



S.A.(MD)No.59 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	16.09.2025
Pronounced On	:	21.01.2026

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

S.A.(MD)No.59 of 2018
and
Cros.Obj.(MD).No.14 of 2025
and
C.M.P.(MD).No.1037 of 2018

*Sivaparangiriya Pillai (died)

1.Vijaya

2.P.Jayakumar

3.Arumugam

4.Krishnamoorthy

... Appellants

Vs.

1.Muthusamy

2.Ramakrishnan

3.Meenakshi Ammal

4.Jegannathan

5.Chellam Pillai

... Respondents

****cause title accepted vide Court order dated 08.01.2018 made in C.M.P.***



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(MD).No.7916 of 2016 in S.A.(MD).SR.No.8293 of 2016

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Memo presented before the Court on 18.04.2024 is recorded, to the effect that respondent Nos.3 to 5/tenants, are given up as they not incorporated of suit property V.C.O., dated 18.04.2024 made in S.A.(MD).No.59 of 2018.

PRAYER:- Second Appeal has been filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No. 74 of 2008 dated 17.10.2014 on the file of the learned Principal District Judge, Madurai allowing in part the judgment and decree dated 29.02.2008 passed in O.S.No.297 of 2004 on the file of the Principal Sub Judge, Madurai where under the suit was dismissed with costs.

For Appellant : Mr.S.Manohar

For Respondent : Mr.R.Devaraj for R1

No Appearance for R2

R3 Given up

JUDGMENT

The legal heirs of the first defendant in the O.S.No.297 of 2004 have filed this appeal challenging the judgment and decree in A.S.No.74 of 2008 on the file of the learned Principal District Judge, Madurai.



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2.For the sake of convenience and brevity, the parties are referred to as per their litigative status before the trial Court.

3.The case of the plaintiffs:

The plaintiff's maternal aunt Kanniyammal was owner of the suit scheduled property and she executed the registered settlement deed dated 20.01.1950 to do various Charity Activities mentioned in the deed:

3.1.It is stated in the said deed that during her lifetime, she and the plaintiff's mother can jointly do charity mentioned in the settlement deed, namely, in the Tamil month of Margali every year as a ritual act of devotion to Sri Nataraja Moorthy Swamy during the procession of the Sri Nataraja Moorthy Swamy, the Thiruvathirai Utchavam at Anupanadi village and Thirukan has to be staged in front of the trust properties ie., first item of the suit scheduled property. In the Tamil month of “Thai”, every year lord Shri Koodal Alagar Perumal Swamy Thirukan Urchavam is to be conducted in the same property. There is also another Nithiya Deepa Kattalai for lighting at the Ujanni Mahali Amman Kovil on every day at Ayyanar Kovil Shir Anupanadi. In the deed it is specifically stated



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that after the death of Kanniyammal, the plaintiff's mother, Pappammal should do all the things and enjoy the properties without making any alienation of the property and after the death of Pappammal all her legal heirs are jointly entitled to enjoy the suit scheduled properties. Kanniyammal died on 19.01.2002, and subsequently, the plaintiff as one of the sons of Pappammal came to know that Pappammal executed the settlement deed 10.10.1990, in favour of the defendant Nos.1 to 3 deviating from the condition of the original settlement deed dated 20.01.1950 and also he came to know that Pappammal during her lifetime executed exchange deed relating to the properties covered under the deed dated 20.01.1950 in violation of the terms and conditions and hence, he seeks to set aside the settlement deed executed in favour of the defendant Nos.1 to 3 as per deed dated 10.10.1990 and to frame the scheme and also seeking accounts for the property mentioned in the deed.

