



SA(MD). No.363 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 11.03.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

SA(MD). No.363 of 2023
and
CMP(MD)No.7863 of 2023

1.Kalyani
2.S.M.Sekar

... Appellants/Appellants /
Defendants 1 & 2

Vs.

Rakkammal (Died)

1.A.Subbaiah
2.S.Chellappa
3.Meena

... Respondents / Respondents/
Plaintiffs

PRAYER :- Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment of the III Additional District Court, Tirunelveli, passed in A.S.No.15 of 2022 dated 08.11.2022 against the decree and judgment of the Sub Court, Valliyoor, passed in O.S.No.60 of 2018 dated 01.04.2021.



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For Appellants : Mr.T.Lenin Kumar

For Respondents : Mr.H.Arumugan

JUDGMENT

The defendants, in a suit for partition, aggrieved by the dismissal of the appeal in A.S .No.15 of 2022, on the file of III Additional District Judge, Tirunelveli, confirming the decree for the partition O.S.No.60 of 2018 before the Sub Court Valliyoor, are the appellants herein.

2. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3. The facts that are necessary for deciding the present second appeal, briefly:

4. The plaintiff Rakkammal filed a suit for partition and separate possession in O.S.No.60 of 2018 on the file of the Sub- Court, Valliyoor, claiming 1/3rd share in the suit properties. The case of the plaintiff was

2/12



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that the suit properties belong to her son Madasamy, who had died on 19.04.2017 and being a class one legal heir, the plaintiff filed the suit for partition and separate possession

5. The suit was resisted by the appellants as defendants, contending that the suit properties were the self acquired properties of the said Madasamy and the plaintiff does not have any right in the same.

6. Before the trial Court, the plaintiff's husband Subbaiah was examined as PW1 and exhibits A1 to A3 were marked on the side of the plaintiff. The first defendant examined herself as D.W.1. and no documents were marked on the file of the defendants.

7. The trial Court, finding that the plaintiff, as mother was certainly entitled to a share in the suit property, granted a preliminary decree for a partition, declaring the 1/3rd share of the plaintiff.



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8. Aggrieved by the preliminary decree passed by the trial Court, the defendants / appellants filed A.S.No.15 of 2022 before the III Additional District Judge, Tirunelveli. However, the plaintiff Rakkammal, after the disposal of suit, died on 02.05.2021 and therefore, the first appeal at the instance of the appellants was filed against the other legal heirs of Rakkammal, viz., the respondents, Subbaiah, Chellappa and Meena.

9. The first appellate Court finding that respondents herein were entitled to inherit 1/3rd share of the Rakkammal, dismissed the appeal. Aggrieved by the same, the defendants have come up by the way of the present second appeal .

10. At the time of admission of the second appeal on 06.07.2023, the following three substantial questions of law have been framed :



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i. Whether the First Appellate Court was right in the aspect of the law in upholding the preliminary decree of the trial Court?

ii. Have not the first Appellate Court committed a serious error in law without considering the Section 15 of the Hindu Succession Act, after the demise of the plaintiff in the suit?

iii. Has not the appellate Court committed a grave error in conforming the partition without taking into account of all the surviving legal representatives of the estate?

11. I have heard Mr. T.Lenin Kumar, learned counsel for the appellants / defendants and Mr.H.,Arumugam, learned counsel for the respondents.

12. Mr. T.Lenin Kumar, learned counsel for the appellants would mainly contend that while confirming the finding that Rakkammal, plaintiff is entitled to 1/3rd share, the first appellate Court failed to take cognizance of the fact that the grandson, that is the 2nd defendant would also be entitled to share in Rakkammal's entitlement, being son of



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pre-deceased son and therefore the first appellate Court should have modified the preliminary decree, accordingly, instead of observing and giving a finding that the respondents Subbaiah, Chellappa, Meena, would alone be entitled to 1/3rd share of Rakkammal.

13. Mr. H. Arumugam, learned counsel for the respondents 1 to 3 would attack the findings of the first appellate Court on the ground that the first appellate Court ought to have noticed that on the demise of plaintiff, the grandson of the plaintiff pre-deceased son's son would be entitled to a share along with the other legal heirs, namely respondents Subbaiah, Chellappa, Meena.

14. The counsel appearing for the respondents, Mr. H.Arumugam would fairly concede to the legal position that a son of a pre-deceased son would also be equally entitled to share the estate of a female Hindu, dying intestate, under Section 15 of Hindu Succession Act, 1956.



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15. Section-15 of the Hindu Succession Act,1956 is extracted for easy reference:

“5. General rules of succession in the case of female Hindus.-

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased(including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu



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from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband. “

16. The appellate Court has rightly taken note of the demise of plaintiff Rakkammal, but however, has erroneously found that only the respondents are the legal heirs and they would be entitled to succeed to the 1/3rd share of Rakkammal. The grandson of Rakkammal, namely the 2nd appellant is also one of the legal heirs who could be entitled to an equal share in the entitlement of the Rakkammal. Thus, the appellants are entitled to succeed.

17. The preliminary decree granted by trial Court and confirmed by first appellate Court stands modified as hereunder:

The second appellant viz., Sekar and the respondents, viz., Subbaiah, Chellappa, Meena shall be entitled to Rakkammal's 1/3rd share, each taking 1/12th share, with the first appellant, wife of



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Madasamy entitled to $1/3^{\text{rd}}$ share and the second appellant apart from his entitlement of $1/3^{\text{rd}}$ share, would also be entitled to an additional $1/12^{\text{th}}$ share as grandson of deceased Rakkammal.

18. The substantial questions of law are therefore answered in favour of the appellants /defendants.

19. The final shares of the parties are thus arranged as follows:

The first appellant	:	$4/12$ Share ($1/3$)
The second appellant	:	$5/12$ Share ($1/3$ ($4/12$)+ $1/12$)
1 st Respondent	:	$1/12$ Share
2 nd Respondent	:	$1/12$ Share
3 rd Respondent	:	$1/12$ Share
Total	:	 $12/12$ Share



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20. In the event of the appellants not having paid court fee, for declaring their share, it shall be open to the appellants to pay the appropriate court fee, before the trial Court, along with a memo within a period of four weeks, from the date of receipt of copy of the judgment and on such payment of Court fees for declaring their respective shares, the appellants shall also be entitled to a preliminary decree, declaring their 4/12 and 5/12 share each in the suit properties.

21. In the result, this Second Appeal is partly allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

11.03.2026

NCS : Yes/No
Index : Yes / No
Internet : Yes / No



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TO

1. The III Additional District Court,
Tirunelveli
2. The Sub Court,
Valliyoor,
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

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