



WEB COPY

AS No. 1 of 2026



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-02-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

AS No. 1 of 2026

and

CMP No.20 of 2026

1. K.Srinivasan,
S/o Late Kaliyappan,

2. S.Nithya
W/o. K.Srinivasan,

3. K.Jyothi
S/o Late Kaliyappan

..Appellant(s)

Vs

Deivanai
W/o Mahendhiran

..Respondent(s)

This appeal filed under Section 96 of CPC r/w. XI Rule 1 to set aside the Judgment and Decree dt. 27.11.2024 passed in OS No. 312 of 2022 on the file of the Additional District Judge, Krishnagiri by allowing the Appeal .

For Appellant(s): Mrs. C.Jaya Chithra

For Respondent(s): Mr. Anirudh B. Menon,
for
Mrs. Ramapriya Gopalakrishnan



JUDGMENT

(Judgment of the Court was delivered by V.Lakshminarayanan J.)

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This appeal arises out of the judgement and decree dated 27.11.2024 passed in O.S.No.312 of 2022 on the file of the Additional District Judge, Krishnagiri. By the said judgment, the suit for partition was partly decreed by passing a preliminary decree in respect of the “A” schedule property, allotting 4/9th share each to the plaintiff and the first defendant and 1/9th share to the third defendant. It was also declared that the “WILL” dated 05.07.2012, said to have been executed by one Kaliyappan in favour of Srinivasan, and Nithya, as null and void. The present appeal has been filed by the defendants .

2. For the sake of the convenience, the parties shall be referred to according to their rank before the Trial Court in the suit.

3. The plaintiff presented a suit for partition and separate possession in respect of two items of properties, namely, the “A” and “B” schedule properties. The plaintiff also sought for a declaration that the “WILL” dated 05.07.2012, and the settlement deed dated 08.06.2022, created by the 3rd defendant in favour of the first defendant, as null and void. The plaintiff claims that she is the



daughter of one, Kaliyappan, through his first wife, Mangai. The third defendant, Jyothi, is the second wife of Kaliyappan. The first defendant is the son of Kaliyappan and Jyothi, and the second defendant is the wife of the first defendant.

4. The plaintiff urged that the “A” schedule property was inherited by Kaliyappan from his father, Madhu. She further pleaded that the “B” schedule property was acquired by the third defendant, Jyothi, out of the income derived from the “A” schedule property and hence, pleaded that the “B” schedule property is also a joint family property.

5. Her father, Kaliyappan passed away on 09.08.2021, leaving behind the parties to the suit, as his legal heirs. She urged that all of them constituted a Hindu Joint Family. As she and the first defendant, being siblings, claimed that they are entitled to 4/9th share in the suit schedule properties. The other averments regarding the mortgage, etc., are not necessary for the purpose of this appeal.

6. The defendants entered appearance and filed a common written statement. The relationship between the parties was admitted. They pleaded that



the second item of the suit property is not an ancestral property, and so, the plaintiff cannot claim any share over the same. They urged that the second item was a self-acquisition of the third defendant, the second wife of Kaliyappan. They pointed out that the “A” schedule property was an Anadheenam Government land, that had been occupied by Madhu Gounder, the grandfather of plaintiff and first defendant. On his death, it was enjoyed by his sons Kaliyappan and Krishnan. Subsequently, separate pattas were obtained from the Government by Kaliyappan for the property situated in Survey No.577/3B and Krishnan obtained patta for the property situated in Survey No.577/3A. Thereafter, Krishnan had sold the property in Survey No.577/3A to the third defendant for a valuable consideration of Rs.14,000/-.

7. It was pleaded that the source for this purchase was the funds raised by the third defendant by selling her jewels and by obtaining financial assistance(streedhana) from her parents. They urged that “A” schedule property is the self acquired property of Kaliyappan and he had executed a registered “WILL” dated 05.07.2012, by which the first and second defendants became owners of the property.

8. The additional written statement filed by them more or less was on the same lines as the original written statement.



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9. On the basis of these pleadings, the learned Trial judge framed the following issues:-

1. Whether it is true that suit “A” and “B” schedule properties are joint family properties of the plaintiff and the first defendant herein, as alleged by the plaintiff?

2. Whether it is true that “A” schedule property was Anadheenam Government land occupied by the Kaliappan and his brother Krishnan or not?

3. Whether it is true that the “B” schedule property was purchased by Kaliappan, in the name of 3rd defendant out of the income generated from the joint family nucleus or not?

4. Whether the “Will” dated 05.07.2012 executed by Kaliappan was valid in the eye of law or not?

5. Whether the plaintiff is entitled for preliminary decree of partition to extent of 4/9th share in suit properties and separate possession thereof or not?

6. Whether the plaintiff is entitled for declaration that the “Will” dated 05.07.2012 executed by Kaliappan in favour of Srinivasan and Nithya as null and void or not?

7. Whether the plaintiff is entitled for declaration to declare the settlement deed dated 08.06.2022 executed by Jyothi in favour of Srinivasan as null and void or not ?

