

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment reserved on : 27.04.2026

Judgment pronounced on : 05.06.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

S.A.(MD).Nos.241 & 242 of 2017
& CMP.(MD).No.8252 of 2024
& CMP.(MD).No.5104 of 2017

S.A.(MD).No.241 of 2017:

- 1.Jayalakshmi
- 2.Prabhakaran (Died)
- 3.Banumathi
- 4.Sumathi
- 5.Pabi
- 6.Eliyarani

[2nd Appellant died and, 1st Appellant, who is already on record, is recorded as LR of the deceased 2nd Appellant vide Court order dated 19.01.2024 made in CMP.(MD).No.16017 of 2023 in S.A.(MD).No.241 of 2017]

- 7.Meena
- 8.P.Sivaramakrishnan
- 9.P.Hariharan

.. Appellants in both SAs

[Appellants 7 to 9 are also brought on record as LR's of the deceased 2nd Appellant vide Court order dated 19.01.2024 made in CMP(MD).No. 16019 of 2023 in S.A.(MD).No.241 of 2017]

[Memo presented before the Court on 06.06.2023 is recorded, as 2nd Appellant died, vide Court order dated 06.06.2023 made in S.A. (MD).Nos.241 & 242 of 2017]

Vs.



M.Prakasam @ Sathiyaseelan

.. Respondent in both SAs

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Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 03.10.2016 passed in A.S.No.49 of 2014 on the file of the Principal District Judge, Tiruchirapalli, confirming the judgment and decree dated 25.04.2012 passed in O.S.No.338 of 1997 on the file of the I Additional Sub-Court, Tiruchirapalli.

S.A.(MD).No.242 of 2017:

- 1.Jayalakshmi
- 2.Prabhakaran (Died)
- 3.Banumathi
- 4.Sumathi
- 5.Pabi
- 6.Eliyarani

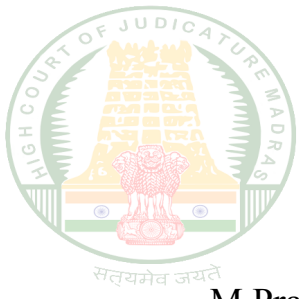
[2nd Appellant died and, 1st Appellant, who is already on record, is recorded as LR of the deceased 2nd Appellant vide Court order dated 19.01.2024 made in CMP.(MD).No.16020 of 2023 in S.A.(MD).No.242 of 2017]

- 7.Meena
- 8.P.Sivaramakrishnan
- 9.P.Hariharan

.. Appellants in both SAs

[Appellants 7 to 9 are also brought on record as LR's of the deceased 2nd Appellant vide Court order dated 19.01.2024 made in CMP(MD).No. 16021 of 2023 in S.A.(MD).No.242 of 2017]

[Memo presented before the Court on 06.06.2023 is recorded, as 2nd Appellant died, vide Court order dated 06.06.2023 made in S.A. (MD).Nos.241 & 242 of 2017]



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Vs.

M.Prakasam @ Sathiyaseelan

.. Respondent in both SAs

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 03.10.2016 passed in A.S.No.14 of 2015 on the file of the Principal District Judge, Tiruchirapalli, confirming the judgment and decree dated 25.04.2012 passed in O.S.No.746 of 1996 on the file of the I Additional Sub-Court, Tiruchirapalli.

(In both Second Appeals)

For Appellants

: Ms.N.Krishnaveni
Senior Counsel
for Mr.N.Anandhakumar

For Respondent

: Mr.M.Jahangir Baba

CMP.(MD).No.8252 of 2024:

- 1.Jayalakshmi
- 2.Prabhakaran (Died)
- 3.Banumathi
- 4.Sumathi
- 5.Pabi
- 6.Eliyarani
- 7.Meena
- 8.P.Sivaramakrishnan
- 9.P.Hariharan

.. Petitioners

Vs.

M.Prakasam @ Sathiyaseelan

.. Respondent



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Prayer: Civil Miscellaneous Petition filed under Order XLI Rule 27 of Code of Civil Procedure, to receive the following documents:

i. Original registered Will dated 28.02.1994 executed by the 1st appellant's father-in-law viz., Ramasamy Udayar/1st defendant in favour of his son viz., Prabhakaran/2nd appellant herein;

ii. Original Will dated 27.04.1998 executed by the 1st appellant's mother-in-law viz., Sivamalai Ammal in favour of his son viz., Prabhakaran/2nd appellant herein.

iii. Death Certificate of the 1st appellant's father-in-law viz., Ramasamy Udayar dated 07.08.2010; and

iv. Death Certificate of the 1st appellant's mother-in-law viz., Sivamalai Ammal dated 05.12.2001.

as additional documents in the above Second Appeal in S.A. (MD).No.241 of 2017.

For Petitioners : Ms.N.Krishnaveni
Senior Counsel
for Mr.N.Anandhakumar

For Respondent : Mr.M.Jahangir Baba

COMMON JUDGMENT

These Second Appeals are directed against the concurrent findings rendered by the Trial Court and the First Appellate Court, granting decrees in favour of the respondent/plaintiff.



