

SA(MD).Nos.65 of 2026 and 389

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment reserved on
15.06.2026

Judgment pronounced on
24.06.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

SA(MD) Nos.389 of 2024 and 65 of 2026 and
CMP(MD).No.9170 of 2024

SA(MD).No.389 of 2024

1. V. Mutharasu
2. V. Muthukumar

.. Appellants / Plaintiffs

Vs.

- 1.P. Vellaichamy
2. V. Periyasamy
3. V. Sangili
4. J. Ponrakku
5. S.Thangarakku

.. Respondents / defendants

Prayer: Second Appeal filed under Section 100 CPC to set aside the Judgment and decree passed in A.S.No.31 of 2022 on the file of the Additional District and Sessions Judge, Srivilliputur dated 10.11.2023 reversing the Judgment and decree passed by the learned Additional Subordinate Judge, Srivilliputur in O.S.No.9 of 2015, dated 16.12.2021.

For Appellants

: Mr.M.S. Suresh Kumar

For Respondents 2 & 3

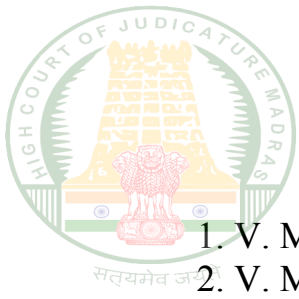
: Mr. D. Srinivasa Ragavan
for Mr.G. Thalaimutharasu

SA(MD).No.65 of 2026

1. V. Periyasamy
2. V. Sangili

.. Appellants / defendants 2 & 3

Vs.



1. V. Muthuarasu
2. V. Muthukumar
3. P. Vellaichamy
4. J. Ponrakku
5. S. Thangarakku

.. Respondents 1 & 2 / Plaintiffs

.. Respondents 3 to 5 / defendants

Prayer: Second Appeal filed under Section 100 CPC to set aside the Judgment and decree passed by the learned Additional District and Sessions Judge, Srivilliputtur dated 10.11.2023 made in A.S.No.10 of 2022, by reversing the Judgment and decree made in counter claim in O.S.No.9 of 2015 dated 16.12.2021 on the file of the learned Additional Subordinate Judge, Srivilliputtur.

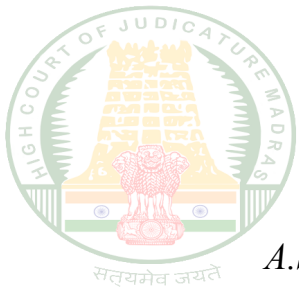
For Appellants : Mr. D. Srinivasa Ragavan
for Mr.G. Thalaimutharasu

For Respondents 2 & 3 : Mr.M.S. Suresh kumar

COMMON JUDGMENT

The second appeal in SA(MD).No.389 of 2024 is at the instance of the plaintiffs in a suit for partition. Aggrieved by the dismissal of the counterclaim filed in the suit for partition, defendants 2 and 3 have filed Second Appeal in SA(MD).No.65 of 2026.

2. SA(MD).No.389 of 2024 has been admitted by this Court on 30.07.2024 on the following substantial questions of law:



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1. *Can the Lower Appellate Court simply allow the appeal in A.S.No. 31 of 2022 by setting aside the judgment and decree in O.S.No. 9 of 2015 without taking into consideration the amended Central Act of Hindu Succession Act of 2005 and thereby ought to have allotted equal share to the daughters also?*

2. *When the DWI (2nd defendant) has categorically admitted in the cross examination that the properties under B-schedule was purchased are all the members of the joint family, can the Lower Appellate Court hold that the B-schedule properties are the individual properties of the defendants 2 and 3?*

3. *Can the Lower Appellate Court simply believed the plea made by the 2nd defendant that he was working as a driver without any supporting oral evidence or any documents?*

3. S.A.(MD).No.65 of 2026 is yet to be admitted. However, I have heard both the appeals together.

4. The brief facts necessary for the adjudication of these two second appeals are as follows:

i) The plaintiffs filed a suit in O.S.No.9 of 2015 on the file of the learned Additional Subordinate Judge, Srivilliputhur, seeking partition and separate