8. To what other relief the plaintiff is entitled to ?



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10. On side of the plaintiff, she examined herself as PW1, and marked Exs.A1 to A15 . On the side of the defendants, the first defendant alone entered the witness box and marked Exs.B.1 to B.3.

11. On appreciation of the oral and documentary evidence, the learned Trial Judge granted a preliminary decree for partition, insofar as the “A” schedule mentioned property is concerned, and dismissed the suit, insofar as the “B” schedule mentioned property is concerned. Consequently, the present appeal at the instance of the defendants.

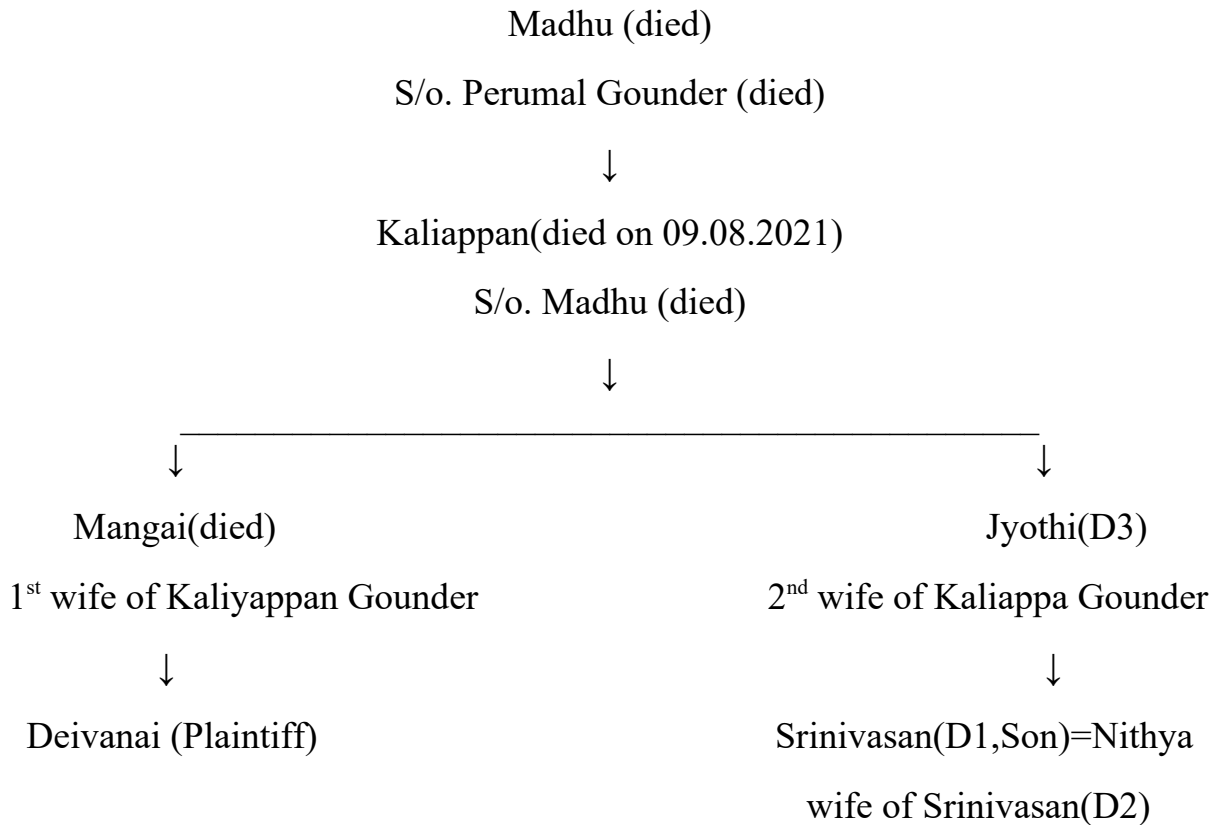
12. We heard Mrs.C.Jaya Chitra for the appellant, Mr.Anirudh B.Menon for Mrs.Ramapriya Gopalakrishnan, for the respondents.

13. In the light of the above submission, now the following points arise for consideration in this appeal:-

- 1. Whether “A” schedule property is a joint family property?*
- 2. Whether the “B” schedule property was purchased out of the joint family nucleus?*

**14. POINT Nos.1 & 2**

The admitted genealogy between the parties setforth hereunder:-



15. It is not in dispute that the “A” schedule mentioned property was classified as a Government Anadheenam land. The same was originally occupied by the father of Kaliyappan, namely, Madhu Gounder. On his death, some time in 1999, his sons, Kaliyappan and Krishnan succeeded to the estate. Kaliyappan and Krishnan obtained separate pattas for Survey Nos.577/3B and 577/3A, respectively. This is evident from Ex.A1, which is the “A” register extract standing in the name of Kaliyappan, with respect to the “A” schedule mentioned property.