3.2.The third defendant filed the written statement adopted by the defendant Nos.1, 2, 4 and 6 stating that the allegation in the plaint that the charity, namely, the Thirukan Urchavam mentioned in the deed was



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not done is not correct and the same has been properly done. Pappammal executed the settlement deed in the year of 1990 to the knowledge of the plaintiff and he was never in the management of the properties and the deed was never construed as a private family trust in respect of suit properties and terms are in the nature of family settlement and the suit is not maintainable without obtaining permission under Section 92 of C.P.C., and also the plaintiff is not entitled to any relief in the suit and Pappammal expressed her intention to transfer the entire right under the settlement deed in favour of the defendant Nos.1 to 3 and they also stated that the payment of the Court fee as such is not correct and therefore, the plaintiff has no cause of action and prayed for dismissal of the suit.

3.3.On the basis of the pleadings the learned trial judge, framed the issues and decided all the issues against the plaintiff and dismissed the suit. Aggrieved over the same, the plaintiff filed the appeal suit in A.S.No.74 of 2008 on the file of the learned Principal District Judge, Madurai. The learned Principal District Judge, partly decreed the suit by allowing the appeal by setting aside the judgment and decree passed in O.S.No.297 of 2004 on the file of the Principal Sub Judge, Madurai and



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the plaintiff's prayer to declare the settlement deed executed in favour of the defendants in the year 1990 is not valid. Apart from that, all the documents executed were contrary to the terms of the 1950 documents, namely Ex.P4 to Ex.P6 and as such they were illegal and also the plaintiff is also entitled to rendition of the accounts. But, he dismissed the suit for framing of the scheme.

4.Challenging the same, the defendants filed the present second appeal in S.A.(MD).No.59 of 2018 and during the pendency, they deleted the relief against the defendant No.7, on the ground that they handed over the possession of the properties as a tenant and the plaintiff also filed the cross appeal challenging the dismissal of the suit, namely, failing to frame the scheme. Both were taken together and the case was not admitted and hence, this Court admitted the second appeal and cross appeal in the following substantial questions of law framed by the learned counsel for the appellant and Cross objector and heard at length.

4.1.The following substantial questions of law arise for consideration in the Second Appeal:



(i)Whether the first Appellate Court was right in decreeing the suit in part when the alleged Trust is not Plaintiff nor party in the suit?

(ii)Whether the First Appellate Court was right in decreeing the suit holding that the settlement deed dated 10.10.1990 is not valid when the suit is barred under Article 49, 58 and 59 of Limitation Act, 1963?

(iii)Whether the First Appellate Court was right in decreeing the suit when it has no jurisdiction in respect of private Trust when only Original petition under Trust Act is to be filed?

(iv)Whether Exhibit A-1 is a Trust deed to maintain the suit as framed?

(v)Whether the First Appellate Court was right in allowing the Appeal in part when there is no permission granted by the Trial Court to file the suit on behalf of the alleged Trust?

4.2.The following substantial questions of law that arise for consideration in the cross objection:

(i)Whether the Lower Appellate Court is correct in declining the relief of framing of scheme when admittedly there is dispute in management of Trust?

(ii)Whether the Lower Appellate Court having come to the conclusion that the Ex.A4 to Ex.A6 are void and further coming to the conclusion that the cross-objector is



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entitled to be a trustee as per Ex.A1 Trust deed can negative the framing of scheme by appointing on rotation basis to perform the obligation of Trust and enjoy the excess proceeds?

(iii) Whether the willful neglect or overlooking attitude of the said Pappammal and other co-trustees, in ignoring the cross-objector or the admission of D.W.1, is explicit evidence of mismanagement of the Trust functions or management, thereby denying the right of the Cross-Objector as a beneficiary under Ex.A1 Trust?

(iv) Whether the Civil Court being the guardian of the trust has jurisdiction to frame a scheme for a private family trust in order to safeguard the interest of the Trust for continuing the obligations under the Trust Deed?

5.Subsequently the case was posted for the clarification on 12.09.2025 and both the learned counsel have appeared before this Court and made detailed submission and thereafter, this Court reserved for judgment.

