnasamy Gowder, namely Attakkal and Subbalakshmi, admitted the rights of defendants 2 to 4 in respect of 0.50 cents and entered into a compromise. According to the appellants, an extent of 2.59 acres in Item No.1 exclusively belongs to the second defendant.



19. However, based on the revenue records, the plaintiffs contend that Item No.1 did not exclusively belong to Perumalsamy Gowder, as it originally stood jointly in the names of Perumalsamy Gowder and minor Krishnasamy Gowder, and prior to the resettlement proceedings it stood in the name of their father, Govindasamy Gowder.

20. According to the plaintiffs, there was already a partition between their father Perumalsamy Gowder and his brother Krishnasamy Gowder, and Item No.1 was also divided between them. After the demise of Krishnasamy Gowder, the properties were orally divided between Perumalsamy Gowder and the legal heirs of Krishnasamy Gowder, wherein the suit properties, namely Items 1 and 2, were allotted to the share of Perumalsamy Gowder. It is not the case of defendants 2 to 4 that the properties were jointly possessed and enjoyed by both brothers throughout; rather, they have admitted that the properties were divided between Perumalsamy Gowder and Krishnasamy Gowder.

21. The second defendant, Rajagopal, son of Perumalsamy Gowder, contended that there was an oral partition among the family members. According to the defendants, a Panchayat was convened among Perumalsamy Gowder, the legal heirs of Krishnasamy Gowder, and the defendants, pursuant to which a Panchayat Muchilika dated 06.01.1988 was executed. In the said Panchayat, Perumalsamy Gowder was allegedly allotted an extent of 2.59 acres



in old Survey Nos. 258/2, 257/3, and 241/1B (Item No.1 of the suit property), while the legal heirs of Krishnasamy Gowder were allotted an extent of 1.59 acres. The said Panchayat Muchilika was marked as Exhibit B1.

22. However, the plaintiffs and the other sisters supporting the plaintiffs denied the execution of any such Panchayat Muchilika and contended that no Panchayat, as alleged by the second defendant, was ever conducted. Therefore, the burden lies upon the defendants, who claim right and title based on the Panchayat Muchilika, to prove its execution by examining the attesting witnesses or Panchayatars. Though the defendants examined DW3 as one of the alleged Panchayat witnesses, it is seen from the evidence that the alleged division of properties was suggested by two Panchayatars, namely Madayan and Duraisamy, who had signed as witnesses 1 and 2 in Exhibit B1. However, the said persons were not examined to prove the execution of the Panchayat Muchilika.

23. DW3, who was examined to prove the execution of Exhibit B1, deposed that Perumalsamy Gowder and Krishnasamy Gowder had already divided their properties earlier and that the Panchayat Muchilika dated 06.01.1988 was executed only to reduce the earlier arrangement into writing. However, during cross-examination, he admitted that Madayan and Duraisamy were present in the Panchayat relating to the division of properties and that five



persons had signed as witnesses. Nevertheless, the document does not describe those signatories as Panchayatars in its recitals, and DW3 was unable to satisfactorily explain this discrepancy. He further revealed that the stamp papers for the alleged Muchilika were purchased three months prior to the date of execution, i.e., on 11.10.1987, whereas the document is said to have been executed on 06.01.1988. Certain corrections and inconsistencies in the recitals were also not properly explained. Moreover, the scribe of the document was not examined on the side of the defendants.

24. It is also admitted that DW3 is a close relative of Subbalakshmi, and his evidence does not clearly establish that he actively participated in the alleged Panchayat proceedings. On a bare perusal of the document, it appears that the signatures of Subbalakshmi and DW3 were made using the same pen, and the insertion of Subbalakshmi's name appears to have been subsequently made. There are material corrections in the document, and the second defendant has failed to satisfactorily prove its genuineness beyond reasonable doubt. Therefore, the authenticity of Exhibit B1 has not been established.

25. Furthermore, the recitals of Exhibit B1 reveal that the second defendant claims absolute right and title over Item No.1 of the suit property based on the said document. Since the document purports to confer right and title in immovable property, it requires compulsory registration under Section 17



of the Registration Act. In the absence of such registration, the document has no legal sanctity. The trial court has elaborately discussed these aspects and rightly held that Exhibit B1 is not valid in the eye of law, and such findings require no interference.

26. Further, Exhibit A2, the subdivision order passed by the Tahsildar, reveals that Perumalsamy Gowder and Subbulakshmi, the daughter of Krishnasamy Gowder, jointly submitted a petition before the Tahsildar, Mettupalayam, seeking subdivision of the properties, and accordingly the properties were subdivided. This also weakens the claim of exclusive title based on Exhibit B1. The defendants 2 to 4 further claimed absolute ownership based on Exhibit B34, a family arrangement. However, the recitals of Exhibit B1 clearly show that it is not a mere memorandum recording a past arrangement but a document intended to confer rights over the property. Therefore, Exhibit B1 is a compulsorily registrable document. Since it is unregistered and insufficiently stamped, it is inadmissible in evidence under Section 35 of the Indian Stamp Act.