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2. These Second Appeals have been admitted by this Court on

13.09.2017 on the following substantial questions of law:

a) Has not the Lower appellate Court committed a serious legal error in dismissing I.A.Nos.113 & 114 of 2015 without adverting to the scope and ambit of Order XLI Rule 23(A) as well as Rule 27 of CPC, especially the appellants have satisfied all the criteria provided under both the Rules for remitting the matter to the file of Trial Court as well as for receiving the additional evidence, especially the Trial Court has proceeded with the suit without even issuing any notice to the appellants/defendants after the counsel reported no instruction?

b) Whether the judgment and decree of the Courts below could be sustained in law in granting 1/7th share to the respondent in respect of all the suit items of properties as the same is contrary to the dictum laid down by the Hon'ble Supreme Court after interpreting Section 16(3) of the Hindu Marriage Act, 1955, especially the very admission of the respondent both in the evidence as P.W.1 as well as in the pleadings is that the properties are the ancestral properties?

c) Whether the Courts below have committed a serious error both in facts and law in not considering that the factum of marriage between Chandra and Muthukrishnan itself has been disputed including that the respondent is not the son of the said Muthukrishnan which has been also substantiated by



cogent evidence including the production of the temple fee register before the Appellate Court which was also accepted by the lower Appellate Court?

3. I have heard Mrs.N.Krishnaveni, learned Senior Counsel for Mr.N.Anandhakumar, learned counsel for the appellants/defendants and Mr.M.Jahangir Baba, learned counsel for the respondent/plaintiff.

4. The brief facts, that are necessary for adjudicating the substantial questions of law framed by this Court, are as hereunder:

The respondent/plaintiff filed three suits in O.S.No.338 of 1997, O.S.No.746 of 1996 and O.S.No.97 of 2003. All the three suits were decreed as prayed for by the I Additional Sub-Court, Trichy. The case of the respondent/plaintiff was that the defendants 1 and 2 in O.S.No.338 of 1997 are parents of Muthukrishnan. They were blessed with a daughter, Muthammal and she is no more. The 3rd defendant in O.S.No.338 of 1997, Jayalakshmi is the first wife of Muthukrishnan. The 4th defendant is the son of the 3rd defendant and the defendants 5 to 8 are daughters of the 3rd defendant. Muthukrishnan married the plaintiff's mother, Chandra as his second wife on 20.09.1984 at Uthamarkoil and the plaintiff was born to said Muthukrishnan and Chandra on 28.09.1985. Claiming that suit items



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1 to 42 and 48 to 59 are joint Hindu family properties, comprising of coparceners, Muthukrishnan and his father and with the death of the father, the entire properties devolving upon Muthukrishnan, the plaintiff stakes a claim in these properties. Insofar as item 43 to 47, the plaintiff claims that they are the self acquired properties of Muthukrishnan.

5. According to the plaintiff, the second wife, Chandra was living with Muthukrishnan, when the first wife and the 2nd defendant compelled Chandra to undergo family planning operation, which forced Muthukrishnan to set up a separate family for himself at Trichy. The plaintiff was educated at Trichy. The defendants are attempting to alienate the suit properties, in order to deny the legitimate share of the plaintiff. The plaintiff is entitled to equal share in all the properties and hence, a suit for partition of 1/7th share has been filed in O.S.No.338 of 1997. Muthukrishnan had also taken an insurance policy with Life Insurance Corporation of India at Perambalur Branch. The plaintiff is entitled to 1/7th share in the proceeds from the said insurance policy as well. The 1st defendant had borrowed Rs.1,44,466/- under two policies with LIC, being the nominee. The plaintiff had sent a lawyer's notice to LIC, claiming 1/7th share, to which the Company sent a reply, stating that a sum of



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Rs.16,199/- was to be disbursed under Policy No.42937698. The plaintiff sent a notice to the 1st defendant. However, there was no reply. Hence, a suit in O.S.No.746 of 1996 has been filed for declaration that the plaintiff is entitled to a 1/7th share in the said Rs.16,199/- and for an injunction to restrain the defendants from claiming the said amount from LIC.

6. Eversince the death of Muthukrishnan, the plaintiff is struggling to maintain himself. He is unable to spend for his education also. The plaintiff's mother, who is the second wife of Muthukrishnan, is also having no means to maintain the plaintiff. Therefore, the third suit in O.S.No.97 of 2003 was filed, claiming monthly maintenance of Rs. 1,500/- from the defendant and for past maintenance of Rs.31,500/-, with a charge over the suit properties.

7. The case of the contesting defendants is as follows:

Muthukrishnan did not have two wives. The 1st defendant is his only wife and Jayalakshmi and Muthukrishnan were blessed with one son and four daughters. The documents relied on by the plaintiff are concocted documents. The properties set out in items 38, 39, 42 and 48 to 59 are not family properties. Similarly, item 41 is belonging to the mother



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of Muthukrishnan, Sivamalai Ammal. The suit items 43 to 47 have not been properly described in the plaint. Neither Chandra, the alleged second wife, nor the plaintiff, ever lived with Muthukrishnan, as alleged in the plaint. Even assuming that the plaintiff is the son through a bigamous marriage, the properties, being joint family properties, the plaintiff is not entitled to any share. The residential house at Perambalur and Rasi Tirumana Maligai were built by availing financial assistance. The income accruing from the lands and lodge have gone only for discharging the debts incurred for the construction and purchase of house sites and Tirumana Maligai.

