



S.A.(MD)No.8 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.03.2026

DELIVERED ON : 30.03.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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1.Vanathi

2.Minor.Ragavi

... Appellants

[Minor second appellant is represented by first appellant]

Vs.

1.G.S.Veerappan

2.Muniyandi

3.Karupayee Ammal

... Respondents

[3rd respondent is given up vide order of this court dated 17.04.2024 made in S.A.(MD)No.8 of 2017]

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 02.09.2016 in A.S.No.34 of 2014 on the file of the Principal District Court, Dindigul, confirming the judgment and decree dated

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03.06.2014 made in O.S.No.11 of 2012, on the file of Sub Court,
Vedasanthur.

For Appellants : Mr.P.Muthuvijayapandian
For Respondents : Mr.S.Anand Chandrasekar,
for M/s.Sarvabhauman Associates

JUDGMENT

The plaintiffs in a suit for partition, aggrieved by the findings of the Principal District Judge, Dindigul in A.S.No.34 of 2014 confirming the judgment and decree in O.S.No.11 of 2012, on the file of the Sub-Court, Vedasandur, are the appellants herein.

2.The brief facts that are necessary for deciding the present Second Appeal are as follows:

The case of the plaintiff:

2.1.The suit properties originally belonged to Semba Gounder, father of the first defendant and the properties are ancestral properties. After the death of Semba Gounder, the first defendant purchased the properties in his name, from and out of the income that accrued from the ancestral properties. Some of the ancestral properties were also sold and from and out of the sale proceeds, two shops and two houses were constructed in S.No.



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1340/1(B). The said properties were belonging to Vellaiammal and her sister Karuppayammal. Items 4 to 9 of the suit schedule property were partitioned between Vellaiammal, wife of the first defendant and she was allotted the northern side. Vellaiammal, was therefore, entitled for half share and thereafter, she died in the year 2000. Karuppayammal, her sister was allotted the southern side of items 4 to 9. Defendants were aware of the same, but denied any partition between the two sisters.

2.2.The first defendant is the father-in-law of the first plaintiff. Second defendant is the brother-in-law of the first plaintiff. First plaintiff married one Thangavelu, who is the elder son of the first defendant in the year 1996. Second plaintiff was born to them. The husband of the first plaintiff died in a road accident on 22.09.1999. During his life time, the husband of the first plaintiff and father of the second plaintiff joined the execution of sale deeds on 13.07.1994, 02/02/1995 and 05.04.1995, to third parties. Subsequent to the demise of her husband, first plaintiff got employment and was appointed as a Nurse in Theni Government hospital. Therefore, she left the suit property along with her son, the second plaintiff. Taking advantage of the same, defendants have denied the entitlement of the plaintiffs. First plaintiff issued a



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notice on 25.06.2005, to which a reply was sent on 14.07.2005, with false allegations. Hence, the suit.

The case of the first defendant:

2.3.Relationship between the parties is admitted. The factum of the death of the first defendant in a road accident is also admitted. First item of property in S.No.1340/1(B) is an ancestral property, belonging to the first defendant. The properties were mortgaged by the first defendant, along with his brothers in the year 1955 and it is the first defendant who redeemed the said mortgage from and out of his personal income in the year 1975. The first defendant has two daughters and in order to maintain his family, educate the children and also to meet out the medical expenses of his wife, who suffered from cancer, the first defendant was compelled to borrow money and he was also constrained to sell 0.80 cents of ancestral property, besides his self-acquired properties, to repay the loan. The suit properties have been purchased only out of the income that accrued to the first defendant as an LIC agent and the ancestral properties did not yield any income, whatsoever.



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2.4.Insofar as property purchased in S.No.1477/2B, first defendant borrowed Rs.1,10,000/- from LIC and put up construction in the year 1981. He re-paid the loan from and out of the income. The said property is his self-acquired property. From and out of the income from the commission as LIC agent, first defendant also purchased a house site, in Gujiliamparai, comprised in S.No.1488. This property is also a self acquired property. He did not purchase any property from and out of the income from the ancestral property, especially, when the income from the ancestral property was not even sufficient to meet monthly expenses. There was no surplus available for acquiring further properties. Therefore, the plaintiffs have no right to demand partition.

2.5.The properties situate in S.No.557/1, originally belonged to Vellaiammal and Karuppayammal. Suit is bad for non-joinder, on account of said Karuppayammal not being impleaded as party to the suit. As per partition between Vellaiammal and Karuppayammal, Vellaiammal sold S.Nos.58/15, 58/7, 58/9 and 59/2 and subsequently, Vellaiammal also died. These properties are not available for partition. The plaintiff was willing to partition the available properties, excepting items 2 and 3, in order to repay the



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subsisting loans. However, plaintiff was not willing for the same and sent a notice with false allegations. First defendant has already executed a Will on 09.09.2005, in respect of the second item of property, in favour of the second plaintiff and in respect of third item, in favour of the second defendant. Plaintiffs are aware of the same. There is no cause of action for filing the suit.

