



WEB COPY

SA No. 341 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 341 of 2020

P.Meganathan
S/o Pachiyappan Naicker,
Mari Amman Koil Street, Thimmasamudharam,
Kanchipuram Taluk And District

..Appellant(s)

Vs

1. D.Lakshmi, W/o Dilli,
No.59, Thimmasamudharam Village,
Kanchipuram Taluk And District.
2. P.Natarajan, S/o Pachiyappan Naicker,
Mari Amman Koil Street,
Thimmasamudharam,
Kanchipuram Taluk And District
3. P.Sudaresan, S/o Pachiyappan Naicker,
Mari Amman Koil Street, Thimmasamudharam,
Kanchipuram Taluk And District

..Respondent(s)

Prayer: Civil Revision Petition filed under Section 100 of CPC to call for the records of the Lower court ,set aside the decree and judgment of the first Appellate Court passed in AS No.8 of 2018 on the file of the District Court No.II, Kanchipuram, dated 28.02.2019, confirming the judgment and decree made in OS NO.218/2008 on the file of the Subordinate Court at Kanchipuram dated 30.10.2017.

For Appellant(s):

Mr.P.K.Sabapathi
For Sole Appellant



JUDGMENT

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The unsuccessful first defendant in the suit is the appellant herein. The first respondent/plaintiff filed a suit in O.S.No.218 of 2017 for partition, seeking half share in the suit property, which was decreed. The appeal filed by the first defendant in A.S.No.8 of 2018 was also dismissed, confirming the judgment and decree passed by the Trial Court, Aggrieved by the concurrent findings of the courts below, the first defendant has come before this court by filing the second appeal.

2. According to the first respondent/plaintiff, the suit property was originally belonged to one Thiruvengada Naicker Vagaiyara and the same was purchased by Murugappa Naicker and his brother Pachaiyappa Naicker jointly under a registered sale deed dated 27.05.1981, which has been marked as Ex.A1. The defendants are sons of Pachaiyappa Naicker. The plaintiff purchased half share in the suit property from Murugappa Naicker under a registered sale deed dated 21.02.2007, which has been marked as Ex.A2. Thus, the plaintiff claims right over half share in the suit property. It is further stated by the plaintiff that the plaintiff and the defendants have been in joint possession of the property and inspite of demand for partition made by her, the defendants failed to accept to her request. Therefore, the plaintiff issued a legal notice to the defendants calling upon them to effect partition, however, there is



no reply from them. In such circumstances, the plaintiff was constrained to file a suit for partition seeking half share in the suit property.

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3. The appellant/1st defendant filed a written statement, denying the contention of the plaintiff that the suit property was jointly purchased by the Murugappa naicker and Pachaiyappa Naicker. According to the first defendant, the land in S.No.62/5 measuring to an extent of 22 cents was the ancestral property of the defendants' father Pachaiyappa Naicker and his brother Murugappa Naicker and the said property was exchanged by them with the suit property in S.No.62/4 measuring to an extent of 0.16. cents in favour of Thiruvengada Naicker. Therefore, the suit property shall be treated as ancestral property. On these pleadings, the first defendant seeks for dismissal of the suit.

4. Before the Trial Court, on the side of the plaintiff, she was examined as PW1 and 8 documents were marked as Ex.A1 to Ex.A8. On the side of the defendants, the first defendant was examined as DW1 and 9 documents were marked as Ex.B1 to Ex.B9.

5. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the suit property was not the ancestral property and it was jointly purchased by Murugappa Naicker and Pachaiyappa Naicker and therefore, the plaintiff is entitled to a decree for



partition of her half share in the suit property. Aggrieved by the said judgment and decree, the first defendant preferred an appeal in A.S.No.8 of 2018 on the file of Principal District Court No.II, Kanchipuram and the first appellate court, confirmed the findings of the Trial Court. Aggrieved by the concurrent findings of the courts below, the first defendant has come before this court.

6. The learned counsel for the appellant/ first defendant would submit that the suit properties are the ancestral properties and therefore, the plaintiff's vendor Murugappa Naicker was not entitled to sell the ancestral property to the third party, without offering it to the other co-sharers.

7. It is seen from the typed set of papers that Ex.A1 is the sale deed executed by the original owner of the suit property, namely, Thiruvengada Naicker and his brothers in favour of Murugappa Naicker and Pachaiyappa Naicker. In the said sale deed, there is no reference about the exchange of ancestral property, as pleaded by the first defendant. Therefore, it is clear that Murugappa Naicker and Pachaiyappa Naicker had purchased the suit property under Ex.A1 and hence, they shall be treated as co-owners but not as co-parceners. Ex.A2 is the patta for the suit property, which stands in the name of Murugappa Naicker and Pachaiyappa Naicker. Ex.A1 clinchingly established that the suit property is not ancestral property and it was purchased jointly by Murugappa Naicker and Pachaiyappa Naicker. In such



circumstances, the plaintiff's vendor Murugappa Naicker is entitled to sell his undivided half share in favour of the plaintiff. Ex.A4 sale deed in favour of plaintiff would indicate that the plaintiff purchased Murugappa Naicker's half share in the suit property. Therefore, the plaintiff is entitled to a decree for partition of her share in the suit property. Even assuming that the suit property is an ancestral property, the defendants being the co-owners, should have exercised their right of pre-emption by taking appropriate steps. In the case on hand, the defendants have not exercised such option for purchase of the suit property. Therefore, the submission made by the learned counsel for the appellant/first defendant is not appealable to this court.

8. Both the courts below, on appreciation of oral and documentary evidence available on record, rightly came to the conclusion that the suit property was not an ancestral property and it was only a joint property purchased by Murugappa Mudaliar and Pachaiyappa Naiker. As a necessary consequence, the plaintiff is entitled to preliminary decree for partition of half share in the suit property and I do not find any perversity in the concurrent findings arrived at by the courts below.



9. Accordingly, the second appeal stands dismissed, confirming the concurrent findings of the court below. There shall be no order as to costs.

12-03-2026

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

To

1. District Judge, Court No.II, Kanchipuram
2. Subordinate Judge, Kanchipuram.



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S.SOUNTHAR, J.

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