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A.S.No.40 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.01.2026

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

A.S.No.40 of 2026
and
C.M.P.No.1043 of 2026
--

S.Ramasamy, S/o Sellakannu

.. Appellant

Vs.

1. R.Murugan, S/o Ramasamy
2. R.Senthil, S/o Ramasamy
3. S.Kannagi, W/o Sadasivam @ Settu

.. Respondents

Appeal Suit filed under Section 96 of CPC against the judgment and decree dated 16.09.2025 passed in O.S.No.47 of 2023 on the file of the Principal District Court, Ariyalur, insofar as it dismisses the plaintiff's claim for partition of B-schedule property and hold that the B-schedule property is joint family property and grant the appellant 1/4 share therein.

For appellant : M/s.R.Venkatesulu

JUDGMENT

(The Judgment of the Court was delivered by N.Sathish Kumar, J)

Challenging the judgment and decree of the trial Court in granting preliminary decree for 1/4th share in the A-schedule property and dismissing the suit for B-schedule property, the appellant/plaintiff has filed the present appeal.



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2. For the purpose of convenience, the parties are herein stated as they are ranked in the suit filed before the trial Court.

3. The plaintiff is the father of the defendants. According to the plaintiff, A-schedule property is the ancestral property and it is a rain-fed area. B-schedule property is also a joint family property. As the defendants 1 and 2 were employed in abroad for some time, they failed to maintain their mother and the plaintiff seeks partition of the suit property. According to the plaintiff, he has borrowed Rs.2,80,000/- for sending the first defendant abroad in the year 2000. The said amount had been discharged by the plaintiff himself. Similarly, he has also incurred Rs.1,80,000/- for sending D.W.2 to abroad. D.W.2 has also sent the amount from abroad. The first defendant has purchased B-schedule property by sale deeds, dated 29.05.2006 and 10.03.2008 for Rs.2,34,000/- and Rs.1,32,500/-. from and out of the income from the joint family as well as the amount sent by the second defendant for the benefit of the joint family. They constructed a house in the B-schedule property in 2008 and 2009. It is the contention of the plaintiff that the entire B-schedule property is also a joint family property. As the first defendant did not provide medical assistance to the wife of the plaintiff, who is none other than the mother of the defendants, the plaintiff decided to divide the joint family property, but the first defendant did not



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agree for the same and therefore, the plaintiff had filed the present suit for partition.

4. The first defendant filed written statement to the effect that the B-schedule property is self-acquired property of the first defendant and he went to Singapore for construction work in the year 2002 and was employed there until 30.04.2003. On 30.04.2003, he met with an accident while working in Singapore and his eye was damaged. He received compensation equivalent to Rs.7,56,248/- of Indian currency. From the said amount, he purchased B-schedule property, besides, he obtained loan for Rs.4,00,000/- and constructed the house. Hence, it is the contention of the first defendant that the B-schedule property is the absolute property of the first defendant.

5. The third defendant has filed written statement to the effect that her father incurred expenses of Rs.3 lakhs in sending the first defendant abroad and the loan was discharged by the plaintiff himself. According to the third defendant, the B-schedule property was purchased in the name of the first defendant and the sale consideration was contributed by the plaintiff. According to her, the B-schedule property is also the joint family property and she prayed 1/4th share in the property.

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6. Before the trial Court, the second defendant remained absent and was set ex-parte. Based on the above pleadings, the trial Court framed the following issues:

- (i) Whether the suit B-schedule property is joint family property, liable for partition ?
- (ii) Whether the plaintiff is entitled for partition and 1/4th share in it ? and
- (iii) To what other relief ?

7. On the side of the plaintiff, P.W.1 plaintiff was examined and Exs.A-1 to A-11 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and Exs.B-1 to B-19 were marked.

8. Based on the above pleadings and evidence and based on the entire materials available on record, the trial Court decreed the suit in part and granted preliminary decree entitling 1/4th share each in respect of A-schedule property and as far as B-schedule property is concerned, the suit was dismissed by the trial Court. Challenging the said judgment and decree of the trial Court, the plaintiff has filed the present First Appeal.



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9. The main contention of the learned counsel for the appellant/plaintiff is that, admittedly, A-schedule property is a joint family property. Further, though B-schedule property was purchased in the name of the first defendant, it is to be presumed only that it is for the benefit of the joint family nucleus. The first defendant had worked in a foreign country only for few years and he would not have acquired any income to purchase as well as to construct B-schedule property. It is his further contention that the trial Court, having held that the A-schedule property is ancestral property, it has to be presumed that the family had sufficient income. Therefore, merely because the property was purchased in the name of the first defendant, it cannot be said that it is his individual property.

10. Learned counsel for the respondents submitted that, admittedly, the property has been purchased by the first defendant after he returned from foreign country. It is the evidence of the parties that he has even received more than Rs.7 lakhs in Singapore as the compensation due to the injury he suffered in the work place. Only out of that amount, the property has been purchased.