Written statement filed by the third defendant:

2.6.The properties belonging to the mother of the third defendant in S.No.58/5, 58/9, 58/15 and 59/2 were already sold. Property in S.No.58/3, was given to Karuma Gounder, for conducting the obsequious ceremonies and that has also been sold to Chettinad Cement Corporation. The suit property in S.No.57/1 together with well is alone jointly enjoyed by Vellaiammal and third defendant. Other half sharer has not been added as a party. First defendant has already executed a Will in favour of the second plaintiff and also deposited Rs.25,000/- in the name of the second plaintiff. Both items 2 and 3 are self acquired properties of the first defendant. The first defendant has put up construction out of his own income and not from any income that accrued from the ancestral properties.



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3. Before the trial Court, at trial, the first plaintiff examined herself as P.W.1 and one Ramasamy as P.W.2 and marked Exs.A1 to A15. On the side of the defendants, first defendant was examined as D.W.1, one Gunasekaran as D.W.2 and one Govindarajan, Assistant Administrative Officer, was examined as D.W.3 and third defendant was examined as D.W.4. The trial Court granted a preliminary decree in respect of the suit properties, excepting items 2 & 3.

4. Aggrieved by the dismissal of the suit in respect of Items 2 & 3, present Appeal has been filed.

5. This Court on 27.02.2023, admitted the appeal on the following substantial questions of law:

“(i) Whether the lower courts are correct in holding that the first respondent / defendant had not ploughed sale proceeds garnered through alienations of joint family properties under Exs.A.6 to A8 into construction of building on third item of suit properties?”



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(ii) Whether the lower courts are correct in holding that the third item of suit properties is self acquired property of first respondent – defendant overlooking legal presumption as to acquisition property by Kartha of joint Hindu family during his management of its properties?”

6.After hearing the learned Counsel for the parties, finding that insofar as Item No.2, no substantial question of law has been framed, the following additional substantial question of law was framed:

“Whether 50% of Item 2 which fall to the share of the first defendant from his father would part-take the character of ancestral property entitling the plaintiffs to claim a share?”

7.I have heard Mr.P.Muthuvijayapandian, learned Counsel for the appellants and Mr.S.Anand Chandrasekar for M/s.Sarvabhauman Associates, learned Counsel for the respondents.



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Arguments of learned Counsel for the appellants:

8.Learned Counsel for the appellant Mr.P.Muthuvijayapandian, would fairly concede that the properties set out in items 5 to 9 have already been sold and are now in possession of third parties and the plaintiffs are not interested in pursuing their relief of partition, in respect of these items. He would limit his arguments to items 2 ad 3 and attacks the findings of the trial Court as well as the appellate Court that these two items were self-acquired properties of the first appellant.

9.Mr.P.Muthuvijayapandian, learned Counsel for the appellant would further submit that Item 2 property was settled by the father of the first respondent on the first respondent and his brother and the 50% share of his brother was purchased by the first respondent and thus, the entire 100% came to be possessed and held by the first respondent. He would therefore, state that when admittedly, the first respondent claimed the said item of property to be a Hindu undivided family property, atleast the 50% that came to the share of the first respondent in the 1954 settlement deed, will have to be treated as ancestral property, entitling the plaintiffs to a share,



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consequent to the demise of the son of the first respondent in a road accident.

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10.Insofar as Item 3, Mr.P.Muthuvijayapandian, learned Counsel for the appellant would state that the Courts below considered Exs.A.6, A7 and A8, which are sale deeds, that were executed on 13.07.1994, 02.02.1995 and 05.04.1995, which were clearly establishing the factum of having applied the sale proceeds for putting up construction in Schedule III property. Pointing out to the fact that two houses and two shops were constructed and they were meant to be two shares, namely to the husband of the first appellant and father of the second appellant and the second respondent herein, the other son of the first respondent, learned Counsel would state that the conduct of the parties clearly established that the appellants' share to one shop and one house could not have been denied. Merely because plaintiffs had to go out of the Item 3 property, on account of avocation of the first appellant, taking her son along, it would not amount to appellants giving up their rights or share in the property. Learned Counsel would therefore, pray for the appeal being allowed, insofar as Items 2 & 3 of the suit schedule properties, by granting a preliminary decree in respect of the their two items of properties.



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Arguments of learned Counsel for the respondents:

11.Per contra, Mr.S.Anand Chandrasekar, learned Counsel appearing for the respondents would state that insofar as Item 2, the property was gifted by the father of the first respondent on 05.02.1954, under Ex.B.6. It was the absolute property of the first respondent and no right could be claimed by the appellants when the 50% share of the husband of the first appellant and father of the second appellant has already been purchased by the first respondent, for consideration.