6.The main contention of the learned counsel for the appellant, namely, defendants is that the reason for the settlement deed executed by the mother of the plaintiff in favour of the defendant Nos.1 to 3 alone,



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excluding the plaintiff is because of necessity of the situation and also the same is known to the plaintiff and he filed the suit belatedly and the suit was erroneously entertained by the learned Appellate Judge instead of dismissing the suit as barred by limitation and granted relief in favour of the plaintiff. The learned counsel for the appellant would further submit that the suit is, if it is treated as a public trust, the permission under Section 92 of C.P.C., has to be obtained and if it is a private trust, the suit can be filed under the Indian Trust Act, for the suit relief. The same was not properly considered by the learned Appellate Judge. Apart from that, when there was a specific direction by Pappammal, namely, mother of the plaintiff, who executed the settlement deed dated 10.10.1990, the plaintiff has no right and the same was properly considered by the learned trial Judge but, the appellate Court erroneously reversed the same. The learned counsel for the appellant would also contend that all Charity mentioned in the settlement deed was properly done by the defendants and they acted as per the terms of 1950 documents. They never violated any of the terms of 1950 documents. Only Pappammal executed exchange deed in the year 1975 and another in 1990 and the same was within her power and hence, no fault can be



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found in the said action but the learned Appellate Judge erroneously reversed the same, stating that the same was contrary to the conditions of 1950 documents.

7.The learned counsel for the plaintiff, on the other hand would submit that, when there were specific clause in 1950 document executed by Kanniyammal, such as after the demise of Pappammal all the legal heirs of the Pappammal are entitled to have right over the properties, to receive the proceeds after doing the above mentioned Charity activities without making any alienation, the plaintiff's entitlement is automatic but, Pappammal without any right, contrary to the terms, executed the settlement deed dated 10.10.1990, in favour of the defendant Nos.1 to 3 alone excluding the plaintiff and therefore, the relief was properly granted by the learned appellate Judge upon considering the entire documents which need not be interfered. The learned appellate Judge also gave a specific finding that as per the terms of 1950 document the plaintiff is entitled to share the income after deducting the expenses spent for various Charities mentioned in the deed. Hence, the learned appellate Judge is correct in holding and declaring the plaintiff's entitlement and



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setting aside the documents executed by Pappammal.

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8. But, the learned counsel for the plaintiff and cross objector would also submit that once the learned appellate Judge held that the plaintiff is entitled to the relief as per the document in order to enjoy the benefits of the properties, the scheme must have been framed. Therefore, the learned appellate Judge erred in dismissing the suit, relating to the framing of the scheme.

9. Learned counsel for the appellants relied the following precedents to substantiate his contention:

AIR 1969 SC 884
2017 (4) SCC 771
2017 (2) CTC 173
2019 (5) CTC 212 (DB)
2020 (4) SCC 321
2024 (5) SCC 358

10. Learned counsel for the respondent relied the following precedents to substantiate his contention:

1951 SCC Online Mad 280



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1956 SCC Online Mad 24

1968 SCC Online SC 214

1969 (2) SCC 313

11.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and also read the precedents relied upon by them.

12.The crux of the issue is whether the terms of the settlement deed dated 20.01.1950 executed by the Kannaiyammal is settlement deed as pleaded by the defendants or private trust deed as pleaded by the plaintiff.

13.Before going into the above issue, the relationship of the parties are to be discussed in this case. The plaintiff's mother is Pappammal. Pappammal's father is Ramasamy Pillai. The said Ramasamy Pillai's sister is Kannaiyammal. The said Kannaiyammal was the owner of number of properties mentioned in the deed 20.01.1950. She executed the settlement deed dated 20.01.1950 in favour of Pappammal and her legal heir who is none other than the mother of the plaintiff and the



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contents of the documents is as follows:

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13.1.During the lifetime of Kannaiyammal both Kannaiyammal and Pappammal should enjoy the property till their lifetime without making any alienation. After demise of Kannaiyammal, Pappammal and her legal heirs should enjoy the property without making any alienation. The said Pappammal and her legal heirs should enjoy the income of the properties upon making the payment of revenue charges and also directed to do family charities (தர்ம கைகாரியங்களையும்) such as:

13.1.1.A ritual act in Tamil month of Margali every year as devotion to Sri Nataraja Moorthy Swamy during the procession of the Sri Nataraja Moorthy Swamy,

13.1.2.The Thiruvathirai Utchavam at Anupanadi village and Thirukan has to be staged in front of the trust properties ie., first item of the suit scheduled property.