11. That apart, admittedly, P.W.1 himself stated that the first defendant has availed loan for construction of the house from the Bank and constructed house. Therefore, it is the contention of the respondents that merely because the



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family had ancestral property without any evidence of surplus income, it cannot be said that the B-schedule property is the joint family property.

12. In the light of the above submissions, now the points that arise for consideration in this appeal are:

(i) Whether the plaint B-schedule property is purchased out of joint family nucleus in the name of the first defendant ? and

(ii) Whether the plaintiff is entitled to share in the B-schedule property ?

13. It is not disputed by the parties that items 1 to 12 in the A-schedule property, are ancestral properties. The plaintiff is none other than the father of the first defendant. The entire pleadings of the plaintiff itself indicates clearly that item Nos.1 to 12 are joint family properties and the pleadings in the plaint itself clearly shows that the said property is dry land and cultivation depends on the rain. When the plaint itself clearly indicates that the property is not irrigation lands and it is entirely depending on the rain, it is for the plaintiff who had ancestral right over the property to establish the nature of the income derived from the property. It is for him to show that there was surplus income derived from the property, namely A-schedule property. However, his evidence does not show that the income much less the surplus income was derived from the joint



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family nucleus. But, on the other hand, the pleadings and evidence of P.W.1 clearly shows that D.W.1 and D.W.2 went abroad and they were working there for few years. The second defendant is still working in abroad. The first defendant has worked from 2002 to 2005 in Singapore. It is the specific case of the defendants that the first defendant met with an accident and sustained injury, for which he has also received compensation of Rs.7,56,248/-. The said aspect has been put to P.W.1 and P.W.1 feigned ignorance. Thereafter, P.W.1 in his cross-examination has clearly admitted that only after return from foreign country, the first defendant has purchased the property. He has purchased the property as vacant site for Rs.85,000/-. Again, he went to foreign country in the year 2007 and returned back in 2008 and purchased the remaining 1/2 share in the B-schedule property for a sum of Rs.1,32,500/-. Further, he has also admitted in his cross-examination that the first defendant had availed loan for construction of the building from the Bank. When the first defendant has sufficient income earned out of his employment in foreign country, and returned back and purchased the property and availed Bank loan for construction, merely because the father has made certain expenses in sending his son to foreign country, it cannot be said that such purchase is also the result of the outcome of the joint family nucleus.

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14. In the above context, it is useful to refer to the Hindu Gains of Learning Act, 1930. It is relevant to note that the evidence of P.W.1 clearly shows that the first defendant was in Singapore till 2005 and later, he purchased the property and again he went to Singapore and came back and in the year 2008, he purchased the remaining property. It is also useful to refer to relevant provisions of the Hindu Gains of Learning Act, 1930. Section 2(b) and 2(c) of the said Act reads as follows:

Section 2: Definitions--In this Act, unless there is anything repugnant in the subject or context,--

.. ..

(b) "gains of learning" means all acquisitions of property made substantially by means of learning, whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or the extraordinary result of such learning;

(c) "learning" means education, whether elementary, technical, scientific, special or general, and training of every kind which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life."

15. Therefore, the property purchased out of his income due to learning and any property gained out of such learning and employment, the said property cannot be held to be the joint family property at any cost. Therefore, merely because P.W.1 made expenses for giving education and sending the defendants

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to get employed in the foreign country, as a result, the first defendant gained out of such employment, at no stretch of imagination, it can be said that such gains are not from learning which shall be held to be the joint family income. Therefore, such property acquired out of employment due to the learning, is held to be the separate property of the acquirer, as per Section 3 of the Hindu Gains of Learning Act. Therefore, the contention of the plaintiff that B-schedule property is also purchased out of joint family nucleus, has no legs to stand.

16. It is relevant to note that from the suggestion put to P.W.1 in the cross-examination, it clearly indicates that the property has been purchased by the first defendant. The nature of the suggestion put to P.W.1 in cross-examination itself shows that a suggestion has been put to P.W.1 and his admission itself clearly shows that the property has been purchased by the first defendant out of his own earnings in the employment. Therefore, for such earnings and gains therefrom, and what they gained out of such earning, it has to be held to be the separate property of the acquirers, namely defendants 1 and 2. Accordingly, the points framed in this appeal are answered.



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17. In the light of the above discussion, we do not find any merits in this appeal, which is accordingly dismissed. There shall be no order as to costs.

Consequently, the Miscellaneous Petition is closed.

(N.S.K., J) (R.S.V., J)
27.01.2026

Index: Yes/no

Speaking Order: Yes/no

Neutral Case Citation: Yes

CS

To

1. Principal District Judge, Ariyalur.
2. The Record Keeper, V.R.Section, High Court, Madras.

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