12.Insofar as Item 3, Mr.S.Anand Chandrasekar, inviting my attention to Ex.B.1, B.9, B.22 and B.23, would contend that the construction was admittedly sourced from and out of the income of the first respondent, including the assistance by way of a loan from LIC, by mortgaging the property. It is therefore, his submission that the first defendant had clearly established that, he had exercised absolute rights over this item of property and that the entire construction was put up at his cost and also by availing loan from LIC, where he was employed as an agent. He would also state that, plaintiff has not established any nexus between the sale of



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properties in Exs.A6 to A8 and the application of the sale proceeds for the construction in Item 3 property. In fact, it is his further submission that the sale deeds under Ex.A.6 to A8, were long after the construction was put up in the third item of suit property. Therefore, they were of no relevance to establish that the construction was put up out of joint family funds or ancestral nucleus. He would therefore, pray for dismissal of the Second Appeal.

Substantial Questions of Law 1 & 2:

13.These questions pertain to Item 3 of the suit property. Admittedly, the land was purchased under Ex.B.9, in and by registered sale deed dated 20.01.1982, in the name of the first respondent. The first respondent has exhibited overwhelming documentary evidence to substantiate his case that, the first respondent availed of loan from LIC, to put up construction of a superstructure in the form of houses in Item 3 of the suit property. Exs.B.10 and B.11 are dated 20.01.1993 and 22.04.1993. These relate to the loans availed of by the first respondent from LIC. Under Exs.B.22 & B.23, which are also dated 11.12.1991 and 17.03.1993, it is noted that approvals have been obtained for construction of the suit structure in Item No.3.



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14.Admittedly, constructions have also been put up only in the year 1993. In such circumstances, the plaintiff cannot fall back on Exs.A6 to A8 and contend that the sale proceeds that the properties which have been sold much later in 1994 could have been applied for putting up construction in Schedule 3 property, that too, when the land admittedly was standing in the name of the first respondent. Weighed against each other, the evidence adduced by the plaintiffs pales into insignificance and does not in any manner establish the plaintiffs' averments that the said item of property was purchased from and out of the income available in excess at the hands of the joint family and that construction put up thereon, was also from and out of the sale proceeds from Exs.A6 to A8.

15.I do not see any error committed by the Courts below in appreciating the oral documents in coming to the conclusion that the first respondent was the absolute owner of the third item of the property and the plaintiffs have miserably failed to establish that they have any iota of evidence. Substantial questions of law 1 & 2 are answered against the plaintiffs.



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Substantial Question of Law No.3:

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16.This pertains to item 2 of the property. It is the case of the plaintiffs / appellants that this second item of property was originally belonging to the father of the first respondent and he had gifted the same to the first respondent and his other son and the other son's share of 50% was purchased by the first respondent himself. Therefore, the plaintiffs contend that insofar as the 50% that belong to the first respondent, he having got it from his father was certainly available for partition, even if the other 50% purchased from his brother could be treated as the first respondent's self acquired property.

17.The case of the first defendant is that the second item of property originally belonged to his father Semba Gounder, who in and by a gift settlement deed dated 05.02.1954, in Ex.B.6 had settled the property to himself and his brother Kulla Gounder and that the first respondent has purchased 50% share of Kulla Gounder, in Ex.B.7 sale deed and ever since the first defendant has been in absolute possession and mutating the revenue records and obtaining patta in his name. Patta has also been exhibited as Ex.B.8.



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18.In the written statement, the first defendant has asserted that the said item of property comprised in S.No.143/2, is his self acquired property. I do not find any admission that the said property was the coparcenary ancestral property, at the hands of the first defendant. The very fact that the property was settled on the first respondent and his brother under a registered gift deed also evidences the fact that, the said item of property is the absolute property of the first respondent and he was in absolute possession and enjoyment of the same, in his own right, after effecting mutation of revenue records, including patta. Therefore, I do not find any material on the side of the appellants, to justify or exhibit their claim that, item 2 property was also an ancestral property and atleast 50%, which first respondent got from his father would have to be treated as coparcenary property. Therefore, the findings of the Trial Court, confirmed by the Appellate Court, do not warrant interference. The third question of law is also answered, accordingly.

19.Though the Second Appeal is being dismissed, it has been brought to my notice by the learned Counsel for the respondents that Item 2 of the property has been bequeathed to the second



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appellant, who is none else than the grand-daughter of the first respondent and simultaneously Item 3 has been bequeathed to the second defendant, through a Will dated 09.09.2005. Learned Counsel would also state that the appellants, therefore cannot have any grievance with regard to Item 2, since the entire Item 2 is now going to fall on the second appellant's shoulders, on the demise of the first respondent.

20.In view of the litigation, this Court only hopes that the first respondent does not cancel the said Will dated 09.09.2005 and ensures that the wishes expressed in the said Will are ultimately carried out and the second appellant takes the second item of property and the second defendant, taking the third item of the suit property.

21.In fine, the Second Appeal stands dismissed. However, considering the relationship between the parties, there shall be no order as to costs.

30.03.2026

Index : Yes / No

NCC : Yes / No

MR

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To

1.The Principal District Judge,
Dindigul.

2.The Sub Judge,
Vedasanthur.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI, J.

MR

PRE-DELIVERY JUDGMENT MADE IN
S.A.(MD)No. 8 of 2017

30.03.2026