

S.A(MD)No.313 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 01.04.2026

Pronounced on : 01.07.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.313 of 2012

and

M.P(MD)No.1 of 2012

1.Amsavalli,
D/o.Somaiah,
W/o.Thangaraj,
36, Anna Nagar,
Keeramangalam,
Alangudi Taluk,
Pudukottai District.

2.Solaiammal,
D/o.Subbaiah,
W/o.C.Veeraiah,
Vembakkudi East,
Keeramangalam Post,
Aranthangi Town,
Pudukottai District.

...Appellants/Respondents/
Defendants 1 & 2

Vs.

1.Selvi,
W/o.V.Harikrishnan,
D.No.13/2/15, Thilagar Street,
Kandanur, Karaikudi Taluk,
Sivagangai District.



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2.Latha,
W/o.S.Balachandar,
Pillaiyar Kovil Street,
Periyakottai Village,
Pattukottai Town,
Thanjavur District.

...1st & 2nd Respondents/Appellants/
Plaintiffs

3.Seetha,
W/o.Selvaraj,
No.84/326, Thilakar Street,
Kandanur, Karaikudi Taluk,
Sivaganga District.

4.Saraswathi Ammal,
W/o.Late.Arumugam,
Vembakkudi East,
Keeramangalam Post,
Aranthangi Town,
Pudukkottai District.

...3rd & 4th Respondents/ 4th & 5th Respondents/
LRs of 3rd Defendant

(Memo, dated 03.04.2025 presented before the Court on 03.04.2025, is recorded to the effect that notice to R3 is dispensed with as R3 was set ex-parte before the first Appellate Court vide Court order dated 03.04.2025 made in S.A(MD)No.313 of 2012)

Prayer: This Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 17.10.2011 in A.S.No.83 of 2011 on the file of the Subordinate Judge, Devakkottai, reversing the judgment and decree dated 27.09.2010 in O.S.No.186 of 2006 on the file of the Additional District Munsif, Karaikudi.



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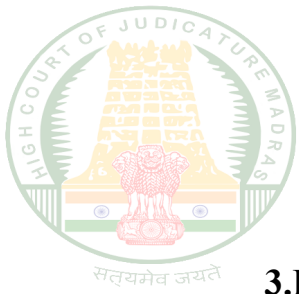
For Appellants : Mr.R.Sundar Srinivasan
For R1 & R2 : Mr.S.Madhavan
R3 : Dispensed With vide Court
Order, dated 03.04.2025
For R4 : No Appearance

JUDGMENT

This Second Appeal is filed to set aside the judgment and decree dated 17.10.2021 passed in A.S.No.83 of 2011 on the file of the Subordinate Judge, Devakottai, reversing the judgment and decree, dated 27.09.2010 passed in O.S.No.186 of 2006 on the file of the Additional District Munsif Court, Karaikudi.

2.The appellants are defendants 1 & 2 and the respondents 1 & 2 are the plaintiffs in O.S.No.186 of 2006 on the file of the Additional District Munsif Court, Karaikudi. The respondents 3 and 4 are the Legal Representatives of the 3rd defendant, Arumugam (since deceased).

2.1.The respondents 1 & 2/plaintiffs filed the suit for partition of 2/3 share in the suit property.



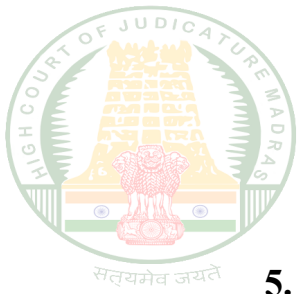
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3.For the sake of convenience, the parties are referred to as plaintiffs and defendants in O.S.No.186 of 2006 on the file of the Additional District Munsif Court, Karaikudi.

4.Case of the plaintiffs (Respondents 1 and 2 herein):

The suit property with a larger extent was purchased by the grandfather of the plaintiffs, namely Mariayappan Pandaram. He had been in continuous possession and enjoyment by paying tax, and a patta was issued to him on 01.06.1974. After the death of Mariyappan Pandaram, the plaintiffs and their father 3rd defendant, Arumugam, were enjoying the same as joint family property. The plaintiffs got married they are living separately in their respective matrimonial homes. Their father/3rd defendant sold eastern 10 cents of the suit survey number to one Rajan with the consent of the plaintiffs. The suit property is the western portion of the suit survey number. The plaintiffs came to know that the 3rd defendant, without consent of the plaintiffs, sold the suit property to defendants 1 and 2. The plaintiffs have a 2/3 share in the suit property. So, the plaintiffs issued a legal notice to the defendants. As there was no response, the plaintiffs have filed the suit for partition.



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5. Case of the Defendants 1 and 2 (Appellants herein):

The averments of the plaintiffs are not sustainable on facts.

The 3rd defendant, Arumugam, is the husband of one Sarawathy, who is the sister-in-law of the 2nd defendant. The 3rd defendant never looked after his family, including his daughters/plaintiffs. The plaintiffs were under the care and custody of the 2nd defendant's husband. The 3rd defendant sold out 10 cents to one Rajan with consent of the plaintiffs. Similarly, the 3rd defendant sold the suit property to the defendants 1 and 2 with knowledge of the plaintiffs. The plaintiffs knew the same very well since they are living with the 2nd defendant. As there was a family issue upon refusal of the marriage affair of the 2nd plaintiff with the son of the 2nd defendant, the 3rd defendant induced the plaintiffs to file the suit. Moreover, there is one more sister of the plaintiffs, namely Seethalakshmi, who has not been added as a party to the suit. So, the suit is bad for non-joinder of a necessary party and the suit is to be dismissed in limine. The 3rd defendant, as family head, sold the suit property to the defendants 1 and 2 by virtue of a registered sale deed dated 10.07.2000 with knowledge of the plaintiffs and their sister Seethalakshmi. The plaintiffs have filed the suit for their self benefit and to harass the defendants 1 and 2. The suit is barred by limitation as the defendants 1 & 2



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purchased the suit property on 10.07.2000 with the knowledge and presence of the plaintiffs. Without seeking any relief against the registered sale deed dated 10.07.2000, the suit is also not maintainable. The proper Court-fee was not paid for the reliefs. Hence, the suit is liable to be dismissed.