13.1.3.In the Tamil month of “Thai”, every year lord Shri Koodal Alagar Perumal Swamy Thirukan Urchavam is to be conducted in the same property.

13.1.4.There is also another Nithiya Deepa Kattalai for lighting at



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the Ujanni Mahali Amman Kovil on every day at Ayyanar Kovil Shir Anupanadi. The above deed dated 20.01.1950 is clearly couched the terms of the settlement and hence, this Court accepted the case of the defendant that the deed dated 20.01.1950 was settlement deed and it created obligation to perform some poojas during some religious festival in the form of Thirukan. Thirukan activities are never treated as religious activities as held by this Court in various judgments. Even as per the pleadings of the defendant, this is not the public charity, the only direction issued in the settlement deed was to perform some pooja activities. Therefore, there is no question of trust and this is only question of settlement deed. Therefore, as per the terms of the settlement the plaintiff is entitled to become one of the beneficiaries under the settlement and have equal share in the income after meeting out the expenses for poojas activities mentioned in the settlement deed. Hence, this Court is not going into the issue of the private trust or public trust and hence the Hon'ble Supreme Court in **AIR 1968 SC 915** as relied by the learned counsel for the appellant, filing of the petition under the relevant provision of Trust Act and also the consequential question of obtaining the permission under Section 92 of C.P.C., would not arise.



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14.During her lifetime she and Pappammal have right to enjoy the properties without making alienation, to do various Pooja activities mentioned in the deed. In the deed, it is specifically stated that after the demise of Kannaiyammal, Pappammal shall enjoy the properties and do the ritual pooja activities and also enjoy the remaining proceeds of the suit scheduled property for her welfare. In the deed it is also specifically stated after her demise ie., after Pappammal's death all her legal heirs are entitled to enjoy the properties without making any alienation. But, as per the pleadings and the documents produced by both sides it is clear that Pappammal has deviated the material terms of 20.01.1950 document and executed two exchange deeds and further made alienation in favour of the defendant Nos.1 to 3 under deed dated 10.10.1990.

15.In the considered opinion of this Court, as rightly held by the learned Appellate Judge, the above all acts of Pappammal are contrary to material terms of 20.01.1950. Pappammal has no right to make any alienation. During the lifetime of Pappammal, she can only enjoy the fruits of the proceeds apart from spending for the above poojas. In the



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said circumstances, the learned Appellate Judge has correctly held that the Pappammal had acted contrary to the terms of 20.01.1950 deed and therefore, rightly set aside all the documents including the document dated 10.10.1990.

16.This Court also perused the other reliefs claimed in the plaint. The plaintiff has admitted that he also got benefitted of some proceeds and also he was in enjoyment of one of the suit scheduled properties. It is also admitted that during her life time mother was enjoying the property and received the entire income. As per the terms of the deed upto 2002, Pappammal is entitled to receive the income. Therefore, the grant of decree in respect of the accounts, in the considered opinion of this Court, is not maintainable in view of the peculiar circumstances of the case where Pappammal was enjoying the property as per terms upto 2002. The suit was filed in the year 2004 and in view of the circumstances that there was no clear evidence and also the plaintiff admitted that they enjoyed the suit scheduled properties and also he received amount from some share of the proceeds, the plaintiff is entitled to be rendition of account only after 2004 to till date. But, his entitlement to share of the properties



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from the date of the suit is crystallized by the judgment of the first appellate Court. Since the suit was dismissed and the first appellate Court decree was granted in the year 17.10.2014, this Court is inclined to modify the relief of granting the accounts from the date of the suit to till furnishing of the account.