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possession of the “B” Schedule property and for a declaration of their two-fifth share in the said property. The appellants in S.A.(MD).No.65 of 2026 / defendants filed a counterclaim contending that the counterclaim schedule properties were not available for partition, as they belonged to them absolutely, and also sought a declaration of their rights in respect of the other items of property. However, the trial Court decreed the suit in favour of the plaintiffs by declaring their two-fifth share in the “B” Schedule property and also proceeded to allow the counterclaim filed by the appellants in S.A.(MD).No.65 of 2026 by granting them a one-seventh share in the properties set out in the counterclaim.

ii) Aggrieved by the judgment and decree of the trial Court, the appellants in S.A.(MD).No.65 of 2026 preferred A.S.No.31 of 2022, and the plaintiffs preferred A.S.No.10 of 2022. Both the appeals were disposed of by a common judgment dated 10.11.2023.

iii) The first appellate Court allowed the appeal filed by defendants 2 and 3 and set aside the preliminary decree granting a two-fifth share in the “B” Schedule property to the plaintiffs. The first appellate Court also set aside the decree passed in the counterclaim in favour of defendants 2 and 3. Aggrieved by the judgment and decree passed in A.S.No.31 of 2022, the plaintiffs have preferred S.A.(MD).No.389 of 2024. Aggrieved by the dismissal of the



counterclaim and the reversal of the decree granted by the trial Court, defendants 2 and 3 have preferred S.A.(MD).No.65 of 2026.

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5. I have heard Mr. D. Srinivasa Ragavan, learned counsel appearing for Mr. G. Thalaimutharasu, for the appellants / defendants 2 and 3 in S.A. (MD).No.65 of 2026 and for the respondents 2 and 3 / defendants in S.A. (MD).No.389 of 2024, and Mr. M.S. Suresh Kumar, learned counsel for the appellants / plaintiffs in S.A.(MD).No.389 of 2024 and for the respondents 1 and 2 / plaintiffs in S.A.(MD).No.65 of 2026.

6. For the sake of convenience, the parties are referred to according to their ranking before the trial Court.

7. Mr. M.S. Suresh Kumar, learned counsel for the plaintiffs, taking me through the relationship between the parties and the chain of events leading to the filing of the suit, would contend that the parties were living together as members of a joint family and that the first defendant was the father of the present appellants. According to the case of the plaintiffs, and as pointed out by Mr. D. Srinivasa Ragavan, even in the plaint it was specifically pleaded that the father had purchased the “B” Schedule property in the names of his two sons, viz., defendants 2 and 3, only for sentimental and auspicious reasons, and that



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the property was purchased entirely out of the surplus funds generated from the “A” Schedule property. He would further submit that, pending the suit, the father died and, therefore, there was no opportunity to examine him to establish the intention behind the purchase of the “B” Schedule property in the names of defendants 2 and 3. He would further contend that defendants 2 and 3 had no independent source of income of their own, much less sufficient income to have acquired the “B” Schedule property as their separate and exclusive property. He would further submit that the trial Court had rightly taken note of the pleadings and the evidence adduced by the parties and granted a preliminary decree in favour of the plaintiffs in respect of the “B” Schedule property, which finding was erroneously reversed by the first appellate Court, without noticing the vital admissions elicited from the defendants during cross-examination.

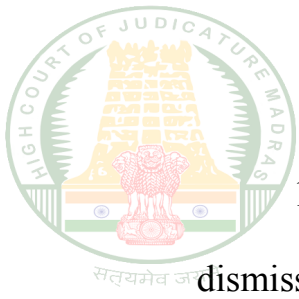
8. Mr. M.S. Suresh Kumar would also take me through the evidence of D.W.1, the second defendant, who has stated that the “B” Schedule property was purchased in the names of all the members of the joint family and that they were all living together. He would further submit that defendants 2 and 3 had not placed on record any material whatsoever to establish that they possessed sufficient funds to purchase the “B” Schedule properties in their names. He would, therefore, contend that the first appellate Court had clearly fell in error, in reversing the well-considered findings of the trial Court, which were based



on the admissions made by the second defendant while deposing as D.W.1.