6.The 3rd defendant has not contested the suit and remained ex-parte before the trial Court.

7.The trial Court framed the following issues:

- (1) Whether the plaintiffs are entitled to 2/3 shares as prayed for?*
- (2) Whether the suit is bad for non-joinder of necessary parties?*
- (3) Whether the suit is barred by limitation?*
- (4) Whether the Court-fee paid is correct?*
- (5) What other reliefs?*

The issues have been recast by the trial Court as follows:

- 1.Whether the suit is bad for non-joinder of necessary parties?*
- 2.Whether the suit is barred by limitation?*
- 3.Whether the plaintiffs are entitled to a preliminary decree for partition of 2/3 shares of the*



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plaint schedule property?

4.To what other reliefs?

8. During trial, on the plaintiffs' side, P.W.1 was examined and Ex.A.1 to Ex.A.15 were marked. On the defendants' side, D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.7 were marked.

9.After hearing both sides and after appreciation of evidences, the learned Additional District Munsif, Karaikudi concluded that the plaintiffs have not included all the properties and has not included the necessary party so, the suit is bad for non joinder of necessary party & barred by limitation, hence, the plaintiffs are not entitled for partition, thereby dismissed the suit by passing judgment and decree, dated 27.09.2010.

10.Aggrieved by the judgment and decree dated 27.09.2010 passed in O.S.No.186 of 2006, the plaintiffs have preferred the first appeal A.S.No.83 of 2011 before the Subordinate Court, Devakottai. During the first appeal, the 3rd defendant, Arumugam, died and his wife, Saraswathiammal and daughter Seethalakshmi were impleaded as respondents 4 and 5.



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11.The first Appellate Court after hearing both sides and after perusing material records of the case came to conclusion that the defect of non joinder has been cured as the LR's of 3rd defendant have been added as parties to the suit and that the plaintiffs are entitled for partition, thereby allowed the appeal setting aside the judgment and decree of the trial Court, by way of its judgment dated 17.10.2011.

12.Challenging the judgment and decree of the First Appellate Court dated 17.10.2011, the defendants 1 and 2 have preferred this second appeal and the same has been admitted on 06.06.2012 on the following substantial questions of law:-

"1. Whether the lower appellate Court is correct in law in setting aside the finding of the trial Court that the suit is bad for non-joinder on the ground that the parties were impleaded in the appeal?

2. Whether the lower appellate Court is correct in law in rejecting Ex.B.7 when the trial Court has given cogent reasons for accepting the said document?

3. When it is the specific case of the plaintiffs that the property belongs to the



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grandfather Mariappa Pandaram as his absolute property, whether inheritance of the said property by the 3rd defendant the only son of the Mariappa Pandaram under Section 8 of the Hindu Succession Act would not make the property inherited by the 3rd defendant as his absolute property dis-entitling the plaintiffs who are the daughters of 3rd defendant to make any claim for partition in the said property?

13.The learned counsel for the appellants/defendants 1 and 2 has submitted that the suit property is self acquired property of Mariappa Pandaram, who is the grandfather of the plaintiffs. The plaintiffs have also categorically pleaded so in the plaint. If so, on the death of the said Mariappa Pandaram, his son, namely the 3rd defendant herein, became entitled to the suit property under Section 8 of the Hindu Succession Act as the absolute owner. Hence, the suit property is not joint family property. Therefore, the plaintiffs cannot claim any right by birth over the suit property, which was derived by their father/3rd defendant on the death of their grandfather, since the 3rd defendant was the sole Class I heir as per the provision of the Hindu Succession Act. As a Karta of joint family, the 3rd defendant can sell the property derived from his father and relied on decision of Hon'ble Supreme



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Court in the case of the **Commissioner of Wealth Tax /v/ Chander Sen etc.** reported in **1986 AIR 1753** which was followed by this Court in its judgment in the case of **Govindan and Anr. /v/ Revathi & Others in S.A.No.273 of 2014 dated 25.10.2019** in which it is held in paragraph Nos.21 to 25 as follows:

21. In Commissioner of Wealth Tax, Kanpur and others v. Chander Sen and Others, reported in 1986 (3) SCC 567, the Hon'ble Supreme Court after referring to the conflict of opinion between various High Courts on the question of applicability of Section 8 or Section 6 of the Hindu Succession Act had held as follows:

“20. We have noted the divergent views expressed on this aspect by the Allahabad High Court, Full Bench of the Madras High Court, Madhya Pradesh and Andhra Pradesh High Courts on one side and the Gujarat High Court on the other.

21.It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

22.In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family.



The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under [Section 8](#) to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in [Section 8](#). Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by [Section 4](#) that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under [Section 8](#) of the Hindu Succession Act would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under [Section 8](#) of the Act included widow, mother, daughter of predeceased son etc.

23. Before we conclude we may state that we have noted the observations of Mulla's "Commentary on Hindu law" 15th Edn. dealing with [Section 6](#) of the Hindu Succession Act at page 924-26 as well as Mayne's on "Hindu Law," 12th Edition pages 918-919.

24. The express words of [Section 8](#) of The Hindu Succession Act, 1956 cannot be ignored and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but includes son of a predeceased son cannot be ignored.



25. In the aforesaid light the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court, and the Andhra Pradesh High Court, appear to us to be correct. With respect we are unable to agree with the views of the Gujarat High Court noted hereinbefore”.

From the above judgments, it is clear that a property that is inherited by a Hindu on the death of his father after 1956 as a Class I heir under [Section 8](#), will not partake the character of coparcenary property qua his children.

He will be the absolute owner of the property and he have absolute power of alienation over the property.