27. The first appellate court has also rightly observed that Exhibit B1 is hit by Section 49 of the Registration Act and ought not to have been received in evidence. Both the courts below have concurrently held that Exhibit B1 is not a bona fide document, and their findings in this regard are well reasoned and



sustainable, requiring no interference.

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28. The defendants also reiterated their claim of right based on Exhibit B34, an alleged family arrangement deed said to have been executed between Perumalsamy Gowder and the second defendant, Rajagopal. The schedule to the document covers the entire suit property, and the recitals state that all the properties are ancestral in nature. According to the second defendant, an oral partition was effected between himself and his father on 23.05.2000, and the same was subsequently reduced into writing on 21.08.2000 and marked as Exhibit B34, described as a family arrangement. Admittedly, the said document is unregistered.

29. The plaintiffs challenged Exhibit B34 on the ground that its recitals disclose that, allegedly due to inconvenience in enjoyment and on the basis that the daughters had already been provided with “seervarisai,” a Panchayat was held on 23.05.2000. It is claimed therein that Perumalsamy Gowder, being aged and unable to cultivate the lands, intended to relinquish the entire properties in favour of his son, the second defendant, subject to his right to reside with him during his lifetime. It is further stated that possession was handed over on the same day and that the document was executed only as a confirmation of the said family arrangement, whereby the entire suit property was allotted to the second defendant.



30. Even assuming the document to be genuine, its recitals clearly indicate that Perumalsamy Gowder relinquished his entire right and share in favour of the second defendant. Any such relinquishment of right and title in immovable property requires compulsory registration under law. Admittedly, Exhibit B34 is an unregistered document and hence does not satisfy the legal requirements. It is also the case of the plaintiffs that the second defendant subsequently obtained a decree in O.S. No.225 of 2003, purportedly to confirm the alleged family arrangement by seeking declaratory relief. The records reveal that shortly after the alleged arrangement, the second defendant filed the said suit against his own father and obtained a consent decree within a short span. The decree and plaint copies were marked on the side of the plaintiffs as Exhibits A13 and A14.

31. The plaintiffs further contended that the second defendant fraudulently obtained the said decree by taking advantage of his father's old age and illness, thereby disputing its validity and genuineness. It is undisputed that a consent decree was passed in the said suit. However, as rightly pointed out by the learned counsel for the respondents, if the properties had already been orally divided between Perumalsamy Gowder and the second defendant, there would have been no necessity for Perumalsamy Gowder and his brother's daughter to jointly apply for subdivision of the property before the Tahsildar in the year 2003, as spoken to by DW4, the Town Surveyor. The evidence on record also



shows that letters were submitted for subdivision during the lifetime of Perumalsamy Gowder, which contradicts the alleged oral partition said to have taken place earlier.

32. On a bare perusal of Exhibit B34, it is evident that the scribe of the document has not been mentioned, nor are there particulars as to where the document was typed. One of the attesting witnesses, Mathaiyan, examined as DW2, is a close relative of the second defendant, and the other attesting witnesses were not examined. Therefore, Exhibit B34 has not been proved in accordance with law. Moreover, since the document purports to transfer and relinquish rights in immovable property, it requires compulsory registration; being unregistered, it is not only inadmissible but also invalid in law.

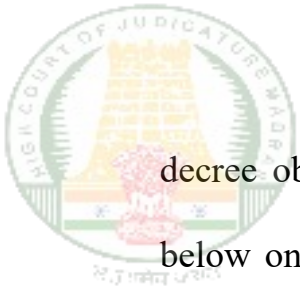
33. It is also significant that the second defendant, who claims absolute right over the entire suit property based on Exhibit B1 Panchayat Muchilika and Exhibit B34 family arrangement, did not enter the witness box. Instead, his daughter, the fourth defendant, was examined as DW1. She was not a signatory to either of the documents and admitted that she was not present at the time of their execution. The second defendant alone was the proper person having personal knowledge of the transactions, yet he failed to depose without sufficient explanation.



34. Though DW1 stated that her father was suffering from memory loss, the medical records produced relate only to the year 2016, whereas the evidence was recorded in the year 2019. Those documents do not establish that he was permanently incapacitated from giving evidence. In such circumstances, the court is justified in drawing an adverse inference against the second defendant, as rightly concluded by the courts below.

