



WEB COPY

SA No. 234 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 234 of 2026 and
CMP.No.7478 of 2026**

1. Rajammal
 2. Saradhambal
 3. Rani
 4. Samy Pillai
Krishnan (Died)
 5. Vijiammal,
 6. Murugan
 7. Shakila
Devendran (Died)
 8. D.Suguna
 9. Jothi
 - 10.Abinaya
 - 11.D. Arunkumar
- (cause title accepted vide C/o
dated 08.06.2023 made in
CMP.No.11597/2023 in
SA.Sr.No.99065 of 2017)
(Appellants 8 to 11 are impleaded as
LR's of deceased Devendran)

..Appellant(s)

Vs

- Indirani Ammal (Died)
1. Nagalakshmi Ammal
 2. Mallika
 3. Kumar (died)
 4. Ravi
 5. Uma
 6. Arul Jothi
 7. Jayanthi
- (R3 died, R6 & R7 are brought on record
as LR's of deceased R3 vide c/o
dated 19.12.2025 made in CMP.No.4791/2024
in SA.Sr.No.99065/2017)

..Respondent(s)



Prayer :Second appeal is filed under Section 100 of Code of Civil Procedure code, praying to reverse the Judgement and Decree dated 30.08.2017 passed in AS.No.62 of 2009 by the learned First Additional Subordinate Judge, Villupuram reversing the Judgement and Decree dated 28.01.2009 passed by the learned Principal District Munsif, Tirukovilur in OS No.92 of 2006.

For Appellant(s): M/s.T.K.Saravanan

JUDGMENT

The unsuccessful defendants are the appellants. The respondents/ plaintiffs filed a suit seeking partition of their 1/4th share each. The suit was dismissed by the trial court. The appeal filed by the respondents/ plaintiffs was allowed. Aggrieved by the same. The appellants/ defendants have come before this court by way of second appeal.

2. According to the respondents/ plaintiffs, the suit property along with the property on the western side was originally belonged to one Thasthakeer Sahib. He sold the said property in favour of Kulliammal and Ammamuthu Ammal under registered sale deed dated 10.04.1912. There was a partition between Kulliammal and Ammamuthu Ammal and the suit property was allotted to the share of Kulliammal. The said Kulliammal died leaving behind her only son Ponnakonar. The said Ponnakonar died leaving behind three sons and two daughters namely Chinnasamy, Ammachiammal, Indirani Ammal, Krishnan and Kannan. The above said Kannan died as a bachelor and hence, his 1/5th share devolved upon his siblings namely the above mentioned four



persons. Thus, the above mentioned four children of Ponnakonar entitled to 1/4th share each in the suit property. The daughter of Ponnakonar namely Indirani Ammal is the 1st plaintiff. The another daughter of Ponnakonar namely Ammachi ammal executed a Will bequeathing her 1/4th share in favour of her granddaughter namely 2nd plaintiff. Ponnakonar's son Chinnasamy died and his legal representatives are defendants 1 to 4. The other son of Ponnakonar has been arrayed as 5th defendant. Thus, according to the plaintiffs, they are entitled to 1/4th share each. The defendants 1 to 4 collectively entitled to 1/4th share and the 5th defendant also entitled to 1/4th share. It is also stated by the plaintiffs that the 5th defendant filed a suit for partition in OS.No.406 of 1995 against Chinnasamy claiming 1/2 share in the suit property. The plaintiffs were not added as a party in the said suit and a collusive decree was obtained as if the plaintiff therein was entitled to 1/2 share. Since the plaintiffs were not party to the said decree, the same was not binding on the plaintiffs. It was also stated that during the pendency of the execution proceedings in the partition suit referred above, the 2nd plaintiff's predecessor-in-interest namely Ammachiammal filed a suit in O.S.No.137 of 1997 seeking declaration and injunction. She also sought for prayer that decree in OS.No.406 of 1995 should not be executed. The said suit was dismissed. However, it was found by the court that plaintiff therein namely Ammachiammal, 1st plaintiff, 5th defendant and Chinnasamy konar are entitled to 1/4th share each in the suit property. The appeal filed by Ammachiammal was also dismissed. It is further stated that the 2nd plaintiff had constructed a



house in the suit property and she has been residing thereon. In spite of the demand for partition, the defendants failed to respond and hence, the plaintiffs were constrained to file a suit seeking partition of their 1/4th share each.

3. The defendants filed a written statement and resisted the suit on the ground that the plaintiffs never enjoyed the suit property and therefore, they were not entitled to claim partition. The Will relied on by the 2nd plaintiff was also denied. It was also claimed that since the plaintiffs had no right over the suit property, they were not added as parties in OS.No.406 of 1995. The averments in the plaint regarding findings in OS.No.137 of 1997 filed by Ammachiammal was also denied. The further allegation that the second plaintiff had been residing in the suit property was also denied. On these pleadings, the defendants sought for dismissal of the suit.

4. Before the trial court, the 2nd plaintiff was examined as PW1. The attestors to the Will relied on by her were examined as PW2 and PW3. The 2nd plaintiff's mother and daughter of Ammachiammal was examined as PW4. On behalf of the plaintiffs, 38 documents were marked as Ex.A1 to Ex.A38. The 5th defendant was examined as DW1 and one Rajikonar was examined as DW2. On behalf of the defendants, 14 documents were marked as Ex.B1 to Ex.B14.