22. Adverting the decisions relied upon by the Mr.P.Dineshkumar, appearing for the respondents, the judgment of the Hon’ble Supreme Court in [Shyam Narayan Prasad v. Krishna Prasad and Others](#), reported in 2018 (7) SCC 646, related to a property that was allotted to the father at a partition between him and his father. There was no dispute about the character of the property in the hands of the father as ancestral property. Therefore, the Hon’ble Supreme Court concluded that the property having devolved under [Section 6](#), the plaintiffs therein would get a right by birth. This essential distinction has already been pointed out by the Full Bench in P.L.Karuppan Chettiar’s case, referred to supra. As regards my judgment in M.Krishnamurthi v. K.Pondeepankar & others, reported in 2017 (3) CTC 170, there also there was no dispute that the property was held by the father Krishnamoorthy as ancestral property and the minor son would get a right by birth.



23.The questions that arose in *M.Krishnamurthi v. K.Pondeepankar's* case, as to whether, the son born after 1956 would get a right by birth. On facts it was conceded that the property was the ancestral property or coparcenary property in which the son would get a right by birth and therefore, both the decisions relied upon by the learned counsel appearing for the respondents would not applicable to the facts of the present case.

24.In view of the above discussions, the essential conclusion is that the property which belonged to Ranganatha Kounder, which was inherited by the first defendant Radha as the Class I heir on the death of Ranganatha Kounder after 1956, will not partake a character of coparcenary property or joint family property so that his children, namely, the plaintiffs would get a right by birth over the same and they will not have a right to challenge the alienation made by the first defendant or the second defendant as the power agent of the first defendant.

25.In view of the above conclusion,

25 (i). the question of law (a) is answered to the effect that the Lower Appellate Court was not right in concluding that [Section 6](#) of the Hindu Succession Act, would apply to facts of the case.

25 (ii). The question of law (b) is answered to the effect that the property inherited by a son from his father as a Class I heir under [Section 8](#) of the Hindu Succession Act will not partake a character of ancestral property in which his children would get a right by birth.



25 (iii). *The question of law (c) is answered to the effect that the First Appellate Court was not right in concluding that [Section 8](#) would not apply to the facts of the case.*

25 (iv). *The question of Law (e) is answered to the effect that though a grandson would have a right to seek partition during the lifetime of his father in the ancestral property, but the same analogy cannot be extended to the self-acquired property of the grandfather which inherited by the father under [Section 8](#) of the Act.*

25 (v) *As regards the cancellation of power of attorney, no doubt, a document dated 06.10.2003 styled as a cancellation deed has been marked as Ex.A4, but there is no evidence to show that the said document was executed in compliance with the provisions of [Section 208](#) of the Indian Contract Act. Even otherwise once it is found that the plaintiff has no subsisting right over the suit properties they cannot question the alienation on the ground of cancellation of the power of attorney, hence question of law (d) is answered against the respondents and in favour of the appellants.*

In Mariammal & Anr. Vs. Subbuthai & Ors. in S.A(MD)No.255 of 2010 reported in 2013 (5) CTC 49, this Court held in paragraph Nos.53 and 55 as follows:

"53. In Sri Narayan Bal and others .v. Sridhar Sutar and others, 1996 (1) CTC 390 (SC):1996 (8) SCC 54, the Hon'ble Apex Court has held that "Kartha of Hindu Joint Family is having unfettered



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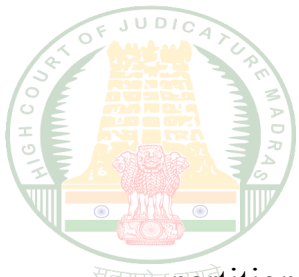


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right of alienation of Joint Family Property and the same is binding upon other members.

55.From the conjoint reading of the decisions referred to supra, it is made clear that a Kartha/Father Manager is having enormous powers of alienation with regard to Hindu Joint Family either for discharging his own debt or for the benefit of the estate and the same is binding upon other members of Hindu Joint Family. Further even if a sale is effected by a manager without legal necessity, the same is nothing but voidable and not void."

13.1. Relying on the above rulings, the learned counsel further argued that the plaintiffs admitted that on their consent, their father sold 10 cents to one Rajan, but their father alienated the suit property in favour of the defendants 1 and 2 without their consent. So, the plaintiffs' case is not acceptable at threshold, they have to challenge the sale executed by their father/3rd defendant in favour of the defendants 1 and 2 and that until it is challenged, the sale executed by the Karta of family would bind upon the plaintiffs. If really, the plaintiffs are aggrieved by alienation by their father, the plaintiffs have to file a suit for declaration that the sale executed by their father is not valid, so without seeking for declaration to that effect, the suit for



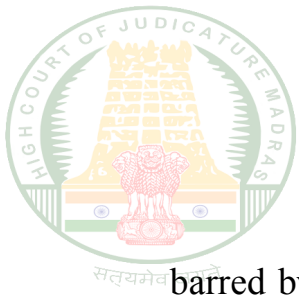
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partition is not maintainable and relied on decision of this court in the case of **Venkusah /v/ Baskaran in S.A.No.219 of 2014 dated 20.09.2019**, in which it is held in paragraph No.15 as follows:

“15. The view is based on the well settled principles of law that the Kartha/manager of the Hindu Joint Family has a right to alienate the suit property for legal necessity. If a member of the joint family impugns the alienation by the Kartha, he has to plead and prove that the alienation is not for legal necessity. Unless, he seeks to set aside the document, the relief of partition cannot be granted. I am therefore of the considered opinion that the additional question of law framed will have to be answered in favour of the appellant.”