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9. Per contra, Mr. D. Srinivasa Ragavan, learned counsel for defendants 2 and 3, would submit that the first appellate Court had rightly set aside not only the preliminary decree granted in respect of the “B” Schedule property. He would contend that the properties covered under the counterclaim had already been settled in favour of the sister and the plaintiffs and had thereafter been sold. He would further submit that merely because the parties were living as members of a joint family, it does not necessarily follow that the properties, admittedly purchased in the names of defendants 2 and 3, are also joint family properties. He would further contend that the plaintiffs have failed to produce any evidence, much less satisfactory and reliable evidence, to establish that the “A” Schedule property was yielding sufficient surplus income to facilitate the purchase of the “B” Schedule property. He would, in any event, submit that the presumption is strongly in favour of the purchasers in whose names the property stands, namely defendants 2 and 3, thereby implying that the property is their absolute property and not a joint family property. He would therefore contend that the first appellate Court has rightly interfered with the erroneous findings of the trial Court and that no interference is warranted with the judgment and decree of the first appellate Court.



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10. Though S.A.(MD).No.65 of 2026 has been filed challenging the dismissal of the counterclaim, I find that the appeal was necessitated only on account of the challenge made by the plaintiffs with regard to the “B” Schedule property and that the appeal is more or less in the nature of a protective measure and abundant caution . I have heard the submissions of the learned counsel for the parties, including the submissions made on behalf of the appellants in S.A. (MD).No.65 of 2026. However, as already indicated above, the said second appeal has not yet been admitted._The first appellate Court has rightly found that the appellants are not entitled to any relief in respect of the other properties set out in the counterclaim and that their rights, if any, can at best be confined to the “B” Schedule property.

11. The findings of the first appellate Court, setting aside the decree passed in the counterclaim are clearly in order and are based on the pleadings and materials brought on record before the trial Court. I do not find any perversity in the appreciation of the evidence or the pleadings warranting interference in the second appeal. No substantial question of law arises for consideration in S.A.(MD).No.65 of 2026. Accordingly, S.A.(MD).No.65 of 2026 is dismissed.

12. Coming to S.A.(MD).No.389 of 2024, Mr. M.S. Suresh Kumar,



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learned counsel for the plaintiffs, has primarily contended that the second defendant has admitted that the “B” Schedule property was purchased in the names of all the members of the family. In this regard, I have carefully gone through the entire evidence of D.W.1, the second defendant. From a reading of his evidence, it is evident that the witness has consistently maintained that the “B” Schedule property was purchased in the names of defendants 2 and 3. It is settled law that the evidence of a party has to be read as a whole and not in isolation.

13. It is the specific case of the second defendant that the “B” Schedule property belongs exclusively to himself and the third defendant and that they possessed sufficient funds to acquire the “B” Schedule property. The alleged admission in cross-examination that the “B” Schedule property was purchased in the names of all the family members is, in fact, factually incorrect. Therefore, I do not see how the said stray admission can be put against the defendants so as to deny them the rights to which they are otherwise entitled.

14. In a suit of this nature, where the property admittedly stands in the name of one or more members of the family, the burden lies heavily on the person who alleges that the property is not the absolute property of the persons in whose names the property has been purchased, but is a joint family or



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coparcenary property acquired from and out of the joint family funds available with the Hindu Undivided Family. In the present case, there is absolutely no evidence available or brought on record by the appellants/plaintiffs to discharge such burden.

15. The appellants/plaintiffs cannot rest upon the weakness of the defendants' case and contend that the defendants have failed to produce documents to establish that they had sufficient income to purchase the “B” Schedule property in their names. The first appellate Court has, therefore, in my considered opinion, rightly reversed the erroneous findings of the trial Court, including the preliminary decree granted in favour of the plaintiffs and the decree passed in the counterclaim in favour of defendants 2 and 3. I do not find the findings of the first appellate Court to be illegal, infirm, perverse, or improper so as to warrant interference by this Court in the exercise of its jurisdiction under Section 100 of the Code of Civil Procedure.

16. In fact, I do not find any ground to entertain S.A.(MD).No.389 of 2024, and the substantial questions of law are answered against the appellants. Consequently, S.A.(MD).No.389 of 2024 is dismissed.

17. In the result, both the Second Appeals are dismissed. There shall be



SA(MD).Nos.65 of 2026 and 389



no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

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24.06.2026

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

1. The Additional District and Sessions Judge, Srivilliputur.
2. The Additional Subordinate Judge, Srivilliputur



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SA(MD).Nos.65 of 2026 and 389

P.B.BALAJI.J.

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Pre-delivery Judgment made in
SA(MD) Nos.389 of 2024 of 2026 and 65 of 2026 and
CMP(MD).No.9170 of 2024

24.06.2026