17.The learned counsel for the appellant submitted that the suit is not maintainable on the ground of limitation. As per the terms of the settlement deed 1950, only after the death of the Pappammal, namely, plaintiff's mother, the plaintiff's declaration of right under the original settlement deed arise and therefore, there is no question of limitation since after her death in 2002 the suit was filed in 2004, the plaintiff's suit either under Article 137 or any other article of Limitation Act, 1963, is well within the time. Therefore, this court is not inclined to accept the argument of the learned counsel for the appellant, namely, the defendants that suit was barred by limitation.

18.Apart from that, this Court also went through the Hon'ble Division Bench Judgment of this Court in **AIR 1953 SC 750** and the



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same is applicable to the facts of the present case. Intention of the original owner Kannaiyammal is that the income of the properties must be enjoyed by all the legal-heirs of the Pappammal after her lifetime in equal proportion after meeting the expenses incurred for doing the poojas mentioned in the settlement deed. The question of either private trust or public trust does not arise. It only created obligation upon all the legal heirs to do poojas. According to the plaintiff, the defendants are not doing the poojas but, according to the defendants, they are doing the poojas.

19. Now, the performance of poojas during the life time of Pappammal is not disputed and only after the death of the Pappammal there is dispute about doing poojas activities.

20. It is the case of the plaintiff that there was a family religious charitable activities created under the deed dated 20.01.1950. Therefore, private trust was impliedly created. The defendants failed to perform the said obligations and hence, he prayed to grant relief of framing of scheme and he relied the judgment of this Court reported in *AIR 1953*



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Mad 750 (DB), AIR 1957 Mad 583 and AIR 1968 SC 915 and 1969 2

SCC 313, to contend that Civil Court has jurisdiction to frame the scheme even in the case of the private trust. This Court on appreciation of the entire document and the contents of the document dated 20.01.1950 holds that the said document is “settlement deed” and “not private trust”. The plaintiff is entitled to his legitimate share after the deduction of the expenditure for pooja activities from the date of the suit till date. Since the plaintiff is automatically entitled as a legal heir of Pappammal, the relief for the framing of scheme does not arise and hence, framing of the scheme is not necessary in view of the specific terms of the document 1950 that all the legal heirs of the Pappammal are entitled for enjoyment of properties after meeting out the expenses of the above said pooja activities. Therefore, this court is inclined to mould the relief upon the acceptance of the case of the defendant that the deed dated 20.01.1950 in question is settlement deed. Under Order 7 Rule 7, Court has power to mould the final relief in appropriate situation and the same is fortified by the judgment of the Hon'ble Supreme Court in **AIR 1975 SC 1409, AIR 1981 SC 1711, AIR 1992 SC 700, 2018 (17) SCC 203**. The Hon'ble Division Bench of this court in **AIR 1957 Mad 346** has



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held that though there was the prayer for declaration, it is in the interest of justice it is prayer to grant partition by metes and bounds is permitted.

In this case, the learned appellate Judge holds that the as per the terms of the deed dated 20.01.1950, as a co-beneficiary plaintiff is entitled to equal share with the defendant Nos.1 to 3, namely other beneficiaries, this Court has mould the relief and confirmed the decree granted by the learned appellate Judge in declaring plaintiff's right to share in the properties with direction to all the beneficiaries to perform the poojas mentioned in the deed. As per the Division Bench of this court **AIR 1969 Mad 329**, there is no bar to grant relief in exceptional circumstances on the basis of the admission of the opposite parties in the pleadings and evidence that confers the jurisdiction upon the Court to award the relief on a basis different from one covered by the issues. In this case, the defendants in their evidence admitted that the plaintiff is entitled to the equal share as per the contents of the deed dated 20.01.1950. and the relevant submissions as follows; மீதம் உள்ள தொகையை எனது அம்மா அனுபவித்து வந்தார் என் அம்மா காலத்திற்கு பிறகு மீதமுள்ள தொகையை நாங்கள் தான் அனுபவித்து வருகிறோம் என்று சொன்னால் அது சரி தான். தர்ம காரியங்களுக்கு வாதி வருவதில்லை. வாதி