13.2.The learned counsel further submitted that it is the case of the defendants 1 and 2 that the plaintiffs are their relatives and the plaintiffs were under custody of 2nd defendant when the defendants purchased the suit property under Ex.B.1 and Ex.B.2, dated 10.07.2000. Based on the said sale, revenue records were mutated in the name of the defendants 1 and 2 under Ex.B.3 to Ex.B.5. The plaintiffs have also not challenged those documents. In the absence of challenging the Ex.B.1 and Ex.B.2 sale deed, the suit is



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barred by limitation, by relying on the decision of the Hon'ble Apex Court in **Dastagirsab /v/ Sharanappa @ Shivasharanappa Police Patil (D) by LRs and Ors.** reported in **2025 INSC 1120** in which it is held in paragraph Nos.12 and 18 as follows:

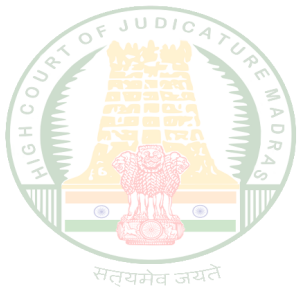
"12.Plaintiff-coparcener has assailed the sale transaction undertaken by 1st defendant-Karta on the ground it was not made for legal necessity but to meet his expensive and wasteful habits. Evidence has come on record 1st defendant-Karta had previously sold various properties of the HUF. Though it is the plaintiff's case that such sales were not for legal necessities, he has not challenged any of these transactions. To justify his present claim, the plaintiff asserts the 1st defendant assured him money derived from such sales would be settled in favour of the sons including the plaintiff and that no other properties would be sold. It is further the plaintiff's case, no money was settled in his favour or that of the 2nd defendant but substantial sums were settled in favour of 3rd and 4th defendant. Though the plaintiff alleges 1st defendant acted in a biased and unfair manner, admittedly the plaintiff has not taken any steps for recovery of such outstanding dues earlier or even in the present suit.

18. On the contrary, conduct of the plaintiff in belatedly challenging the sale transaction after five years in the year 2000 raises grave doubt regarding



his bona fides. Plaintiff sought to justify the delay by contending he was unaware of the sale since possession of the suit land was not parted with. Such explanation is wholly facetious as ample evidence in the form of mutation certificate, land record entries standing in the name of 5th defendant have come on record establishing his continued possession of the suit land. High Court not only ignored these facts improbabilising the plaintiff's case but made up a third case that the plaintiff was working for gain elsewhere and could not have been aware of the sale transaction. No such case was either pleaded or probalised by the plaintiff during trial. "

13.3.The learned counsel for the defendants 1 and 2 further submitted that the plaintiffs admit that they have one more sister, Seethalakshmi, but she has not been added as a party. Though the plaintiffs claim that she executed a relinquishment, the plaintiffs have not produced any document to substantiate the same. When the plaintiffs want to challenge the property sold to defendants 1 and 2, claiming a share, they also have to claim a share in the earlier sale of 10 cents. They have not executed any document to show their consent or executed any document to convey their share. So, the suit is bad for non-joinder of the necessary party and also bad for partial partition.



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13.4.The learned counsel for the defendants 1 and 2 further submitted that the plaintiffs, through their power of attorney, gave their consent in writing, not pressing the suit as it was settled out of Court. The said consent letter is marked as Ex.B.7. Further, the plaintiff's previous power of attorney filed Ex.B.7 - letter accepting the validity of Ex.B.1 & Ex.B.2 sale deeds executed in favour of the appellants/defendants 1 and 2. The plaintiffs have not entered into the witness box and deposed against the Ex.B.7 letter. The power of attorney as P.W.1 has admitted the consent given by the plaintiffs. When the plaintiffs have filed the suit through power of attorney, his evidence regarding Ex.B.7 is acceptable as his evidence binds upon the Principal, except for some personal knowledge. Hence, the first Appellate Court has erred in reversing the finding of the trial Court regarding Ex.B.7. Moreover, the plaintiffs have not entered into the witness box to substantiate their case that the suit property was sold without their consent, whereas one part was sold with their consent. The non examination of plaintiffs is fatal to their case, because the alleged not giving consent for the sale of the suit property and for giving consent for the sale of 10 cents to the said Rajan is within their personal knowledge. The learned counsel relies on decision of the Hon'ble Supreme Court in **Janki**



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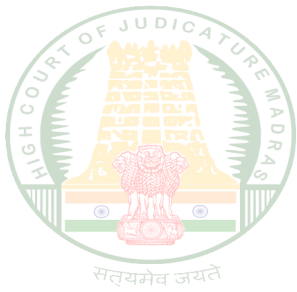
Vashdeo Bhojwani case reported in 2005 (2) CCC (Current Civil Cases)

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61, wherein it is held in paragraph Nos.11 and 12 as follows:

“11. In the context of the directions given by this Court, shifting the burden of proving on the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The power of attorney holder does not have the personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.

12. Order III, Rules 1 and 2 [CPC](#), empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 [CPC](#), confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the



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instrument. The term "acts" would not include depositing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined."

Therefore, the trial Court has properly appreciated the evidence of both sides and adjudicated the same in favour of the defendants. But, the first Appellate Court set aside that findings by holding that the said Ex.B.7 is not proved by examination by both parties and the non-joinder issue was cured as they were added during the appeal since the 3rd defendant died. The trial Court has properly appreciated the evidence adduced on both sides and correctly arrived at a decision dismissing the suit, whereas the first Appellate Court erred in reversing the finding of the trial Court. Hence, the second appeal may be allowed.



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14. The learned counsel for the respondents 1 and 2/plaintiffs contended that the trial Court has mainly dismissed the suit on the ground of character of property, non-joinder of Seeethalakshmi and based on Ex.B.7 consent for withdrawal of suit filed by previous power of attorney and that the suit is barred by limitation. The defendants 1 and 2 admitted that the 3rd defendant has sold the suit property as Karta of the Hindu Undivided Family. The plaintiffs' case is that the 3rd defendant sold the suit property without their consent, whereas the earlier sale was made with their consent. Only after the partition of the joint family property, the individual share would be allotted to each member of HUF, but in this case, there was no partition in respect of the suit property, so the 3rd defendant cannot sell the suit property, including the share of the plaintiffs. The trial court has also observed that the suit property is joint family property, and later it held that since the plaintiffs are living separately after their marriage, they are out of possession of the suit property. It has been held in various decisions that constructive possession is sufficient in Hindu Undivided Family. The trial Court has also not framed any issue regarding the character of the property. So, the suit property is joint family property. When the sale is made by 3rd defendant as head of the family, it is the bounden duty of the defendants to prove the legal necessity for such sale.



