



S.A.(MD)No.314 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	16.09.2025
Pronounced On	:	06.01.2026

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

S.A.(MD)No.314 of 2018

Shanmugasundaram

... Appellant/1stAppellant /
1st Defendant

Vs.

1.Mangayarkarasi

2.Shanthanayagi

... Respondents

PRAYER:- Second Appeal is filed under Section 100 of Code of Civil Procedure, to set aside the decree and judgment passed in A.S.No.12 of 2014 on the file of the learned Principal District Judge, Thajavur dated 17.05.2017 confirming the decree and judgment passed in O.S.no.4 of 2009 on the file of the Additional Sub Court, Thanjavur dated 12.01.2012.

For Appellant : Mr.V.K.Vijayaragavan

For Respondents : Mr.S.Alagarsamy for A1

: No appearance for R2



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J U D G M E N T

This Second appeal has been filed to set aside the decree and judgment passed in A.S.No.12 of 2014 on the file of the learned Principal District Judge, Thajavur dated 17.05.2017 confirming the decree and judgment passed in O.S.no.4 of 2009 on the file of the Additional Sub Court, Thanjavur dated 12.01.2012.

2.The plaintiff has filed a suit for partition against her brother first defendant and her sister second defendant claiming 1/3 share in the suit scheduled properties mentioned in 43 item of properties.

3.According to the plaintiff, the properties are the coparcener property of her father Veeraiah Thenkondar. He died intestate leaving behind the plaintiff and the defendants as legal heirs to inherit his estate up to 17.04.2008 there was a dispute relating to the properties and their non enjoyment and therefore she issued legal notice on 24.05.2008 demanding from her brother, first defendant and she filed the suit for partition of her share of 1\3 in the suit schedule mentioned properties.



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The first defendant filed a written statement stating that she got married before 1990 and the properties are not the properties of the Veeraiah Thenkondar and the case of the ancestral/coparcener is specifically denied and most of the items are the self acquired property of the first defendant and his wife and she is not entitled to any partition. The second defendant also supported the case of the first defendant and pleaded that non joinder of necessary party.

4.The learned trial Judge after considering the necessary pleadings framed necessary issues. The plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A6 and on the part of the defendant D.W.1 and has been examined Ex.D1 to Ex.D20 were marked.

5.The learned trial Judge was pleased to grant decree for partition relating to 1/3 share in item No.1 to 17 and dismissed the suit for partition item Nos.18 to 43 by judgment dated 12.01.2012 The learned trial Judge decreed the suit in granting the partition relating to Item Nos. 1 to 34 and same has been challenged before the learned Appellate Judge in A.S.No.12 of 2014 by the appellant. The learned learned Appellate



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Judge in A.S.No.12 of 2014 confirmed the decree in respect of item No.1 to 17 and modified the share of $\frac{1}{6}$ into $\frac{1}{3}$ and granted decree in respect of entire properties including item No.18 to 43 without any cross appeal. Hence, the appellant preferred this appeal challenging the same.

6.The following Substantial questions of law are framed and both parties are heard at length:

(i)When plaintiff did not file cross appeal as against the decree and judgment of trial court passed in O.S.No.4 of 2008, whether the appellate Court has erred in granting relief to the plaintiff in A.S.No.12 of 2014 in respect of suit items 28 to 27, 29, 30 and 34?

(ii)Whether the decree and judgment of the Appellate Court granting $\frac{1}{6}$ th share in the suit items 1-17 to the plaintiff is tenable?

7.The plaintiff has filed suit in O.S.No.4 of 2009 to grant preliminary decree against her own brother and sister stating that suit schedule mentioned item No.1 to 43 items are Co-parcenary property of her father Veeraiya Thenkondar and he died on 06.04.2000. Hence, she is entitled to $\frac{1}{3}$ share in the schedule property.



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8. The Learned Trial Judge vide judgment and decree dated 12.01.2012 has decreed the suit partly and granted 1/3 share in the Item No.1 to 17 and dismissed the suit so far as item No.18 to 43 holding that said properties are not ancestral or joint Hindu family Property of her father Veeraiya thenkondar. 1st Defendant/her brother has preferred appeal suit in AS.No.12 of 2014 on the file of Principal District Judge and the learned Judge has decreed the suit in respect of item No.18 to 43 without any cross appeal on the side of the plaintiff and modified the decree in ASNo.12 of 2014 and reduced the share to 1/6 from 1/3 in respect of share 1 to 17.

9. The 1st Defendant has preferred this Second Appeal. At the outset, this court is inclined to hold that modifying decree in AS.No.12 of 2014 by reducing the share 1/6 from 1/3 is erroneous after giving finding that the suit schedule property is Co-parcenery property in Paragraph No. 16 of the Judgment in ambiguous manner. Further granting relief in respect of item No.18 to 20, 22, 26, 27 29, 30, 34 without any cross appeal on side of plaintiff is against law laid down by Hon'ble Supreme



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Court 2003 (9)scc606and also against provision of order 41 rule 33 cpc.
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10. Hence this court inclines to set-aside the Judgment and decree without any further deliberation and remit the case back to the first appellate Court to decide the case in accordance with law by framing proper issues for determination and determine the correctness of the preliminary decree granted in O.S.No.4 OF 2009 in accordance with law.

11. Accordingly, this Second Appeal is allowed without costs on the following terms:

(i)The judgment and decree passed in A.S.No.12 of 2014 on the file of the learned Principal District Judge, Thajavur dated 17.05.2017 is hereby set aside and A.S.No.12 of 2014 is **remanded back** to the learned Principal District Judge, Thanjavur to decide the correctness of the decree and judgment passed in O.S.No.4 of 2009 on the file of the Additional Sub Court, Thanjavur dated 12.01.2012 on merits in accordance with law.

(ii) C.M.P.(MD).No.6268 of 2025 is closed with liberty to file the



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additional document before learned Principal District Judge, Thanjavur and the Registry is hereby directed to return the original Will dated 30.08.1991 filed in C.M.P.(MD)No.6268 of 2025 in order to facilitate the appellant to file it before 1st Appellate Court. On such filing, the learned Principal District Judge, Thanjavur is hereby directed to consider the application to receive the additional document in accordance with law after affording adequate opportunity to the respondents herein.

06.01.2026

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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Note: Registry is hereby directed to return the original Will dated 30.08.1991 filed in C.M.P.(MD)No.6268 of 2025.

To

- 1.The Principal District Court, Thanjavur.
2. The Additional Sub Court, Thanjavur.
- 3.The Section Officer,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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