



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.256 of 2026
and C.M.P.Nos.8609 and 8611 of 2026

1.Rayadurai

2.Raja

3.Vasantha

... Appellants

vs.

1.Dhanam

2.Kalaiselvi

3.Senthamarai

4.Vijayakumar

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to partly set aside the Judgment and Decree dated 19.02.2025 passed in A.S.No.9 of 2020, on the file of the learned Principal District Judge, Ariyalur by upholding the right of the plaintiffs over their 3/5th share in the suit properties and reversing Judgment and Decree dated 28.02.2020 passed in O.S.No.39 of 2013, by the learned Subordinate Judge, Ariyalur and allow this second appeal.

For Appellants : Ms.Chenthoori Pugazendi
for M/s.K.Balu



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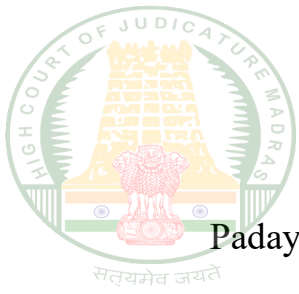
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The plaintiffs in the suit are the appellants. They filed a suit for partition claiming 3/5 share in the suit properties. The suit was dismissed in its entirety. On appeal filed by the plaintiffs, the First Appellate Court allowed the appeal and partly decreed the suit and granted preliminary decree for partition in respect of Items 1, 2 and 5 to 9. The suit was dismissed in respect of Items 3, 4, 10, 11 and 12. Aggrieved by the same, the plaintiffs have come before this Court.

2. According to the plaintiffs, the suit properties are ancestral properties of their father namely Karuppa Padayachi. The 1st defendant is the first wife of Karuppa Padayachi. The 2nd defendant is the daughter of Karuppa Padayachi born through the 1st defendant. It is the further case of the plaintiffs that Karuppa Padayachi did not have a male issue, he married plaintiffs' mother-Saroja as his second wife and plaintiffs have born to him through his second wife. Thus, the plaintiffs claimed 3/5 share in the suit properties and laid a suit for partition.

3. The suit was resisted by the defendants 1 and 2 on the ground that there was no marriage between plaintiffs mother-Saroja and Karuppa



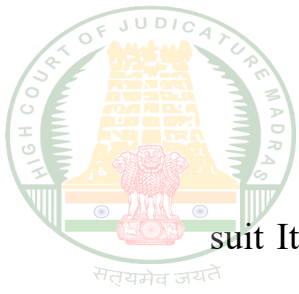
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Padayachi. Further, it was also stated that as per the law, the second marriage is not valid and in such circumstances, even assuming there was a marriage with Saroja, the same was not valid. It was further stated that Saroja was only a concubine of Karuppa Padayachi and plaintiffs being children of concubine are not entitled to any share in the suit properties. On these pleadings, the defendants sought for dismissal of the suit.

4. Before the Trial Court, the 2nd plaintiff was examined as PW.1 and two other witnesses were examined as PW.2 and PW.3. 9 documents were marked on the side of the plaintiffs as Exs.A1 to A9. On behalf of the defendants, the 2nd defendant was examined as DW.1 and two other witnesses were examined as DW.2 and DW.3. 18 documents were marked on their side as Exs.B1 to B18.

5. The Trial Court on appreciation of evidence available on record, came to the conclusion that marriage between Saroja and Karuppa Padayachi was not proved by the plaintiffs and dismissed the suit. Aggrieved by the same, the plaintiffs preferred first appeal in A.S.No.9 of 2020 on the file of Principal District Court, Ariyalur. The First Appellate Court partly allowed the appeal by granting 3/10 share to the plaintiffs in



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suit Items 1, 2 and 5 to 9. The suit was dismissed in respect of Items 3, 4, 10, 11 and 12. Aggrieved by the same, the plaintiffs have come before this Court.