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There is no evidence to discharge the said burden of legal necessity for executing sales under Ex.B.1 and Ex.B.2. Hence, the sale by 3rd defendant in favour of defendants 1 and 2 is unsustainable and the learned counsel for plaintiffs relied on decision of the **Hon'ble Supreme Court in the case Dastagirsah /v/ Sharanappa case** reported in **2025 INSC 1120** in which it is held in paragraph No.11 as follows:

“11.Right of a Karta to sell joint family property is well settled. Karta enjoys wide discretion with regard to existence of legal necessity and in what way such necessity can be fulfilled. Whether legal necessity existed justifying the sale would depend on facts of each case. In [Beereddy Dasaratharami Reddy vs. V. Manjunath & Anr.](#) this Court succinctly elucidated:

“6. Right of the Karta to execute agreement to sell or sale deed of a joint Hindu family property is settled and is beyond cavil vide several judgments of this Court including [Sri Narayan Bal v. Sridhar Sutar](#) (1996) 8 SCC 54] , wherein it has been held that a joint Hindu family is capable of acting through its Karta or adult member of the family in management of the joint Hindu family property. A coparcener who has right to claim a share in the joint Hindu family estate cannot seek injunction



against the Karta restraining him from dealing with or entering into a transaction from sale of the joint Hindu family property, albeit post alienation has a right to challenge the alienation if the same is not for legal necessity or for betterment of the estate. Where a Karta has alienated a joint Hindu family property for value either for legal necessity or benefit of the estate it would bind the interest of all undivided members of the family even when they are minors or widows. There are no specific grounds that establish the existence of legal necessity and the existence of legal necessity depends upon facts of each case. The Karta enjoys wide discretion in his decision over existence of legal necessity and as to in what way such necessity can be fulfilled. The exercise of powers given the rights of the Karta on fulfilling the requirement of legal necessity or betterment of the estate is valid and binding on other coparceners.

7.Elucidating the position in Hindu law, this Court in [Kehar Singh v. Nachittar Kaur](#) (2018) 14 SCC 445 has referred to Mulla on Hindu Law and the concept of legal necessity to observe thus: (SCC pp. 449-51, paras 20-21 & 26)

“20.Mulla in his classic work Hindu Law while dealing with the right of a father to alienate



any ancestral property said in [Article 254](#), which reads as under:

254. Alienation by father.—A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may: (1) make a gift of ancestral movable property to the extent mentioned in [Article 223](#), and even of ancestral immovable property to the extent mentioned in [Article 224](#); (2) sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and great-grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt, and was not incurred for immoral or illegal purposes ([Article 294](#)).’

21. What is legal necessity was also succinctly said by Mulla in [Article 241](#), which reads as under:

‘Article 241

241. What is legal necessity.—
The following have been held to be family necessities within the meaning of [Article 240](#): (a) payment of government revenue and of debts which are payable out of the family property; (b) maintenance of coparceners and of the members of their families; (c) marriage expenses of male coparceners, and of the daughters of coparceners; (d) performance of the



necessary funeral or family ceremonies; (e) costs of necessary litigation in recovering or preserving the estate; (f) costs of defending the head of the joint family or any other member against a serious criminal charge; (g) payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a pre-existing debt;

The above are not the only indices for concluding as to whether the alienation was indeed for legal necessity, nor can the enumeration of criterion for establishing legal necessity be copious or even predictable. It must therefore depend on the facts of each case. When, therefore, property is sold in order to fulfil tax obligations incurred by a family business, such alienation can be classified as constituting legal necessity.’ (See Hindu Law by Mulla “22nd Edition”).

26. Once the factum of existence of legal necessity stood proved, then, in our view, no co-coparcener (son) has a right to challenge the sale made by the karta of his family. The plaintiff being a son was one of the co-coparceners along with his father Pritam Singh. He had no right to challenge such sale in the light of findings of legal necessity being recorded against him. It was more so when the



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plaintiff failed to prove by any evidence that there was no legal necessity for sale of the suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no evidence at all."

In K.C.Laxmana /v/ K.C.Chandrappa Gowda & Anr. reported in

2022 Live Law (SC) 381, it is held in paragraph No.12 as follows:

"12. It is trite law that Karta/Manager of a joint family property may alienate joint family property only in three situations, namely, (i) legal necessity (ii) for the benefit of the estate and (iii) with the consent of all the coparceners of the family. In the instant case, the alienation of the joint family property under Ex.P1 was not with the consent of all the coparceners. It is settled law that where an alienation is not made with the consent of all the coparceners, it is voidable at the instance of the coparceners whose consent has not been obtained (See :[Thimmaiah and Ors. Vs. Ningamma and Anr.1 \(2000\) 7 SCC 409](#)). Therefore, the alienation of the joint family property in favour of the second defendant was voidable at the instance of the plaintiff whose consent had not been obtained as a coparcener before the said alienation."



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14.1.The learned counsel further argued that the plaintiffs are co-owners and they are coparceners as per Section 8 of the Hindu Succession Act. Unless the defendants prove the legal necessity for alienation of the suit property in their favour by the 3rd defendant, the plaintiffs have the right over the suit property as that of the son as per Section 6 until final decree for partition by the Court of law. The learned counsel relied on the decision of the Hon'ble Supreme Court in the case of **Danamma alias Suman Surpur & Anr. /v/ Amar & Ors.**, reported in **(2018) 3 SCC 343**, in which it is held in paragraph Nos.23 and 26 as follows:

"23. Section 6, as amended, stipulates that on and from the commencement of the amended Act, 2005, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son....."

26. In the present case, no doubt, suit for partition was filed in the year 2002. However, during the pendency of this suit, Section 6 of the Act was amended as the decree was passed by the trial court only in the year 2007. Thus, the rights of the appellants got crystallised in the year 2005 and this event should have been kept in mind by the trial court as well as by the High Court. This Court in Ganduri Koteswaramma v. Chakiri



Yanadi held that the rights of daughters in coparcenary property as per the amended Section 6 are not lost merely because a preliminary decree has been passed in a partition suit. So far as partition suits are concerned, the partition becomes final only on the passing of a final decree."

14.2.The learned counsel for the plaintiffs further contended that a portion of the property was sold to one Rajan with the consent of the plaintiffs, who are members of an undivided family. So, the non inclusion of that property will not stand as a partial partition and the defendants 1 and 2 cannot question the same and relied on the following decisions.