35. Admittedly, Perumalsamy Gowder was seriously ill and bedridden for about six months prior to his death, and even the defence witnesses admitted that he was not hale and healthy. Under such circumstances, whether he was fully aware of the proceedings in O.S. No.225 of 2003 or had genuinely consented to the decree becomes doubtful and is surrounded by suspicious circumstances. The second defendant, being the plaintiff in that suit and the person with personal knowledge of the events, failed to enter the witness box to clarify these aspects. His conduct raises serious doubt regarding the genuineness of the alleged arrangements and indicates that he attempted to create litigation to unlawfully secure rights over the property through legal processes. Therefore, the findings rendered by the courts below in this regard are well founded and require no interference.

36. The learned counsel for the appellants contended that, in the absence of specific pleadings regarding the validity of Exhibits B1 and B34 and the



decree obtained in O.S. No.225 of 2003, the findings rendered by the courts below on those aspects are unsustainable in law. He further argued that when there are no specific pleadings, the parties are not entitled to adduce evidence on such issues. However, though the trial court had not framed specific issues on those aspects, the first appellate court, being the final court on facts and law, has rightly considered the matter and rendered findings by relying upon the ratio laid down in the decisions reported in (i) AIR 1966 SC 735, 1967 (0) BLJR 158, 1966 2SCR 286, Ram Sarup Gupta V.Bishun Nrain Inter College and (ii) AIR 884, 1963 SCR (2) 208, Nedunuri Kameswaramma Vs. Sampati Subba Rao. The propositions laid down in the said authorities support the case of the plaintiffs, and therefore the first appellate court was justified in examining the validity and evidentiary value of the disputed documents.

37. On a holistic consideration of the pleadings contained in the plaint, even though the plea was not specifically articulated in express terms, it was sufficiently covered by necessary implication through the issues framed and the nature of the dispute between the parties. Therefore, the courts below cannot be faulted for examining the validity of Exhibits B1 and B34 and the decree in O.S. No.225 of 2003. Consequently, the findings rendered by the courts below regarding the veracity and genuineness of Exhibits B1 and B34 are sustainable in law and require no interference. Accordingly, Question of Law “B” is answered.



38. Another objection raised by the learned counsel for the appellants is that the first appellate court erroneously applied the ratio laid down in *Vineeta Sharma v. Rakesh Sharma*, reported in SCC, by overlooking the alleged oral partition said to have been effected within the family, which according to the appellants was supported by Exhibits B34 and B36. It is contended that by ignoring the said documents, the courts below erroneously granted a partition decree in favour of the plaintiffs, which is illegal and liable to be set aside.

39. As already discussed in detail, the alleged Panchayat Muchilika and family arrangement, on the basis of which defendants 2 to 4 claimed that the properties had already been divided and that the entire share had been allotted to the second defendant, have been held to be invalid and not acceptable in the eye of law. The genuineness of those documents has also not been established. Therefore, the courts below rightly concluded that the properties continue to remain undivided in nature and correctly applied the principles laid down in *Vineeta Sharma*. The findings in this regard are well reasoned, and the objection raised by the appellants is unsustainable. Accordingly, Question of Law “C” is answered.

40. With regard to Question of Law “A,” the second defendant claimed that he had been in exclusive possession of the property since the alleged



Panchayat Muchilika and family arrangement from the year 2000. However, the evidence of DW1 and DW2, as well as other defence witnesses, does not support such a claim. In fact, the evidence of DW1 itself indicates that the second defendant was not in exclusive possession of the property. Further, in the year 2003, Perumalsamy Gowder submitted a petition before the revenue authorities seeking subdivision of the property, which contradicts the alleged oral partition said to have taken place in the year 2000. During his lifetime, Perumalsamy Gowder continued to cultivate the lands, a fact not seriously disputed by defendants 2 to 4. Therefore, the alleged exclusive possession claimed by the second defendant is unsustainable.

41. In view of the above discussion, the findings rendered by the courts below regarding Exhibits B1 and B34 are sustainable, and the appreciation of facts and evidence by the courts below does not warrant interference. Consequently, the plaintiffs are entitled to the relief of partition, and the first appellate court has rightly granted 2/10th share in the entire suit property. The Second appeals are devoid of merits and is liable to be dismissed.

42. Accordingly, **the Second Appeals are dismissed as devoid of merits.** The plaintiffs are declared entitled to 2/10th share in the suit properties. In the event of any final decree application being filed by any of the parties, the trial court is directed to dispose of the same within a period of three months from the



date of receipt of such application. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

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13-02-2026

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

1. The IV Additional District and Sessions Judge,
Coimbatore.
2. The Subordinate Judge,
Mettupalayam.
3. The Section Officer,
VR-Section, High Court of Madras.



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SA No. 12 of 2022



T.V.THAMILSELVI J.
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SA No. 12 of 2022
AND CMP NO. 294 OF
2022,CMP NO. 289 OF
2022,SA NO. 13 OF 2022

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