



A.S.(MD)No.56 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.04.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**A.S.(MD)No.56 of 2018
and
C.M.P.(MD)No.3287 of 2018**

Mehala

... Appellant

Vs.

1.Ramachandran
2.Sundaraj
3.Subramanian
4.Ramalakshmi
5.Rajendran

... Respondents

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to allow this appeal by setting aside the judgment and decree dated 14.12.2017 made in O.S.No.13 of 2013 on the file of the IV Additional District Court, Tirunelveli.



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For Appellant : Mr.S.Palanivelayutham

For Respondent : Mr.S.P.Maharajan for R1 to R3
No appearance for R4 & R5

JUDGMENT

(Judgment of the Court was delivered by G.R.Swaminathan, J.)

The second plaintiff in O.S.No.13 of 2013 on the file of the IV Additional District Court, Tirunelveli is the appellant herein. The first plaintiff has not joined the appellant in challenging the judgment and decree passed the Court below. The plaintiffs / Rajendran and Mehala filed the said suit seeking the relief of partition, claiming 2/6th share in the suit schedule properties from the defendants. The defendants are none other than the siblings of the plaintiffs. It is not in dispute that the parties to the suit are the children of Petchimuthu and Rajammal. The plaintiffs have claimed 2/6th share in each of the six suit schedules. The court below by the impugned judgment and decree dismissed the suit for partition. Aggrieved by the same, this appeal has been filed by one of the plaintiffs.



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2. Heard the counsel on either side and perused the evidence on record. The point that arises for determination is whether the court below was justified in dismissing the partition suit in toto.

3. The contest revolves primarily around suit schedules 1, 2 and 3. It is seen that all the three suit schedule properties stood in the name of Rajammal. Though the plaintiffs would claim that these items were purchased in the name of Rajammal by their father Petchimuthu from out of his business profits, there is nothing on record to substantiate the same. We have to necessarily proceed on the footing that the suit schedule items 1, 2 and 3 were the self acquired properties of Rajammal. It is seen that the third suit schedule property was sold by Rajammal herself during her lifetime in the year 1998 itself. The first suit schedule was settled in favour of Sundarraaj and Subramanian under Ex.B5 dated 10.04.2012 by Rajammal. The second suit schedule was settled in favour of Ramachandran under Ex.B6 dated 30.03.2012 by Rajammal. In the written statement, the defendants had categorically stated that the claim for partition is not maintainable in view of the execution of these two settlement deeds. The plaintiffs failed to amend the suit prayer and did not seek any declaratory relief in respect of these two settlement deeds.



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4.It is true that as per law, the settlement deeds required to be attested and that they have to be proved in terms of Section 68 of the Indian Evidence Act. The attestors happened to be none other than the wives of the defendants 2 and 3. This may be a suspicious circumstance. But then, the settlement deeds have been proved by examining these two attestors as D.W.1 and D.W.3. That is why, the Court below had to dismiss the suit in respect of suit schedules 1 to 3. The Court below had come to the conclusion that there is no proof to show that the deceased Petchimuthu left behind any movables nor was there any proof to show that Rajammal died leaving behind any sovereigns of gold as claimed by the appellant. It is well settled that the person who makes the claim has to prove the same. That is why, the Court below non-suited the plaintiffs in respect of all the six schedules. As already mentioned, it is only the second plaintiff who had filed this appeal and the first plaintiff has chosen not to challenge the judgment and decree of the Court below.



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5. We concur with the reasons assigned by the Court below. There is no merit in this appeal and it stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (R.P. J.)
02.04.2026

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

The IV Additional District Court,
Tirunelveli.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
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