(a) 1998 SCC Online Mad 273 in the case of Balakrishna Udayar /v/

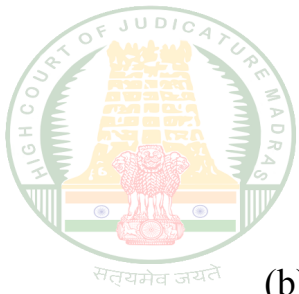
Chellammal, in which it is held in paragraph Nos.9 and 12 as follows:

9.In the decision reported in (1969) 2 SCWR 414 (Mst. Hateshar Kuer & others v. Sakaldeo Singh & others), Their Lordships held that, "The rule requiring inclusion of the entire joint estate in a suit for partition is not a rigid and inelastic rule which can admit of no exception. This rule aims at preventing multiplicity of legal proceedings which must result if separate suit



were to be instituted in respect of fragments of joint estates. Normally speaking, it is more convenient to institute one suit for partition of all the joint properties and implead all the interested cosharers so that all questions relating to the share of the various co-owners and the equitable distribution and adjustment of accounts can be finally determined. But this being a rule dictated by consideration of practical convenience and equity may justifiably be ignored when, in a given case there are cogent grounds for departing from it. When an item of property is not admitted by all the parties to the suit to be their joint property and it is contended by some of them that it belongs to an outsider, then a suit for partition of joint property excluding such items does not become legally incompetent because of any rule against partial partition....

12.Again, as found by the lower appellate Court, contention of partial partition is put forward only by the alienees. They cannot put forward such a contention against non-alienating co-owner. The judgment of the lower appellate court is, therefore, confirmed and consequently the Second appeal is dismissed."



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(b) 2014 (2) TNCJ 842 (Mad)(MB) in the case of Karuppiah and Another /v/ C.Muniyappan and Others, it is held in paragraph Nos.21 & 23 as follows:

"21. So far as the objection to partial partition is concerned, the said objection can be raised only by a sharer and the seventh defendant not being the co-owner, it is not open to him to take the plea. The present suit is one between the co-owner and a alienee and not really between the members of the family. Therefore, the co-owner is entitled to recover his share of the property in the schedule item and an alienee cannot contend that the suit is barred for partial partition when that right is given only to the members of the family.

22. In this regard, it is relevant to quote the decision reported in 1998 (2) Law Weekly - 414, BALAKRISHNA UDAYAR AND 3 OTHERS Vs. CHELLAMMAL AND 9 OTHERS, wherein this Court has decided the question of partial partition.

*"8. The only question to be decided is, whether the suit is bad for partial partition.....
When an item of property is not admitted by all the parties to the suit to be their joint property and it is contended by some of them that it belongs to an outsider, then a suit for partition of joint property*



excluding such items does not become legally incompetent because of any rule against partial partition .

"From the foregoing discussions, it appears to be well settled that -

(1) The rule that the suit for partition must cover the entire property held jointly by the parties is merely a rule of equity and convenience;

(2) A suit for partition must embrace only the property to which the parties have community of interest and unity of possession;

(3) there is substantially no difference in respect of the subject-matter of a suit for partition amongst Muslim co-owners or Hindu co-owners where they hold property as tenants-in-common; and

(4) A suit for partition of even one item of such property is maintainable, provided that the partition can be effected without much inconvenience to the other co-owners, In other words, in the case of tenants-in-common, whether such tenants are Mohammedans or Hindus, one of them is not obliged to sue for the partition of all the items of the property in which they are interested, inasmuch as each of them is entitled to his definite share in every item of the property, unless the



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partition sought for results inconvenience to the other tenants-in-common."

23. In view of the foregoing decision, the contention of the alienee, questioning the partial partition against the non-alienating co-owner is unsustainable and the question of law is answered against the appellant.

(c) 2022 SC Online 240 in the case of B.R.Patil /v/ Tulsa Y.Sawkar and Ors. it is held in paragraph Nos.10 and 11 as follows:

"10. This is the state of the pleading and evidence in support of the existence of the property other than what has been scheduled by the plaintiffs and for which partition is sought. It is true that the law looks with disfavor upon properties being partitioned partially. The principle that there cannot be a partial partition is not an absolute one. It admits of exceptions. In Mayne's 'Treatise on Hindu Law & Usage' 17th Edition, Paragraph 487, reads as follows:

"487. Partition suit should embrace all property – Every suit for a partition should ordinarily embrace all joint properties. But this is not an inelastic rule which admits circumstances of a particular case or the interests of justice so



require. Such a suit, however, may be confined to a division of property which is available at the time for an actual division and not merely for a division of status. Ordinarily a suit for partial partition does not lie. But, a suit for partial partition will lie when the portion omitted is not in the possession of coparceners and may consequently be deemed not to be really available for partition, as for instance, where part of the family property is in the possession of a mortgagee or lessee, or is an impartible Zamindari, or held jointly with strangers to the family who have no interest in the family partition. So also, partial partition by suit is allowed where different portions of property lie in different jurisdictions, or are out of British India. When an item of property is not admitted by all the parties to the suit to be their joint property and it is contended by some of them that it belongs to an outsider, then a suit for partition of joint property excluding such item does not become legally incompetent of any rule against partial partition.”