6. The learned counsel appearing for the appellants would submit that the First Appellate Court having come to the conclusion that marriage between Karuppa Padayachi and Saroja was proved through the evidence of PW.2 and other documents and committed an error in dismissing the suit in respect of certain items of the suit properties. The learned counsel further submitted that by virtue of legitimacy conferred under Section 16 of the Hindu Marriage Act, 1955 to the children born under a void marriage, the plaintiffs are entitled to equal share in the separate properties of Karuppa Padayachi and therefore, the Trial Court ought to have granted decree for partition of 3/10 share in respect of all the items of the suit properties.

7. It is seen from the typed-set of papers and discussion of the First Appellate Court, out of 12 items of suit properties, items 10 and 11 have been purchased in the name of 1st defendant under Ex.B1, dated 11.03.1996. The property stands in the name of female member of the Hindu Joint Family, is deemed to be her absolute property by virtue of Section 14 (1) of



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the Hindu Succession Act, 1956. In the absence of any contrary evidence, Ex.B1 clearly established that items 10 and 11 of the suit properties are properties of 1st defendant-Pavunambal. In such circumstances, the plaintiffs are not entitled to claim any share over the Items 10 and 11 of the suit properties.

8. As far as Items 1 to 9 of the suit properties are concerned, there is no dispute all these properties are ancestral properties of Karuppa Padayachi. The 2nd defendant is the daughter born to Karuppa Padayachi through his wife-1st defendant. Therefore, 2nd defendant has got 1/2 share in the Items 1 to 9 as coparcenar. The remaining 1/2 share represents the interest of Karuppa Padayachi in the coparcenary properties. By virtue of Section 16 (3) of the Hindu Marriage Act, 1955, the plaintiffs being the children born to Karuppa Padayachi under void marriage, they are entitled to equal share along with other heirs of Karuppa Padayachi.

9. It is further seen that Karuppa Padayachi executed a Settlement Deed dated 03.09.1996, marked as Ex.B2, settling the Items 3, 4 and 12 of the suit properties in favour of 1st defendant-Pavunambal. It was submitted by the learned counsel appearing for the appellants that Settlement Deed



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executed by Karuppa Padayachi in respect of his ancestral properties, cannot be a valid document. Therefore, according to her, it has to be ignored. It is settled law that the coparcenar cannot execute a settlement in respect of the coparcenary properties in favour of third parties, without consent of other coparcenars.

10. In the case on hand, the other coparcenar (2nd defendant) has not chosen to question the Settlement Deed executed by Karuppa Padayachi. The plaintiffs are not coparcenars, they are only children born to Karuppa Padayachi under a void marriage with Saroja. In such circumstances, the plaintiffs are not entitled to question the validity of Settlement Deed executed by Karuppa Padayachi. If at all it is only the other coparcenar namely the 2nd defendant can question the same.

11. In the case on hand, the 2nd defendant has not questioned the validity of the Settlement Deed executed in favour of 1st defendant. In fact, after the life time of 1st defendant, in case of intestate succession, the settled properties will go to 2nd defendant as a sole heir of 1st defendant. In such circumstances, this Court is unable to accept the contention made by the learned counsel appearing for the appellants, as plaintiffs are not competent



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enough to question the validity of the Settlement Deed executed by Karuppa Padayachi in respect of the ancestral properties. The First Appellate Court rightly came to the conclusion that in view of Exs.B1 and B2, the plaintiffs are not entitled to any share in Items 3, 4, 10, 11 and 12. In respect of other items, it rightly granted 3/10 share in favour of the plaintiffs. I do not find any error or perversity in the findings of the First Appellate Court. No substantial question of law arising for consideration in this second appeal.

12. In Nutshell:-

- (i) The Second Appeal is dismissed.
- (ii) In the facts and circumstances of the case, there will be no order as to costs.
- (iii) Consequently, the connected Civil Miscellaneous Petitions are closed.

10.04.2026

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
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To

- 1.The Principal District Court, Ariyalur.
- 2.The Subordinate Court, Ariyalur.



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S.SOUNTHAR, J.

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