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A.S.(MD)No.70 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2026

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MRS.JUSTICE R.KALAIMATHI

A.S(MD)No.70 of 2018

and

C.M.P.(MD)No.4053 of 2018 & 16477 of 2025

R.Rajesh Kumar(died)

...1st Plaintiff

1. Ramya Nisha

... 1st Appellant /
2nd Plaintiff

2. R.Lavanya

3. Minor R.Panchajanya

Rep. By his natural guardian & mother
R.Lavanya

... Appellants 2 and 3/
LRS of 1st Plaintiff (Died)

Vs.

1.T.S.Ramanan

2.R.Maheswari

3.Nalini Deepika

4.Minor R.Sivasurya

Represented by his Guardian
and Father T.S.Ramanan

... Respondents



Prayer: Appeal Suit filed under Section 96 of CPC, to set aside the judgment and decree made in O.S.No.103 of 2013 on the file of the II Additional District Court, Tiruchirappalli dated 30.10.2017 and pass a preliminary decree as prayed for in the suit or any other relief that this Court may deem fit.

For Appellants : Mr.Raguvaran Gopalan
for Mr.Prabhakar

For Respondents : Mr.V.Ramakrishnan

JUDGMENT

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

This appeal arises out a suit for partition.

2.T.S.Ramanan, the first defendant, married one Nalini and through the said wedlock, the plaintiffs, namely, Rajesh Kumar and Ramya Nisha were born. Nalini passed away in the year 1990. Thereafter, Ramanan married Maheswari (D2) and through the said wedlock, Nalini Deepika and Sivasurya were born. The children born through the first wife filed O.S.No.103 of 2013 on the file of II Additional District Judge, Tiruchirappalli seeking preliminary decree for partition by dividing Item No.1 of the suit properties into three equal shares by metes and bounds and allotting the same respectively to the plaintiffs and the first



defendants. As regards Item No.2, the plaintiffs sought 1/3rd share each and as regards Item No.3 they sought 1/6th share each.

3.The case of the plaintiffs was controverted by the first defendant by filing written statement, which was adopted by the other defendants. Based on the rival pleadings, issues were framed. The plaintiffs examined themselves as PW1 and PW2 and Exs.A1 to A5 were marked. T.S.Ramanan examined himself as DW1 and Exs.B1 to B11 were marked. After considering the evidence on record, the suit was decreed for partition by holding that the second plaintiff is entitled to 1/5th share in Item Nos.1 and 3. The suit was dismissed with regard to Item No.2 of property, and as regards the first plaintiff, the suit was dismissed in *toto*. Aggrieved by the same, this appeal came to be filed.

4.The appellants filed C.M.P(MD)No.16477 of 2025 under Order 41 Rule 27 of CPC. Even before commencing his submissions, the learned counsel appearing for the appellants made it clear that the scope of his submissions is confined to Item Nos.1 and 3 and that he does not propose to pursue the case with regard to Item No.2.



5.It is seen that the first plaintiff passed away and this appeal has been filed by the sister and the legal heirs of the deceased first plaintiff.

The learned counsel appearing for the appellants made it clear that he would be satisfied if relief is granted in favour of the first appellant (Ramya Nisha alone). Since the appellants filed an application for adducing additional evidence, it was taken up along with the main appeal.

6.In the affidavit filed in support of C.M.P(MD)No.16477 of 2025, it has been mentioned that the suit first item of the suit property, which is a house property, was actually the stridhana property of Nalini, the mother of the plaintiffs. To establish this claim, the appellants want to mark the certified copy of the sale deed dated 18.03.1983 (Document No. 2039 of 1983 on the file of the I Joint Sub Registrar, Trichy). The appellants claim that they got a copy of the same only recently.

7.It is seen therefrom that the suit first item originally belonged to one Ramamoorthy, S/o. Karuppiah Pillai. He was allotted the said property by the Trichy Co-operative Housing Society No.786. Ramamoorthy had entered into an agreement with Nalini as early as on



13.05.1961 agreeing to execute the sale deed in her favour, as he had received the sale consideration of Rs.6000/- in 1961 itself. Nalini had been in possession of the property since the date of agreement. Only in 1983, Ramamoorthy came forward and executed the said sale deed.

8.The plaintiffs had pleaded that the first item of the suit property belonged to their mother. However, this was disputed by the defendants. When the second issue framed by the Court below related to the suit first item, the Court below had eventually awarded 1/5th share in favour of the second plaintiff in the said property. The case of the plaintiffs is that even though they had taken a plea that the property belonged to their mother, they could get certified copy of the title document only recently. The Hon'ble Supreme Court in the decision reported in **(2015) 1 SCC 677 (Wadi Vs Amilal & Others)** had held as follows:

“5.Now it is clear that Rule 27 deals with production of additional evidence in the appellate court. The general principle incorporated in Sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in Clauses (a), (a) and (b). We are



concerned here with Clause (b) which is an enabling provision. It says that if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, Clause (b) enables it to adopt that course. Invocation of Clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of material on record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.”

Applying the aforesaid ratio, one can easily come to the conclusion that the appellants have made out a case for adducing additional evidence. If an application under Order XLI Rule 27 of CPC is contested, the procedural formalities for adducing additional evidence will have to be followed. In this case, the respondents have not filed any counter affidavit opposing the application.