11. In the facts of this case having noticed the state of the pleadings and the evidence, we are of



the view that the interest of justice lies in rejecting the appellant's contention. “

14.3.The learned counsel for plaintiffs further argued that the defendants' case is that without challenging the sale deed under Ex.B.1 and Ex.B.2, which stood in their favour, the suit is not maintainable. This argument is not a valid one. Because, in respect of family property, the 3rd defendant has transferred his right alone and not the right of the plaintiffs, so the sale deeds - Ex.B.1 and Ex.B.2 need not be cancelled, the plaintiffs are entitled to seek partition of their share and relied on the decision of the Hon'ble Supreme Court rendered in **SK Golam Lalchand case in Civil Appeal No.4177 of 2024, dated 10.09.2024, in which it is held in paragraph Nos.23 to 25 as follows:**

"23. A faint effort was made in the end to contend that the plaintiff-respondent Nandu Lal had not asked for any relief of cancellation of the sale deed by which the property was purchased by the defendant-appellant S.K.Golam Lalchand and, therefore, is not entitle to any relief in this suit. The argument has been noted only to be rejected for the simple reason that [Section 31](#) of the Specific Relief Act, 1963 uses the word 'may' for getting declared the instrument as void which is not imperative in every case, more particularly when the person is not

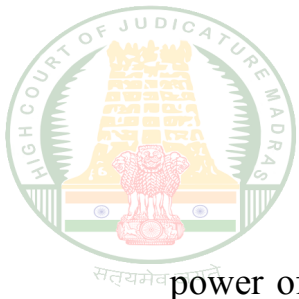


a party to such an instrument.

24. The suit property which is undivided is left with the co-owners to proceed in accordance with law to get their shares determined and demarcated before making a transfer.

25. The point for determination formulated in paragraph 12 above is accordingly answered and it is held that Brij Mohan alone was not competent to transfer the entire property without getting his share determined and demarcated so as to bind the other co-owners. Accordingly, the defendant-appellant S.K. Golam Lalchand has rightly been restrained by the decree of injunction in acting in derogation of the propriety rights of the co-owners until and unless the partition takes place.

14.4.The trial Court has also based Ex.B.7 for dismissal of the suit. The Ex.B.7 letter was given by the previous power of attorney of the plaintiffs without their knowledge and in collusion with the defendants. The trial Court has held that Ex.B.7 is valid, which was reversed by the first Appellate Court. As per provisions of Order XXIII Rule 3 of CPC., a compromise has to be produced before the Court along with the parties, and only after the satisfaction of such consent could it be considered by the Court. In this case, the previous



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power of attorney filed Ex.B.7 and his mere statement would not validate the said Ex.B.7, so Ex.B.7 is invalid and relied on decision of the **Hon'ble Supreme Court rendered in Amro Devi & Ors. /v/ Julfi Ram (Deceased) Thr LRs & Ors. case rendered in SLP (C) 14690 of 2015 reported in 2024 INSC 527**, in which it is held in paragraph Nos.9 and 23 as follows:

*"9.The Trial Court, by order dated 19.12.1992, dismissed the suit. It held that for proceeding under **Order XXIII Rule 3 of Code of Civil Procedure, 1908** the existence and production of written compromise between the parties duly signed by them is most important. It relied upon the ruling of this Court in Gurpreet Singh vs Chaturbhuj Gopal. Since the said compromise was not presented in written form duly signed by the parties, the mandate under **Order XXIII Rule 3 CPC** is not fulfilled and thus it lacks legal force. The Trial Court also held that statements before the District Court cannot be treated as agreement or compromise.*

*23.In the present case, neither the compromise deed has been reduced to writing, nor it is recorded by the court. Mere statements of the parties before court about such said compromise, cannot satisfy the requirements of **Order XXIII Rule 3 of the CPC**. Therefore, the compromise decree is not valid".*



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14.5. The trial Court has also held that the suit is bad for nonjoinder of the plaintiffs' sister. When the plaintiffs filed their first appeal, the 3rd defendant died and the plaintiffs' mother and sister, Seethalakshmi, were added as parties as per the order passed in I.A.No.177 of 2011 dated 09.09.2021 and subsequently, the plaint was amended on 20.09.2011. Moreover, the defendants have not challenged the said order. So, the question of non-joinder was cured in the appeal, which is a continuation of the suit. Therefore, the issue with respect of non-joinder cannot be raised at this stage. The trial Court has not considered the evidences let in on both sides in a prospective manner. But the first Appellate Court has properly appreciated the evidence and correctly reversed the judgment of the trial Court and allowed the appeal. Hence, there is no question of law arising for discussion in this second appeal and the second appeal may be dismissed.

15. Heard both sides and perused the entire records. Both sides filed written arguments also.

16. The plaintiffs have clearly pleaded in the plaint that their grandfather was Mariappa Pandaram. So, a grandson or granddaughter does not have a



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direct right over the suit property, since it is self acquired property of Mariappa Pandaram. On his demise, his property would be distributed among his Class 1 legal heirs as per Section 8 of the Hindu Succession Act.

Section 8 of the Hindu Succession Act reads thus:

8. General rules of succession in the case of males.—

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

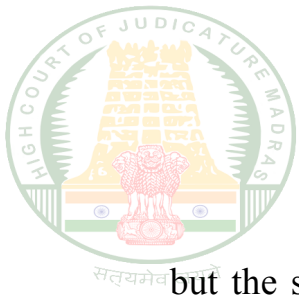
(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

17.A perusal of records it is clear that there is no dispute that the plaintiffs' father is the only son of their grandfather. The plaintiffs' father has inherited his father's property as his absolute property and the plaintiffs, being grandchildren, would not have a direct right over the suit property. That being the case, as rightly held by this Court in Govindan's case (supra judgment in S.A.No.273 of 2014) which followed the settled principle of The Hon'ble Supreme Court in AIR 1986 SC 1753) that "though a grandson would have a right to seek partition during the lifetime of his father in the ancestral property,



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but the same analogy cannot be extended to the self-acquired property of the grandfather which is inherited by the father under Section 8 of the Act.”

18.Moreover, a thorough consideration of both side rulings makes it very clear that as a Karta of a Hindu Joint Family, the Karta/Father Manager has enormous powers of alienation with regard to the Hindu Joint Family property either for discharging his own debt or for the benefit of the estate and the same is binding upon other members of the Hindu Joint Family. Further, even if a sale is effected by a manager without legal necessity, the same is nothing but voidable and not void. In this case, the 3rd defendant is the head of the family, who derived the property from his father as his absolute property U/s.8 of the Hindu Succession Act. So, any alienation with or without consent cannot be questioned by other members, unless the alienation was not made for the benefit of the family. In this case, the plaintiffs have not pleaded that the alienation was not made for the benefit of the family and challenged such alienation.