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16. With respect to Poramboke lands, it is well settled that even as long as the family is in joint possession of the property, a suit for partition is maintainable(see *K.Arumugam V. Meera and others, 2013 Supreme (Mad) 2404*). The word “Anandheenam” literally means a property, which is unclaimed or orphaned without a person claiming title to the same. By virtue of the Ex.A1, the Government has recognised that Kaliyappan was in settled possession of the property. It has also issued a chitta under Ex.A.2. Hence, this property cannot be treated as an ancestral property of Kaliyappan, but only as a property, being in his settled possession, recognized by the Government.

17. Though the plaintiff has claimed that the parties constituted a Hindu Joint Family and sought to invoke Section 6 of the Hindu Succession Act, we are of the view that Section 8 of the Hindu Succession Act alone would apply with respect to the properties that have been in the hands of Kaliyappan. If section 8 applies, then the third defendant, being the second wife and his son through the second wife, would be entitled to a share. We have to point out that Kaliyappan had married the third defendant only after the death of his first wife, Mangai, and, therefore, she would also be entitled to a share, as the marriage is legally valid.



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18. In order to defeat the claim of the plaintiff, the first defendant had projected a registered “WILL” under Ex.A4. The purpose of executing a “WILL” is to interfere with the natural course of succession. The manner of execution and proof of a “WILL” has been laid down by law under Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act.

19. In terms of the said provisions, a “WILL” has to be proved before the Court by examination of atleast one attesting witness. In the present case, no attesting witness has been examined by the defendants to prove the “WILL”. In addition, the original “WILL” had not been produced by the defendants before the Trial Court. When the Will has not been proved in the manner known to law, it cannot be deemed to have come into effect and thereby, the defendants 1 and 2 cannot claim a share over the same in exclusion of the plaintiff and the third defendant.

20. Insofar as the “A” schedule mentioned property is concerned, Kaliyappan had a possessory right over the same. Since the “WILL” has not been proved in the manner known to law, it has to be treated as if he had died



intestate. If he dies intestate, each of his legal heirs would be entitled to an equal share as provided under Section 8 of the Hindu Succession Act, 1956.

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21. Accordingly, the plaintiff, the first defendant and the third defendant would each be entitled to 1/3rd share in the “A” schedule mentioned property. Since the second defendant is the daughter-in-law of the deceased Kaliyappan, and her husband(the first defendant) is alive, obviously she would not be entitled to any independent share in the same.

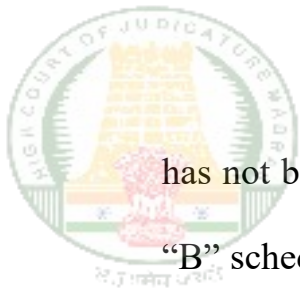
22. Turning to the “B” schedule property, the land record settlement Jamabandi Chitta for Survey.No.577/3B, marked as Ex.A.14, points out that during the Jamabandi proceedings, the Government had recognised and had issued revenue receipts for the said property in the name of the grandfather, Madhu. Madhu’s children had partitioned the property. Kaliyappan was enjoying Survey No.577/3B and Krishnan was enjoying Survey No.577/3A. Insofar as the “B” schedule property is concerned, the averments in the plaint itself reveal that Kaliyappan had acquired the “B” schedule property in the name of the third defendant, allegedly from the joint family nucleus.



23. We have already found that there is no joint family as the property was admittedly an Anadheenam property. Furthermore, no evidence has been let in by the plaintiff, in order to substantiate the plea that the income from the “A” schedule property was sufficient for Kaliyappan, to have purchased the “B” schedule property in the name of his second wife/third defendant.

24. Unlike the presumption applicable to a property in case of a male, where the property purchased out of the assets of a joint family, can be considered a joint family property, no such presumption, even under the pristine Hindu Law existed when a property was acquired by a female [See, *Narayana Vs. Krishna, (1884) ILR 8 Mad 214 (DB)*]. Worse is the situation in the present case as the property had been purchased by Jyothi by way of a registered document. When the property stands in the name of Jyothi, unless and until, it is shown that it was for the benefit of the entire family and not for her exclusive benefit alone, then a presumption arises that she is the absolute owner of the property.

25. The learned Trial Judge had recorded a finding that the plaintiff was not able to substantiate that the “B” schedule property was purchased from and out of the income from the “A” schedule property. The counsel for the plaintiff



has not been able to show before us that such a conclusion is erroneous. As the “B” schedule property stands in the name of the third defendant, we do not find any reason to take a different view than that taken by the learned Trial Judge.

This points are answered accordingly.

26. In the light of the above discussion, the judgment and decree of the learned Trial Judge in O.S.No.312 of 2022 dated 27.11.2024 stands confirmed. The appeal is dismissed. Consequently, connected miscellaneous petition is closed. Considering the close relationship of the parties, we are not inclined to impose any costs.

(N.S.K.,J.) (V.L.N.,J.)

19-02-2026

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

MRP

To

The Additional District Court,
Krishnagiri.



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N.SATHISH KUMAR, J.
AND
V.LAKSHMINARAYANAN, J.

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