9.The learned counsel appearing for the defendants was fair enough to state that the application for additional evidence can very well be allowed. We therefore allow CMP(MD)No.16477 of 2025 and Document No.2039 dated 18.03.1983 is marked as Ex.A6.

10.The details of the family have already been set out. The prime defence taken by the defendants is that a partition was entered into among the members of the family way back on 09.12.1994 and that the same was duly registered. Suit Item No.1 figured as the first item in A-schedule. The parties to the partition deed are as follows:

- 1) T.S.Ramanan
- 2) Maheswari, second wife of Ramanan
- 3) Minor Ramya Nisha
- 4) Nalini Deepika
- 5) Rajesh Kumar

11.Rajesh Kumar was allotted half share in house property at Karur. The learned counsel appearing for the defendants would point out that when a partition had already taken place in the family, without challenging the same or without formally seeking to reopen it, a fresh suit for partition will not lie. In support of this proposition, the learned



counsel relied on the decisions reported in **2001 2 CTC 641**

(K.Jagannathan Vs A.M.Vasudevan Chettiar & Others), 2008 7 MLJ

550 (Ranganayakamma & Another Vs K.S.Prakash & Others) and

2004 13 SCC 480 (Nagappan Vs Ammasai Gounder & Others).

12.The proposition canvassed by the learned counsel appearing for the respondents is beyond cavil. That is why the Court below rightly held that the suit for partition has to fail in *toto* as regards the first plaintiff Rajesh Kumar. Even though the legal heirs of Rajesh Kumar are also appellants in this appeal, we are clearly of the view that the dismissal of suit qua the first plaintiff has to be upheld. The point that arises for determination is whether the allotment of share in favour of the first appellant Ramya Nisha is correct.

13.We are of the view that the case of the first plaintiff Rajesh Kumar and the case of the second plaintiff Ramya Nisha cannot be put on the same pedestal. Ramya Nisha had of course aligned herself with her brother before the trial Court and is also one of the appellants in this appeal. Even the application for reception of additional evidence was filed by the wife of Rajesh Kumar. But that will not take away the rights



to which Ramya Nisha is entitled. If the contention of the learned counsel for the respondents is to be accepted for both the plaintiffs, then the suit would have to be dismissed in *toto* qua both the plaintiffs. The Court below dismissed the suit only as regards the first plaintiff and allotted 1/5th share in favour of the second plaintiff Ramya Nisha in suit Item Nos.1 and 3. Admittedly, the defendants have not filed any appeal questioning the same. Therefore, the maintainability of the suit for partition as regards the second plaintiff can no longer be in doubt. The only issue that remains is with regard to the quantification of the second plaintiff's share.

14.In view of Ex.A6 which was received by way of additional evidence, it is seen that the suit first item was never the property of Ramanan. It was the absolute stridhana property of his first wife Nalini. Nalini died intestate in the year 1990. Therefore, the suit item No.1 devolved upon her legal heirs in equal measure. Her legal heirs were her husband Ramanan, Son Rajesh Kumar and daughter Ramya Nisha. Each of them was entitled to 1/3rd share. Rajesh Kumar cannot have any claim because he was very much a major in the year 1994 and he got himself divided. As per the partition deed ExA2 dated 09.12.1994, suit Item



No.1 was allotted to Ramanan, his second wife, daughter Ramya Nisha and Nalini Deepika. Since Rajesh Kumar got divided in the year 1994 itself, neither he nor his legal heirs can have any claim on suit Item No.1.

15.The learned counsel appearing for the respondents would contend that Ramya Nisha can have only 1/4th share in suit Item No.1. We do not agree. When suit Item No.1 house property belonged only to Nalini, it can devolve only on her legal heirs. The second wife of Ramanan and the children born through the second wife cannot have any claim over suit Item No.1. Once Rajesh Kumar is out of the picture, Ramanan and Ramya Nisha alone can have claim over suit Item No.1. Ramya Nisha was minor during 1994. In fact, she was represented by her father, namely, Ramanan. The recital in the partition deed treating suit Item No.1 as HUF property was solely on account of the assertion made by Ramanan who was fully aware that it was the absolute property of his first wife. Such a fraudulent recital cannot take away the rights of Ramya Nisha. We therefore hold that Ramya Nisha is entitled to half share in suit Item No.1.



16.Through the second wife, Ramanan had begotten one more son, namely, Sivasurya and that is why the Court below held that the second plaintiff will be entitled to 1/5th share in Item No.3 of the suit property.

17.We therefore partly allow this appeal and modify the judgment and decree passed by the Court below. The dismissal of the suit as regards the first plaintiff is confirmed and the allotment of share in favour of the second plaintiff in suit Item No.3 is also confirmed. However, her share in suit Item No.1 is enhanced to ½ share.

18.This Appeal Suit is partly allowed accordingly. No costs. Consequently, CMP(MD)No.16477 of 2025 is allowed and C.M.P(MD)No.4053 of 2018 is closed.

[G.R.S., J.] [R.K.M, J.]

29.01.2026

NCC : Yes / No
Index : Yes / No
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To

II Additional District Court, Tiruchirappalli.



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