



WEB COPY

SA No. 247 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 247 of 2026
C.M.P.No.8392 of 2026

Chinna Thayamma (Died)

1. Krishnan
2. Kanthamani
3. Vasantha
4. Kallavi
5. Ravichandran
S/o. Chinnappa,
Constable, Papparatti Police Station,
Palacode Taluk.,
Dharmapuri Dist.

..Appellant(s)

Vs

- Kallavi (Died)
1. Kasthuri
 2. K.Muralidharan
 3. Rajeswari
 4. Sumathi
 5. Poongodi
 6. Dhanalakshmi
 7. Lalitha
 8. Chinnappa

..Respondent(s)



Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, pleaded to set aside the judgment and decree in A.S.35/2022, on the file of Additional District Court, Hosur, dated 10.02.2025 in confirming the Final Decree in I.A.No.190/2014 in O.S.85/2009, on the file of Additional Subordinate Court, Hosur dated 24.03.2021.

For Appellant(s): M/s.R.Poornima

JUDGMENT

The defendants 1 to 5 in the original suit are the appellants herein. The predecessor in interest of respondents 1 to 6 namely Kallavi filed a suit for partition against the appellants seeking 1/3rd share and a preliminary decree for partition was passed in his favour on 21.06.2011. Challenging the same, the appellants said to have filed Second Appeal in S.A.No.220 of 2026 and the same is pending. The present Second Appeal has been filed challenging the final decree passed in the partition suit.

2.It is seen from the typed set of papers in the final decree proceedings the appellants 1 to 4 herein remained ex-parte and the same was contested only by the fifth appellant / Ravichandran. In his counter to the final decree proceedings he contended that there was a oral partition in the family and above said Kallavi had received money from the other family members for her share. Therefore, the suit properties were not available for partition.



3. The objection raised by the fifth appellant regarding oral partition cannot be raised in a final decree proceedings. If it is the case of the appellants that plaintiff is not entitled any share in the suit property, the same shall be agitated only in the proceedings prior to the passing of preliminary decree. In the case on hand already preliminary decree has been passed in favour of the plaintiff granting 1/3rd share in the suit property and the same has been challenged by the appellants in Second Appeal No.220 of 2026. The point urged by the appellants should have been raised prior to passing of preliminary decree. Therefore, the objection raised by the appellants with regard to oral partition could not be the subject matter of consideration in a final decree proceedings. It is seen from the typed set of papers in the final decree proceedings, an Advocate Commissioner was appointed. He filed a report suggesting mode of division. Based on the Advocate Commissioner's report, the trial Court passed a final decree allotting portion of the suit property shown as A schedule (Red washed portion) to the plaintiff. Aggrieved by the same, the appellants herein filed First Appeal.

4. The first appellate Court after noting that the objection raised by the fifth appellant herein regarding the oral partition should have been raised only in the proceedings before preliminary decree, rightly over ruled the same, and allotted property marked as "A" schedule in the Advocate Commissioner's plan to the plaintiff. In the absence of any irregularity or irrationality in the allotment



of “A” schedule property (Red washed portion) to the plaintiff, the appellants are not entitled to challenge the final decree. As mentioned earlier, the question regarding oral partition should have been raised by the appellants in the suit proceedings prior to the passing of preliminary decree and the same cannot be the subject matter of the final decree proceedings. The Courts below rightly over ruled the objections raised by the appellants and dismissed the appeal. I do not find any substantial questions of law arising for consideration to interfere with the findings of the Courts below. Accordingly, the present Second Appeal stands dismissed. It is made clear that the dismissal of the Second Appeal which is arising out of final decree proceedings will not come in the way of appellants working out their remedy in the pending second Appeal against preliminary decree. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

02-04-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To:-

- 1.The Additional District Court, Hosur.
- 2.The Additional Subordinate Court, Hosur.



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S.SOUNTHAR, J.

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