8. The 1st defendant raised crops and also did toddy business with arrack shop license and earned considerable income therefrom. The lodge was built mostly out of the said income. Apart from the borrowings, the 1st defendant was also doing money lending business from which also he had substantial income. Muthukrishnan started assisting the 1st defendant only when the 1st defendant was old. Muthukrishnan did not have any independent income or funds to acquire items 44 to 47. After marriage to Jayalakshmi, Muthukrishnan was living at Nathakkadu for about two years. Later, he shifted to Perambalur and was taking care of the joint



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family money lending business. The 1st defendant purchased properties in the name of his son Muthukrishnan, as well as in his own name, from and out of the income derived from joint family lands and business. Under the provisions of Hindu Succession Act, the plaintiff is not entitled to any share. The valuation of the suit is not correct. The defendants do not admit that the plaintiff is an illegitimate son of Muthukrishnan born through Chandra. The plaintiff is therefore not a heir of Muthukrishnan. The defendants therefore sought for dismissal of the suits.

9. A joint trial of all the three suits was conducted by the Trial Court and evidence was recorded in the suit for partition in O.S.No.338 of 1997. The Trial Court, on appreciation of oral and documentary evidence, proceeded to decree all the three suits. Aggrieved by the common judgment and decree, the defendants 3 to 8, the appellants herein filed A.S.No.49 of 2014 (O.S.No.338 of 1997), A.S.No.13 of 2015 (O.S.No.97 of 2003) and A.S.No.14 of 2015 (O.S.No.746 of 1996).

10. The First Appellate Court dismissed A.S.No.49 of 2014 and A.S.No.14 of 2015, confirming the judgment and decrees of the Trial Court. However, A.S.No.13 of 2015 was allowed and the decree in



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O.S.No.97 of 2003 was set aside. There is no further appeal on the side of the respondent/plaintiff as against the judgment and decree in A.S.No.13 of 2015. The present Second Appeals are at the instance of the defendants 3 to 8, challenging the concurrent findings in A.S.No.49 of 2014 and A.S.No.14 of 2015.

11. Submissions of the learned counsel for the appellants:

Ms.N.Krishnaveni, learned Senior Counsel appearing for the appellants would submit that when the plaintiff himself admitted the marriage of Jayalakshmi and the factum of son and four daughters having been born to Muthukrishnan and Jayalakshmi, the burden was very heavily on the plaintiff to establish that (i) Muthukrishnan had married Chandra as his second wife and (ii) the plaintiff was born to said Muthukrishnan and Chandra. Pointing out to Ex.A1 to Ex.A6, which alone have been filed on the side of the respondent/plaintiff, learned Senior Counsel would contend that the plaintiff has miserably failed to prove the marriage between Muthukrishnan and Chandra, the alleged parents of the plaintiff. Pointing out to the evidence adduced on the side of the defendants, learned Senior Counsel would state that the defendants



have filed overwhelming documentary evidence to establish that the defendants alone were entitled to share in the suit properties.

12. Taking me through the judgment of the Trial Court, learned Senior Counsel would contend that without any discussion on the subject, the Trial Court has summarily proceeded to hold that the plaintiff is entitled to a share in the suit properties. The learned Senior Counsel, Ms.N.Krishnaveni, would also contend that when it is the specific claim and case of the plaintiff that his mother Chandra had married Muthukrishnan on 20.09.1984, the same had to be established by the plaintiff, before becoming entitled to a decree.

13. In this regard, the learned Senior Counsel would take me through the proceedings before the First Appellate Court, where the register from Uthamarkoil was summoned, which clearly demonstrated the fact that there was no such marriage solemnised between Muthukrishnan and Chandra on the said date at Uthamarkoil. It is her further contention that even the long cohabitation has not been established, even assuming long cohabitation can be presumed in favour of marriage. It is however her submission that when long cohabitation



may be a strong circumstance for establishing marriage, it would not apply to a second marriage.

14. Pointing out to the interested testimony of the witnesses examined on the side of the plaintiff, the learned Senior Counsel would contend that the oral evidence adduced on the side of the plaintiff to establish the marriage between Muthukrishnan and Chandra did not inspire the confidence of the Court. It is also her legal submission that in such circumstances, when the marriage is not proved, Section 16 of the Hindu Marriage Act cannot be applied to bestow a right upon the plaintiff, treating him to be an illegitimate son.

15. As regards the character of properties also, learned Senior Counsel would contend that the plaintiff has miserably failed to establish that the properties were available for partition at the hands of the plaintiff. She would also point out to the reasons set out in the plaint to contend that if really the reason for Muthukrishnan setting up a separate family residence was because of the compulsion for undergoing family planning, then, in all likelihood, the said Muthukrishnan and Chandra should have begotten further children, which is not the case of the plaintiff admittedly.