5. The trial court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the prayer for partition was barred by limitation as Ponnakonar died in the year 1956 itself. The trial court also found that 1st plaintiff had not established her possession over the suit



property. It was also found that the Will relied on by the 2nd plaintiff was not proved and as a necessary consequence, dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in AS.No.62 of 2009 on the file of Additional Sub Court, Villupuram. The first appellate court, on appreciation of evidence of attestors and PW4, upheld the validity of the Will relied on by the second plaintiff. The first appellate court also found that there was no evidence available on record to suggest that Ponnakonar died prior to coming into force of the Hindu Succession Act and consequently, held that the plaintiffs were entitled to decree as prayed for. Aggrieved by the said judgment and decree passed by the first appellate court, the defendants have come before this court.

6. The learned counsel for the appellants vehemently contended that the suit filed by Ammachiammal, the predecessor-in-interest of the 2nd plaintiff, in OS.No. 137 of 1997 seeking declaration of title and injunction was dismissed and in such circumstances, the present suit filed by the plaintiffs is barred by *res-judicata*. The learned counsel also submitted that having raised a plea that the entire suit property was orally gifted in favour of Ammachiammal, the present suit for partition is not maintainable. He also submitted that the plaintiffs failed to prove joint possession of the suit property and therefore, the present suit is barred by limitation for their failure to demand partition for more than statutory period.



7. It is seen from the records that 2nd plaintiff's predecessor-in- interest namely Ammachiammal filed a suit in OS.No.137 of 1997 seeking declaration of title and injunction. Though she claimed right over the entire suit property under the settlement allegedly executed by her father Ponnakonar, the said suit was dismissed as she failed to establish gift. However, a perusal of the judgment passed in OS.No.137 of 1997, which has been marked as Exhibit A9, would establish that while dismissing the suit, the court found that suit property was inherited by Ponnakonar from her mother and he died intestate. Therefore, there was a clear finding that all the children of Ponnakonar were entitled to share in the said property. The Court also found that OS.No.406 of 1995 was fought between the sons of Ponnakonar and the plaintiffs have not been made as parties and therefore, the said decision would not affect the rights of the present plaintiffs.

8. The plea of adverse possession raised by defendants 1 and 2 therein, namely Chinnasamy Konar (predecessor-in-interest of present defendants 1 to 4) and 5th defendant herein namely Krishnan, was negated by the trial court with a specific finding. Ultimately, the above said suit was dismissed with liberty to the plaintiffs to file suit for partition. In the light of the findings rendered in OS.No.137 of 1997 and by virtue of the liberty granted by the court in the said suit, the decision in OS.No.137 of 1997 will not bar the present suit and the contention raised by the learned counsel for the appellants in this regard



is not acceptable to this court.

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9. The learned counsel for the appellants also attempted to argue that Ponnakonar died prior to coming into force of the Hindu Succession Act. Therefore, his daughters were not entitled to share in the estate of deceased Ponnakonar. It is pertinent to mention that appellants/defendants have not raised any specific plea that Ponnakonar died prior to coming into force of the Hindu Succession Act and hence, his daughters were not entitled to share in his estate. In fact, the trial court found that Ponnakonar died prior to 26.07.1956. The Hindu Succession Act came into force on 17.06.1956. However, there is no evidence available on record to suggest that Ponnakonar died prior to coming into force of the Hindu Succession Act. In fact, there is a finding by the court in the earlier suit in OS.No.137 of 1997 that Ponnakonar died intestate and all of his heirs are entitled to share. In the absence of specific plea that Ponnakonar died prior to coming into force of the Hindu Succession Act and also any evidence, the submission made by the learned counsel for the appellants cannot be countenanced. Even assuming there is an evidence, the same cannot be considered in the absence of specific plea in the written statement.

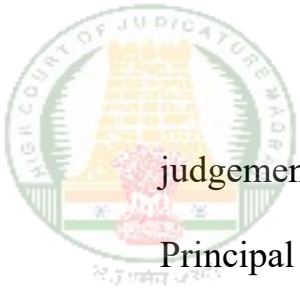
10. The first appellate court referred to the evidence of DW2 wherein he categorically admitted that there was an ancestral house in the suit property and the 2nd plaintiff's predecessor-in-interest namely Ammachiammal was residing thereon. He also admitted that as on today, there is a tiled house in the suit



property and the 2nd plaintiff Nagalakshmi has been residing thereon for the past 20 years. In such circumstances, the plea raised by the defendants as if the plaintiffs were ousted from the suit property is not acceptable. Further, the plea of ouster raised by the defendants in the earlier suit in OS.No. 137 of 1997 was also negatived. In such circumstances, the submission made by the learned counsel for the appellants based on the plea of ouster is also not appealable to this Court.

11. The first appellate court carefully considered the evidence of attestors to the Will relied on by the 2nd plaintiff, who were examined as PW2 and PW3 and came to the conclusion that execution of the Will was duly proved. It also pointed out that Ammachiammal executed a Will, Ex.A2 in favour of 2nd plaintiff on 15.10.1989. The said Ammachiammal's only heir namely her daughter was examined as PW4. She clearly admitted that Ammachiammal executed a Will in favour of 2nd plaintiff. Taking into consideration all these facts, the first appellate court gave a factual finding that the Will relied on by the 2nd plaintiff was duly proved and the said finding requires no interference in the absence of any perversity.

12. In the light of the discussions made earlier, the contentions made by the learned counsel for the appellants are liable to be rejected. Finding no substantial question of law arising for consideration, the second appeal stands dismissed by affirming the judgement and decree dated 30.08.2017 in AS.No.62 of 2009 passed by the I Additional Subordinate Judge, Villupuram reversing the



judgement and decree dated 28.01.2009 in OS.No.92 of 2006 passed by the Principal District Munsif, Tirukovilur. Consequently, the connected miscellaneous petition is closed. No costs.

23-03-2026

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

To

1. The I Additional Subordinate Judge, Villupuram
2. The Principal District Munsif, Tirukovilur



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S.SOUNTHAR, J.

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