19.Moreover, a perusal of the ruling of the Hon'ble Supreme Court in 2025 INSC 1120, relied on by both sides, makes it very clear that if the sale in

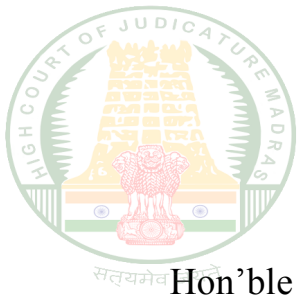


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favour of defendants 1 and 2 was not made for the benefit of the family, the sale has to be challenged by the plaintiffs. The sale took place in 2000 and it is the specific case of the defendants that the plaintiffs are their relatives and they were living with 2nd defendant at the time of that sale. This plea was not specifically denied by the plaintiffs. In this case, the plaintiffs admitted that ten cents in the suit survey number was sold to one Rajan with their consent. But, they have not clearly stated whether they have given written consent or executed a deed transferring their right when they claim a share over the property. They have also not produced any material to show the same. So, without seeking declaration for alienation in respect of the suit property without their consent, the suit for partition is not maintainable as rightly held by this court in **Venkusah /v/ Baskaran case rendered in S.A.No.219 of 2014.**

20.The rulings relied on the plaintiff's side are delivered in cases challenging the alienation, not in a partition suit. Hence, the citations relied on by the plaintiffs are not applicable to the facts of this case. Because it is for the plaintiffs who question the alienation by the Karta, they have to plead and prove that the alienation is not for legal necessity and unless they seek to set aside the document, the relief of partition cannot be granted. In this regard, the



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Hon'ble Supreme Court clearly settled the position in its decision reported in **2024 INSC 527**. From a perusal of the same, it is clear that the plaintiffs have to prove that the alienation is not for legal necessity. The trial court has correctly appreciated the evidence and rightly dismissed the suit, whereas the first Appellate Court erred in reversing the finding of the trial Court.

21.The next question is the non-joinder of a necessary party. It is an admitted fact that the plaintiffs have another sister Seethalakshmi. They have not added their sister Seethalakshmi as a party to the suit. Instead, they pleaded that their sister Seethalakshmi relinquished her right over the property. But there is no proof on the plaintiff's side to substantiate the same. The defendants have specifically contended in their written statement that the plaintiffs did not add their sister Seethalakshmi as a party. Even then, the plaintiffs have not filed any impleading application for adding their sister as a party. The trial Court has correctly framed the issue with regard to non-joinder and properly appreciated the evidence and answered correctly against the plaintiffs. The plaintiffs have not taken steps to implead their sister in the first appeal. But, on the demise of the 3rd defendant, the plaintiffs' sister Seethalakshmi and their mother Saraswathi Ammal were added as parties.

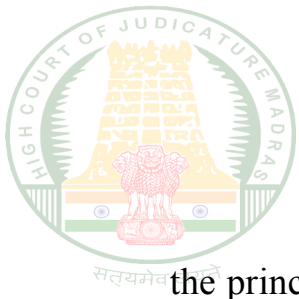


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They have been added only as LR's of the 3rd defendant on his demise. So, it could not be taken as the issue of non joinder is cured one. Moreover, when 3rd defendant died, all legal heirs are entitled to a share. But, the plaintiffs have not properly pleaded and properly amended the plaint and prayer while they were added as LR's of the deceased 3rd defendant. The first Appellate Court has not discussed these aspects, but erred in setting aside the decision of non-joinder issue.

22.On perusal of the records, the suit has been laid by the plaintiffs through their power of attorney. After laying the suit, the previous power of attorney was changed and substituted with the present power of attorney. During the subsistence of the power of attorney, the previous one filed Ex.B.7 stating a compromise was reached out of Court and so the plaintiffs consented to not pressing the suit. This Court has clearly held in Janki case (supra) that, as per the provision of Order III, Rules 1 and 2 of CPC, it confines only with respect to "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance of the power of attorney, he may depose for

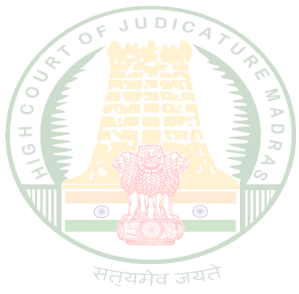


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the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. So, since the plaintiffs consented to not pressing the suit, the same has been reduced into writing under Ex.B.7 and produced by the power of attorney. Admittedly, as rightly argued by the defendants 1 and 2, the plaintiffs have not entered into the witness box to substantiate their claim that their previous power of attorney biased them and they have not settled the matter out of Court. The plaintiffs inconsistently take Ex.A.14 in their favour, whereas they opposed Ex.B.7. The act of the plaintiffs is not bona fide, as rightly held by the trial Court. The trial Court has correctly appreciated the evidence and rightly held that Ex.B.7 is a valid one. But, the first Appellate Court travelled beyond settled principles and reversed the finding of the trial Court.

23.From the above facts, the trial Court was correct in law in giving findings of the case, but the first Appellate Court erred in reversing the findings of the trial Court. The said findings of the first Appellate Court need interference by this Court by way of second appeal. Hence, the questions of law framed in this appeal are answered in favour of the appellants. Thus, this second appeal succeeds.



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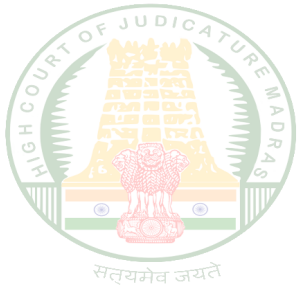
24.In the result, the Second Appeal is allowed. The judgment and decree, dated 17.10.2011, passed in A.S.No.83 of 2011 on the file of the learned Subordinate Judge, Devakottai, are set aside. The Judgment and decree of the trial Court dated 27.09.2010 in O.S.No.186 of 2006 is restored and the suit in O.S.No.186 of 2006 is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

01.07.2026

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The Additional District Munsif Court,
Karaikudi.
- 2.The Subordinate Court,
Devakottai.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.313 of 2012

P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
S.A(MD)No.313 of 2012
and
M.P(MD)No.1 of 2012**

01.07.2026