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Hence, it is her submission that the plaint allegations are invented, in order to entitle the plaintiff to seek a right in the properties of Muthukrishnan, which otherwise devolve only upon the defendants.

16. The learned Senior Counsel would further state that excepting the 1st defendant, none of the other defendants contested the suit and after the demise of the 1st defendant in 2010, the counsel also reported “no instructions” on 23.04.2012 and within two days, the judgment was pronounced on 25.04.2012. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in *Malkiatsingh Vs. Jogindersingh*, reported in (1998) 2 SCC 206, where the Hon'ble Supreme Court held that when a counsel reports 'no instruction' and the party is not present before the Court, then the Court should issue notice to the party before proceeding ex-parte.

17. The learned Senior Counsel would further contend that the plaintiff had clearly abused the process of law by filing the suits at Trichy, where there was absolutely no cause of action. It was specifically pointed out in the written statement that none of the properties belonging to the family or to Muthukrishnan were situate at Trichy. Despite the same, no



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specific issue was framed by the Trial Court in this regard. She would also point out that the only property at the time of filing of the suit, which was admittedly situate within the jurisdiction of the Trichy Court, was not belonging to the family and hence, the plaintiff had clearly manipulated the situation and filed the suit before the Sub-Court, Trichy, which did not have the territorial jurisdiction to try the suit itself. In this regard, the learned Senior Counsel has relied on the judgment of this Court in *Chinnasami and others Vs. Dhanasekaran*, reported in (2022) 0 *Supreme (Mad)* 1529. The learned Senior Counsel appearing for the appellants would state that though the partition suit was filed in Trichy, all the properties were situate only at Perambalur and even the LIC policy was taken only at Perambalur Branch. However, the suits were transferred to Trichy to be tried together by taking out transfer applications.

18. The learned Senior Counsel would also point out to the written statement filed in O.S.No.97 of 2003 and contended that the defendants themselves have taken a plea that the Sub-Court at Trichy did not have territorial jurisdiction to try the suit as none of the properties are situate at Trichy and the only property which is shown in the suit and situate within the jurisdiction of the Trichy Courts did not belong to the deceased



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Muthukrishnan or the defendants' family. It is therefore her submission that despite such stand taken in the written statement, no issue was framed and the common judgment passed by the Sub-Court, Trichy was non-est and without jurisdiction.

19. In support of her contentions, the learned Senior Counsel has also relied on the following decisions:

1.K.Munuswami Gounder Vs. M.Govindaraju (1995) 1 LW 487.

2.Rajam and others Vs. Chidambaravadivu and others (2002) 3 LW 803.

3.V.Leela and others Vs. D.Rajammal (Died) and others (2002) 3 MLJ 312.

4. Malkiatsingh Vs. Jogindersingh (1998) 0 AIR (SC) 258.

5. Revanasiddappa and another Vs. Mallikarjun and others (2023 10 SCC 1).

6.Chinnamuniamma Vs. Pattammal (Deceased) (2017) 0 Supreme (Mad) 2605.

20. Submission of the learned counsel for the respondent:

With regard to territorial jurisdiction, the learned counsel for the respondent would further state that no doubt the defendants have raised the plea of jurisdiction and no issue was framed. However, when Transfer OP's were filed and three suits were clubbed together and directed to be



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decided by the Sub-Court, Trichy, having participated in the trial, it is not open to the appellants to contend that the Court did not have necessary jurisdiction territorial or otherwise to non-suit the plaintiff.

21. It is also his submission that in support of the proof of marriage between Muthukrishnan and Chandra, the second wife Chandra herself has been examined and her mother has also deposed. Relying on the evidence of P.W.4, he would contend that the evidence of P.W.4 clinchingly establishes the factum of marriage between Muthukrishnan and Chandra.

22. As regards the manner in which the Trial Court had proceeded to dispose of the suit in the light of the arguments of the learned Senior Counsel, the learned counsel for the respondent would contend that the 1st appellant is a graduate and the 2nd appellant is also a graduate and they are not illiterate persons to contend that the counsel did not inform them about the hearing of the case and no advantage can be derived from the fact that after the counsel reported no instruction, the Trial Court proceeded to decide the suits ex-parte and pass judgments. He would also invite my attention to the evidence of P.W.5, who is a person from the



same locality and contended that the evidence of P.W.5 was strong enough for the Courts to believe.

23. Insofar as the arguments of the learned Senior Counsel with regard to the reason Muthukrishnan had set up a separate residence in view of the alleged compulsion to undergo family planning and further, children not being born, the learned counsel for the respondent would contend that the birth of further children is dependent on multifarious factors and merely because apart from the plaintiff, no further children were born to Muthukrishnan and Chandra cannot imply falsity in the case set up by the plaintiff. In support of his submissions, the learned counsel has relied on the following decisions:

1. Gobind Singh and others Vs. Union of India and others (Civil Appeal Nos. 5168 – 5169 of 2011 dated 09.03.2026).

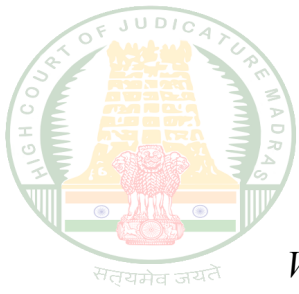
2. Perumal Nadar (dead) by Legal Representatives Vs. Ponnuswami Nadar (Minor) (AIR 1971 Supreme Court 2352).