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வந்தால் அவருடைய உரிய பங்கை நாங்கள் கொடுக்க தயாராக இருக்கிறோம். பின்பு சாட்சி தானாக முன்வந்து வாதி வருவதில்லை அவருக்குரிய பங்கு தொகையை நாங்கள் கொடுக்க மாட்டோம். அவ்வாறு கொடுக்க வேண்டாம் என்று எங்கள் தாயார் முடிவு செய்துள்ளார். As per the terms of the documents 20.01.1950 after the death of Pappammal, the plaintiff is entitled to enjoy the income of the properties mentioned in the said deed after meeting out the expenses for the above pooja activities. Therefore, the learned appellate Judge, specifically held that he is also entitled to joint enjoyment of the property as per terms of the documents 20.01.1950. In this aspect, the defendant also admitted the above situation and reiterated that the mother was not interested to give the right of enjoyment to the plaintiff. It is not the intention of the mother, but, the original executant/owner of the properties, namely, Kannaiyammal who had clearly stated that all the legal heirs ie., “Buthara, Bouthara (புத்ர பெளத்திரா)” automatically can enjoy the properties as legal heirs.

21.In view of the above circumstances, Pappammal's intention is not material, only Kannaiyammal's intention is material. Kannaiyammal



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had expressed her intention to enjoy all the properties equally by all the

legal heirs of the Pappammal. Hence, after the death of the Pappammal in the year 2002, plaintiff is entitled to the share in the properties after meeting out the expenditure for the trust. Hence, the learned appellate Judge is correct in this aspect. The plaintiff also admitted that the contents of the terms have not satisfied the ingredients to constitute the public trust. Only the obligation is created upon the beneficiaries to enjoy the properties by deriving the income without making alienation and also further obligation created to do the poojas as stated above, which are not religious charitable endowment as held by the learned Appellate Judge. In the said circumstances, this Court is inclined to mould the relief and direct the plaintiff and defendants to perform the poojas out of the income of the property mentioned in the deed and thereafter, divide the income in proportionate ratio without any disparity.

22. The plaintiff is entitled to become one of the legal heirs of Pappammal and entitled to receive the proportionate income of his share after meeting the expenses of the poojas activities mentioned in the deed



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dated 20.01.1950. He is only entitled for the accounts from 2004 to till date. Since he automatically became a beneficiary and inducted into the family as per the terms of the settlement deed there is no necessity to frame a scheme.

23. Accordingly, this second appeal is dismissed by confirming the judgment and decree in A.S.No.74 of 2008 dated 17.10.2014 on the file of the learned Principal District Judge, Madurai by setting aside the dismissal of suit in O.S.No.297 of 2004 on the file of the Principal Sub Judge, Madurai and that partly decreeing the suit in O.S.No.297 of 2004 on the file of the Principal Sub Judge, Madurai that the settlement deed executed by Pappammal in favour of the defendant Nos.1 to 3 under Ex.A4 to Ex.A6 are null and void is confirmed.



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24. Accordingly, the cross appeal is partly allowed.

24.1. Total dismissal of suit in O.S.No.297 of 2004 on the file of the Principal Sub Judge, Madurai, dated 29.02.2008, is hereby set aside and the suit is decreed in the following terms:

24.1.1. The plaintiff is entitled to share the income of the properties mentioned in the suit scheduled properties.

24.1.2. The plaintiffs and the defendants are hereby directed to conduct poojas mentioned in the deed without fail by meeting the expenditure from the income derived from the properties mentioned in the deed and the remaining amount are liable to be shared among the plaintiff and the defendants as per the terms of the documents dated 20.01.1950.

24.1.3. Both plaintiff and defendants are hereby restrained from making alienation of property mentioned in the deed dated 20.01.1950.



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24.1.4.The plaintiff is entitled to mense profit from the date of the
plaint and he is at liberty to file a separate petition to determine the
mense profit.

There shall be no order as to costs. There shall be no order as to
costs. Consequently, connected Civil Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1. The Principal District Court, Madurai.
2. The Principal Sub Court, Madurai.



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