

A.S.(MD)No.36 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.06.2026

CORAM

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

**A.S(MD)No.36 of 2020
and
C.M.P(MD)No.1507 of 2020**

1.P.Rajakumari

2.B.Thenmozhi

... Appellants/plaintiffs

Vs.

M.Raja Bhoopathy (died)

1.R.Vijayakumari

2.R.Vijayaraghavan

... Respondents/defendants

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to allow this appeal by setting aside the judgment and decree dated 23.07.2019 made in O.S.No.103 of 2011 on the file of the II Additional District Court, Tiruchirappalli.



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For Appellants : Mr.S.Karthik

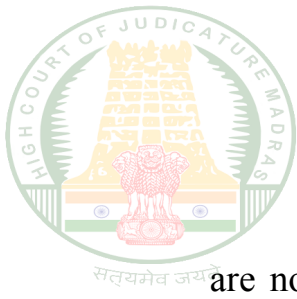
For Respondents : No appearance

JUDGMENT

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

The plaintiffs in O.S.No.103 of 2011 on the file of the II Additional District Court, Tiruchirappalli, are the appellants herein. The suit was filed for partition claiming 1/4th share in the suit schedule properties and for past and future profits. One Raja Boopathy and Vijayakumari got married to each other and through the wedlock, the two daughters (plaintiffs) and a son (third defendant) were born. The partition suit was instituted by the daughters against their parents and brother. The daughters contended that the suit schedule properties are ancestral properties and that they should be given their rightful share therein. During the pendency of the suit, the first defendant (father) passed away.

2. The case of the plaintiffs was resisted by the defendants by filing a written statement. The defendants contend that the suit schedule properties



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are not joint family properties and were inadvertently titled as such. They also contend that items 1C and 2B are not part of the partition deed at all and did not form part of the joint family nucleus. Based on the rival pleadings, the Court below framed necessary issues.

3.The 2nd plaintiff examined herself as PW1 and marked Exs.A1 to A10. The (first defendant) father was alive when the trial took place and he examined himself as DW1. The third defendant, Vijayaraghavan, examined himself as DW2. Exs.B1 to B31 were marked. After considering the evidence on record, the trial Court partly decreed the suit on 23.07.2019 by granting 1/4 share in suit items 1A, 1B and 1E to the plaintiffs, and Defendants 2, and 3 each. In respect of other items, the suit was dismissed. In respect of the disallowed portion, this appeal has been filed.

4. The learned counsel for the appellants reiterated all the contentions set out in the grounds of appeal and called upon this Court to modify the impugned judgment decree and grant relief as prayed for.



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5. Though the respondents have been served, *paper publication was taken out* and their names were printed in the cause list, they have chosen not to enter appearance. It is well settled that where the appellant appears and the respondent does not appear, the appeal can be heard ex parte.

6. We carefully considered the appellants' contentions and went through the entire evidence on record.

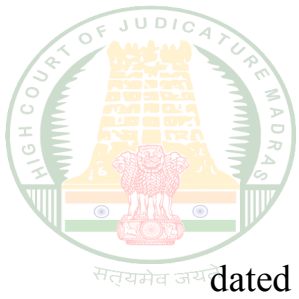
7. The points that arises for determination:

1. Whether the Court below was justified in coming to the conclusion that suit items 1C and 2B are the self acquired properties of the first defendant ?

2. Whether the Court below was justified in dismissing the appellants claim with regard to 1C, second schedule and third schedule properties ?

8. Points 1 and 2:

It is seen that the first defendant had a brother by name Ramamurthy Reddiar. Both of them entered into a deed of partition (Ex.A1)



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dated 05.09.1986. The suit item 1C was obtained by the 1st defendant through a Deed of Exchange (Ex.B12) dated 15.09.1971. In the deed of exchange, there is nothing on record to show that the items covered under Ex.B12 are ancestral in character. If they were ancestral in character, they would have definitely found a place in the partition deed dated 05.09.1986. That is why the Court below came to the conclusion that Ex.1C was self acquired property and denied the claim of a partition.

9.Item 2B was purchased by the 1st defendant in his name vide Ex.B7 dated 15.05.1964. One Krishnamurthy executed a sale deed in favour of the first defendant. If that was an ancestral property, certainly, the first defendant's brother Ramamoorthy Reddiar would have staked a claim thereon and it would have been a subject matter of the partition deed Ex.A1 dated 05.09.1986. Therefore, the Court below rightly came to the conclusion that item 2B also was a self acquired property of the first defendant and rightly denied the claim of the plaintiffs' suit for partition.

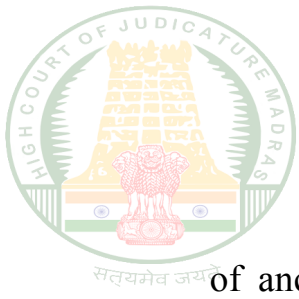


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10. As regards suit item 1D, it was sold prior to the institution of the suit vide Ex.B25 dated 10.07.2006. Likewise 2A was sold vide Exs.B26 and B27 dated 10.07.2006. The purchasers namely, Ravikumar, Mohandas and Masilamani were not impleaded as parties to the suit for partition. When an item of property had already been sold, before the institution of the partition suit, the purchaser should be impleaded as defendants as they are necessary and proper parties for the adjudication of the dispute. (***vide Mumbai International Airport Limited v Regency Convention Centre and Hotels Private Limited (2010) 7 SCC 417***). No such step was taken by the plaintiff. Therefore, the Court below rightly negated the plaintiffs' claim in respect of those items.

11. The suit schedule three is a bus. The bus permit was originally in the name of the father. It was subsequently transferred in the name of the third defendant (brother of the plaintiffs) vide proceedings dated 30.07.2012 (Ex.B30) of the RTA, Srirangam. Since it is only a license granted in the name of the first defendant and subsequently transferred under Section 82 of the Motor Vehicles Act, 1988, in favour of the third defendant, the character



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of ancestral property cannot be attributed to it. If the bus had been an ancestral property, it would have been included in the Ex.A1 partition deed dated 05.09.1986 executed between their father (D1) and his brother Ramamoorthy Reddiar. The non-inclusion confirms the defendant's plea that it is not amenable to partition. The two points are answered accordingly.

12. The court below had given convincing reasons for dismissing the suit in respect of the disallowed items. We agree with the same. We do not find any ground to fault the approach adopted by the court below. This appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (R.P. J.)
04.06.2026

NCC : Yes/No
Index : Yes / No
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To:
The II Additional District Court,
Tiruchirappalli.

Copy to:

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



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