3. Shantinath Ramu Danole and another Vs. Jambu Ramu Danole and others (Civil Appeal No. 2703 of 1984 dated 05.11.1996).

4. Valliammal (D) by LR's Vs. Subramaniam and others (2004 SAR (Civil) 769).

5. Karedla Parthasaradhi Vs. Gangula Ramanamma (D) Thr. LR and others (2015 SAR (Civil) 196).

6. Dhannulal and others Vs. Ganeshram and another (2015 SAR (Civil) 583).



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7.Om Prakash Agarwal (D) through LR's and others Vs. Visham Dayal Rajpoot and another (2019 SAR (Civil) 70).

8.Rajneesh Kumar and another Vs. Ved Prakash (SLP. (Civil).Nos.935-936 of 2021 dated 21.09.2024).

9.Narinder Singh Rao Vs. AVM Mahinder Singh Rao and others (2013) SAR (Civil) 702).

24. Pending Second Appeals, CMP.No.8252 of 2024 has been taken out by the appellants for adducing additional evidence, invoking Order XLI Rule 27 of CPC. The Will of the 1st defendant in favour of the 2nd appellant, the Will of Sivamalai Ammal, 1st appellant's mother-in-law in favour of the 2nd appellant, the death certificate of 1st appellant's father and mother are sought to be produced as additional evidence.

25. It is the contention of Ms.N.Krishnaveni, learned Senior Counsel that these documents would establish that the father of Muthukrishnan, Ramasamy Udayar died only on 21.07.2010, pending the suit and pursuant to his death, the plaintiff filed an application for amendment of the plaint for enlarging his share, which came to be allowed on 19.09.2011.

26. According to the learned Senior Counsel, the appellants were in dark about the said interlocutory order allowing amendment since by then



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the counsel appearing for the appellants had reported 'no instructions'. She would therefore contend that when the father-in-law and mother-in-law of the 1st appellant had left behind the testamentary instruments, giving the properties to the 2nd appellant, the plaintiff cannot seek for enlargement of his share pursuant to the demise of his grand parents. She would therefore contend that the application has to be allowed and the additional documents are to be received.

27.The application is resisted by the respondent/plaintiff. Mr.M.Jahangir Babu, learned counsel appearing for the respondent would firstly contend that even before the First Appellate Court, I.A.No.113 of 2015 was filed under Order XLI Rule 27 of CPC to let in further oral and documentary evidence and the First Appellate Court found that the appellants cannot be allowed to fill up the lacuna at the appellate stage and dismissed the application. He would also point out to the judgment of the Appellate Court, where specifically the documents now sought to be adduced as additional evidence have been discussed and rejected by the First Appellate Court. He would therefore state that the application cannot be renewed at the second appeal stage and there is no merit in the said application. He would therefore pray for dismissal of the CMP.



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28. In *Gobind Singh's case*, referred herein supra, the Hon'ble Supreme Court held that parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage.

29. In view of the above, I do not find any merits in the Order XLI Rule 27 of CPC application. Accordingly, the same is dismissed.

30. I have carefully considered the submissions advanced by the learned Senior Counsel for the appellants and the learned counsel for the respondent. I have also gone through the judgments on which reliance is placed on by the learned Senior Counsel for the appellants and the learned counsel for the respondent, besides going through the pleadings, as well as the oral and documentary evidence and the judgments of the Courts below.

31. The status of the plaintiff is seriously disputed by the defendants. The plaintiff claims that his mother Chandra was the second wife of Muthukrishnan and as an illegitimate son, the plaintiff seeks partition of the properties belonging to Muthukrishnan and the properties



in which Muthukrishnan has a share.

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32. Section 16 of the Hindu Marriage Act is pressed into service and the same is usefully extracted hereunder:

“16. Legitimacy of children of void and voidable marriages;-

(1) Notwithstanding that a marriage marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled

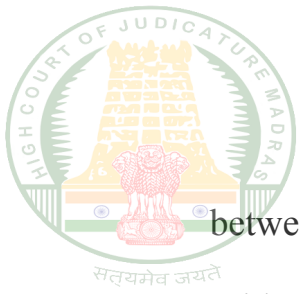


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by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.”

33. Keeping the statutory provision in mind and analysing the rival contentions of the parties to the lis in the present case, it is seen that the plaintiff himself admits the marriage of Muthukrishnan and Jayalakshmi to be the first marriage and proceeds to seek partition on the footing that he is the son of the second wife Chandra. In order to fall within Section 16 and be entitled to claim a share or a right to partition, the plaintiff has to first establish the existence of the second marriage, namely between Muthukrishnan and Chandra. Such a marriage should be either void under Section 11 or voidable under Section 12 of the Hindu Marriage Act and the Section itself presupposes a decree of nullity being granted either under Section 11 or under Section 12 of the Act and most importantly, the child should have been begotten or atleast conceived before such a decree of nullity was made. As already discussed, the defendants do not admit the second marriage or even the illegitimacy of the plaintiff. Thus, the burden was entirely on the plaintiff's shoulder to establish a marriage



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between Muthukrishnan and Chandra and the birth of the plaintiff to the said Muthukrishnan and Chandra.

34. In order to establish the same, the plaintiff has filed Ex.A1 to A6. Ex.A1 is the birth certificate of the plaintiff, Ex.A4 is a Family Card survey questionnaire, which mentions the second wife Chandra's name and the plaintiff's name. Ex.A5 is the voters list for the year 1988. Heavy reliance is placed on these documents to establish the marriage between Muthukrishnan and Chandra. Ex.A4, Family Card survey questionnaire does not bear any seal or signature and appears to be a self serving form. Interestingly, it does not even mention the name Muthukrishnan anywhere. The names of the parents of Muthukrishnan's alone are found. The plaintiff is stated to be 5 years old at the time of the said document coming into existence. The plaintiff claims to have been born on 28.09.1985, which means that Ex.A4 should have been a document of the year 1980 or thereabouts, when admittedly Muthukrishnan was alive. Therefore, the omission of Muthukrishnan's name in the said document certainly raises serious eyebrows. By no stretch of imagination, Ex.A4 can be styled as an official document, as projected by the plaintiff. The Courts below have given undue weightage to the said document to come



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to the conclusion that since the plaintiff's name and his mother's name are found along with the names of the parents of Muthukrishnan, it is a strong factor to establish the marriage between Muthukrishnan and Chandra.

35. Ex.A5 is the voters list that has been relied on by the plaintiff. In the said voters list, Sl.Nos.781 to 784 assumes relevance. Sl.No.781 reflects the name of Ramasamy, father of Muthukrishnan, Sl.No.782 reflects Sivamalai Ammal, mother of Muthukrishnan, Sl.No.783 reflects the name of Muthukrishnan himself and Sl.No.784 reflects the name of his wife, Jayalakshmi. Chandra's name is not even found in the said voters list. The document that has been relied on by the plaintiff himself does not support his case.

36. In fact, the version projected by the plaintiff is that during the Family Card survey questionnaire in the year 1985, the parents of Muthukrishnan had accepted Chandra as his second wife and included her name in the questionnaire. Strangely, the plaintiff's name and age are also found in the said questionnaire. The plaintiff was born admittedly in the year 1985 alone and therefore, by no stretch of imagination, the document



could have reflected the age of the plaintiff as 5 years. The document is therefore not trustworthy of reliance.

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37. The definite case of the plaintiff was also that Muthukrishnan married his mother Chandra at Uthamarkoil on 20.09.1984. Pending first appeal, the register concerned was summoned from the said temple at the behest of the appellants. The Appellate Court found that the said register did not contain any entry with regard to the solemnisation of marriage between Muthukrishnan and Chandra. Unfortunately, the First Appellate Court has not considered the same to disentitle the plaintiff to relief. The Courts below have also been carried away by the first sheet of Ex.A5, Voters Enumeration Card, which contains the names of Muthukrishnan and Chandra. The first page of Ex.A5 is not signed by Muthukrishnan, but only by Chandra. As already discussed, the voters list does not even mention the name Chandra, leave alone showing her to be the wife of Muthukrishnan. On the contrary, it only reflects the first wife Jayalakshmi's name. Unfortunately, the Courts below have gone by the self serving declaration in the first page of Ex.A5 to infer that Chandra is the wife of Muthukrishnan, on a total misreading of Ex.A5. Therefore, from the documents filed by the plaintiff, the Courts could never have



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come to the conclusion that the plaintiff had proved the marriage between Muthukrishnan and Chandra. Unfortunately, the Courts have misconstrued the documentary evidence and also failed to see that the witnesses examined on the side of the plaintiff were all interested witnesses and their testimony was not only biased but also untrustworthy and no reliance ought to have been placed on the same.

38. The defendants, on the other hand, have filed numerous documents, namely invitation cards for house warming ceremony, marriages between 1988 and 2003, which clearly demonstrated that Muthukrishnan and Jayalakshmi were very much living together as husband and wife, which falsified the case of the plaintiff that Muthukrishnan set up a separate residence with his mother Chandra. The plaintiff's mother claimed herself that she lived along with Muthukrishnan for three years. Though P.W.4 claimed that he was related to the 1st defendant and the marriage was solemnised at Uthamarkoil on 20.09.1984, which version was spoken to by the alleged second wife, Chandra, P.W.2, as well as her mother, P.W.3, with the register being summoned from the temple, the case of the plaintiff clearly fell to the ground. With the same, the oral testimony of P.W.2 to P.W.4 also has to



be necessarily disbelieved as not being trustworthy or having any credence whatsoever to be given any weightage.

39. Though P.W.4's evidence is strongly relied on by the learned counsel for the respondent to be an independent witness, on going through his evidence in chief and cross, I find that the witness claims to be the nephew of the 1st defendant. However, excepting the *ipse dixit* of P.W.4, there is no proof to substantiate that the witness was related to the 1st defendant's family. Specific suggestions in this regard were also put, denying the self serving claim of P.W.4 that he was related. In any event, when he claims that the marriage between Muthukrishnan and Chandra was solemnised on 20.09.1984 at Uthamarkoil and the same has been established to be false, I do not see how the evidence of P.W.4 can be looked into, to accept the case of the plaintiff regarding the proof of marriage between Muthukrishnan and Chandra.

40. In view of the Courts below having clearly misdirected themselves to rely on the documents having no evidentiary value and by also misconstruing the documentary evidence adduced by the parties to come to erroneous conclusions, I am constrained to interfere with the



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concurrent findings rendered by the Trial Court, as well as the First Appellate Court, exercising powers under Section 100 of CPC.

41. Once the findings of the Courts below that the plaintiff is the son of Muthukrishnan is set aside, the question of going into the entitlement of the plaintiff to a partition decree does not even arise. Even for academic interest, as rightly pointed out by the learned Senior Counsel, the Courts below have not even discussed the nature and character of properties and whether the plaintiff, assuming to be an illegitimate son, under Section 16 of the Hindu Marriage Act, would be entitled to seek right in the said properties.

42. Insofar as the arguments regarding no opportunity being given to the appellants, I am unable to countenance the said arguments for the simple reason that the appellants were very much represented by a counsel and they ought to have diligently followed up the case without choosing to blame the counsel who has reported no instruction only at the fag end of trial. Therefore, as rightly pointed by the learned counsel for the respondent, it is not as if the appellants are illiterates. Admittedly, they are graduates and they have to blame themselves, if they have not



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followed up the matter with their counsel. Hence, I do not see any merit in the arguments of the learned Senior Counsel that the appellants were deprived of an opportunity.

43. In any event, the appellants have been given a full audience before the First Appellate Court and hence, I do not see any serious prejudice having been caused to them, in order to apply the ratio laid down in *Malkiatsingh's case*, referred herein supra, where a challenge was to an ex-parte decree passed by the Trial Court and under such circumstances, the Hon'ble Supreme Court held that an opportunity should be given since the appellants were not found to be careless or negligent in defending the suit.

44. In *Revanasiddappa's case*, referred herein supra, the Hon'ble Supreme Court held that a child born from a voidable marriage, which has been annulled, would have rights in the property of the parents and not in the property of any other person and further held that children who have been conferred with legitimacy under Section 16 of the Hindu Marriage Act, would also be entitled to a share in the property which would have been allotted to a deceased upon notional partition, if it had taken place.



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However, pre-condition for recognition of right of children born from voidable or void marriage is proof of marriage. Here, admittedly, as already discussed, the plaintiff has miserably failed to prove the factum of marriage between Muthukrishnan and Chandra.

45. The additional document summoned and marked, pending the first appeal, further worsens the case of the plaintiff by clearly establishing that on the alleged date of marriage, namely 20.09.1984, there was no such solemnisation of marriage in the temple in which the plaintiff claims that the marriage between Muthukrishnan and Chandra was solemnised.

46. In *Chinnamuniamma's case*, referred herein supra, this Court held that the second marriage cannot be presumed from long cohabitation and as such, a marriage cannot be recognized in law. The ratio laid down in this case would squarely apply to the facts of the present case since it is the case of the plaintiff himself that he is born to Muthukrishnan and the second wife, Chandra. Muthukrishnan died within 9 years from the date of the alleged marriage with Chandra and therefore, it cannot even be termed as long cohabitation as well.



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47. In *Rajam's case*, referred herein supra, the Division Bench of this Court held that once the factum of marriage is not proved, then it has to be treated as a case of no marriage and Section 16(1) of the Hindu Marriage Act would not stand attracted and children born from such marriages cannot get the benefit of Section 16(1) of the Hindu Marriage Act. The Division Bench of this Court followed the earlier Division Bench judgments in *Chellammal Vs. Ranganatham Pillai*, reported in 1911 (I) ILR 34 Madras 277 and *K.Munuswami Gounder and another Vs. M.Govindaraji and others*, reported in 1995 (1) L.W 487, as well as *Ponnamma Vs. Kumara Pillai and others*, reported in 1972 (I) MLJ 364. These decisions will apply in all force to the facts of the present case, having come to the conclusion that the plaintiff has failed to prove the marriage between the deceased Muthukrishnan and Chandra.

48. In *V.Leela's case*, referred herein supra, this Court held that legitimacy is an express pre-condition for succession, which constitutes foundation of a right under the Act to succeed and that illegitimate children cannot be included within the meaning of the words 'son', 'daughter', etc., to invoke general rules in Section 8 of the Hindu Succession Act. This Court further held that Section 16 confers status of



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legitimacy, though limited, on children born of void or voidable marriages to recognise their parentage and benefit such children. However, such benefit cannot be conferred when the factum of marriage has not been proved. The ratio laid down in this case would also squarely apply to the facts of the present case.

49. Coming to the decisions that have been relied on by the learned counsel for the respondent, in *Rajneesh Kumar's case*, referred herein supra, the Hon'ble Supreme Court held that the entire blame cannot be thrown on the head of the advocate and the Hon'ble Supreme Court has deprecated the tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the Court. The Hon'ble Supreme Court reiterated that the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings.

50. In *Om Prakash Agarwal's case*, referred herein supra, the Hon'ble Supreme Court, referring to Section 21 of CPC, held that when a case has been tried by a Court on merits and judgment is rendered, it

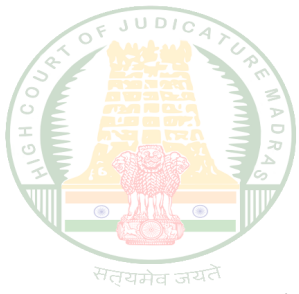


should not be liable to be reversed purely on technical grounds unless it has resulted in failure of justice.

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51. In *Narinder Singh Rao's case*, the Hon'ble Supreme Court held that no issue having been made with regard to a plea of benami, it cannot be permitted to be raised before the Appellate Court for the first time. *Valliammal's case*, has been relied on to defeat the claim of the property having been purchased by the 1st defendant. As I have already found that the plaintiff not entitled to seek the relief of partition, these decisions will not apply in the instant case.

52. In *Dhannulal's case*, referred herein supra, the Hon'ble Supreme Court held that law presumes in favour of marriage and concubinage, when a man and woman have cohabited continuously for a long time. It is however only a rebuttable presumption. Further, as already held by this Court, presumption merely because of long cohabitation cannot be applied in favour of a second marriage and further as already discussed, even long cohabitation has not been proved in the instance case. Hence, I am unable to apply the ratio laid down in the above case to the facts of the present case.

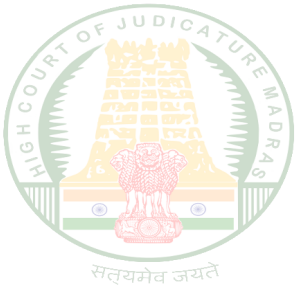


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53. In *Karedla Parthasaradhi's case*, referred herein supra, the Hon'ble Supreme Court held that continuous cohabitation for number of years is a strong presumption in favour of legality of a marriage and legitimacy of offspring of such cohabitation.

54. In *Shantinath Ramu Danole's case*, the Hon'ble Supreme Court held that opinion of a co-villager and a person of community of the husband deposing that he saw the couple living as husband and wife would be a relevant and admissible fact for the proof of marriage. However, I have already discussed, the evidence of witnesses examined on the side of the plaintiff and how their testimony was unworthy of reliance. Hence, this decision also will not apply.

55. In *Perumal Nadar's case*, the Hon'ble Supreme Court held that children born during subsistence of valid marriage, though husband and wife were living apart long before birth of child, would still give rise to a presumption of legitimacy of such child born, unless the husband is able to establish absence of access, the presumption under Section 112 of the Indian Evidence Act will not be displaced. I do not see how this decision will apply to the facts of the present case, since the issue is not as to whether the plaintiff was born during subsistence of a valid marriage.



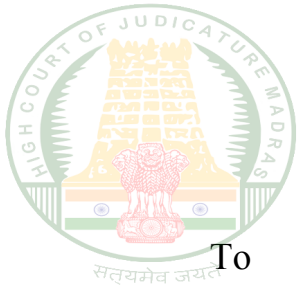
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56. For all the above reasons, I am inclined to interfere with the concurrent findings rendered by the Courts below on a wholly misplaced and misconceived approach to the pleadings, as well as the oral and documentary evidence brought on record by the parties, in coming to erroneous conclusions, which could not have been arrived at, if the oral and documentary evidence were assessed in a proper and judicious perspective. The substantial questions of law are therefore answered in favour of the appellants.

57. In fine, the Second Appeals are allowed and the judgment and decree dated 03.10.2016 passed in A.S.No.49 of 2014 and A.S.No.14 of 2015 on the file of the Principal District Judge, Tiruchirapalli, confirming the judgment and decree dated 25.04.2012 passed in O.S.No.338 of 1997 and O.S.No.746 of 1996, on the file of the I Additional Sub-Court, Tiruchirapalli, are set aside. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

05.06.2026

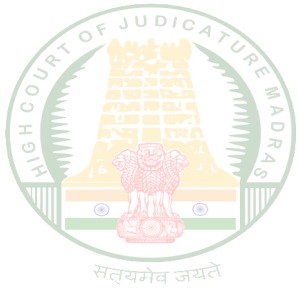
Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

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1. The Principal District Judge,
Tiruchirapalli.
2. The I Additional Sub-Court,
Tiruchirapalli.
3. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI.J,

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Pre-delivery Judgment made in
S.A(MD).Nos.241 & 242 of 2017
& CMP.(MD).No.8252 of 2024
& CMP.(MD).No.5104 of 2017

05.06.2026