



**IN THE COURT OF ADDITIONAL DISTRICT JUDGE, DINDIGUL**

**Present: Thiru. Swarnam J Rajagopalan, B.A.B.L.,(Hons.)**

**Additional District Judge, Dindigul**

**Wednesday, dated this the 01<sup>st</sup> day of April, 2026**

**Appeal Suit No. 56/2020**

**(C.N.R.No. TNDG01-004007-2020)**

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A.Francis Xavier Raj

.. Appellant/Plaintiff

Vs.

1. A.Arul Mary @ Lakshmi Devi
2. Josephine Chandra (Died)
3. Arockiaraj
4. Pinky.A.Shantha
5. Preethi A.Sheela

... Respondents / Defendants

On appeal from the Decree and Judgment passed in O.S.No.188/2007 on the file of the Learned Additional Subordinate Judge, Dindigul dated 18.01.2017.

**Parties before Trial court:**

A.Francis Xavier Raj

... Plaintiff's

Vs.

1. A.Arul Mary @ Lakshmi Devi
2. Josephine Chandra
3. Arockiaraj
4. Pinky.A.Shantha
5. Preethi A.Sheela

... Defendants

The Appeal Suit in A.S.No.56/2020 came before me for final hearing on 01.04.2026 in the presence of Learned counsel Thiru. M.Ashokumar, Advocate for Appellant and the Learned counsel Thiru.E.Rahuraman, Advocate for 1<sup>st</sup> Respondent and learned counsel Thiru.P.Lakshmanan, Advocate for Respondents 3 to 5 and R2 died Appellant and Respondents filed memo and on perusing entire case records and having stood over for consideration till this date, this Court delivered the following ...

### **JUDGMENT**

On appeal from the judgment and decree passed in O.S.No.188/2007 dated 18.01.2017 by the learned Additional Subordinate Judge, Dindigul.

The suit was filed for preliminary decree for partition declaring that the plaintiff is entitled to 2/3rd share in Items 1 to 3 of the suit properties; Direct the 1st defendant to divide the suit properties into three equal shares, after taking into consideration all equities, and allot 2/3rd share to the plaintiff by metes and bounds; In the event of failure on the part of the 1st defendant to effect such division, permit the plaintiff to approach this Hon'ble Court for passing a final decree, by appointing a Court Commissioner to divide the suit properties and allot 2/3rd share to the plaintiff by metes and bounds; Grant a permanent injunction restraining the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit properties; Award costs of the suit; and Pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

The parties are referred to as in the suit for convenience and easy understanding.

**1. Brief averments of the plaint in O.S.No. 188/2007:**

The father A.V.Arockiam and the mother of the plaintiff who is the first defendant herein were married on 26.08.1977 as per Christianity and this plaintiff was born on 23.09.1978. The second defendant is the niece of A.V. Arockiam and the defendants 3 to 5 are her children. In order to augment the family income, the father allowed the first defendant to embrace Hinduism and avail the reservation benefits. The first defendant then joined service in State Bank of India. The father of the plaintiff was working at Chennai and the first defendant could not migrate to Chennai and because of this he started treating her with cruelty and deserted her. The Second defendant worked as servant maid during this period. Taking advantage of the misunderstanding, the second defendant swindled all the earnings of A.V. Arockiam. On 02.08.2007, Arockiam was admitted in Sri Ramachandra Medical Centre, Chennai, and under mysterious circumstances he died intestate on 01.09.2007. The first and second items of the suit property still stand in the name of paternal grandmother Savariammal. The third item stands in the name of paternal grandfather Viyagulam. But they are not alive and they died leaving behind the plaintiff and his father Arockiam. Father of the plaintiff sought custody from his mother, and when the plaintiff attained majority, that proceeding became infructuous and the plaintiff was closely associated with his father. As his father Arockiam was employed at Chennai, the plaintiff continued to be in joint possession and enjoyment of the suit properties with the help of his

paternal uncle. The defendants 3 to 5 have no right or interest over the properties and they attempted to encroach the second item which was repulsed with the help of elders and relatives. Under the Succession Act, the plaintiff is entitled to 2/3 share and the first defendant is entitled to 1/3 share in the suit properties. The first defendant is refusing to cooperate for an amicable partition. Hence, the suit for partition and separate possession as well to restrain the defendants 2 to 5 by way of permanent injunction.

**2. Averments in the written statement filed by the first defendant:**

The marriage between this defendant and A.V. Arockiam, as well the birth of the plaintiff are all admitted. Only on the persuasion of A.V. Arockiam, the first defendant became a clerk in the telecom department initially and later joined S.B.I., Dindigul Branch. Because of her work, this defendant was unable to join her husband at Mumbai. This resulted in a stand off between A.V. Arockiam and this defendant, which continued as an inconclusive matrimonial proceeding. The proceedings initiated by the husband for the custody of the plaintiff was turned down and similarly the divorce proceedings I.D.O.P. No.108/2003 before the District Court also ended in dismissal on 05.09.2007. The marriage between the said Arockiam and this defendant subsisted till his death. Hence, this defendant is a heir under the provisions of Succession Act. The defendants 2 to 5 are total strangers to the family of A.V. Arockiam. This defendant is shown as the nominee to receive all retirement

benefits, which has to be shared with the plaintiff. There is no cause of action and the suit needs to be dismissed.

**3. Averments in the written statement filed by the 3<sup>rd</sup> defendant and adopted by 2, 4 and 5 :**

The husband of the 2<sup>nd</sup> defendant and father of the defendants 3 to 5 A.V. Arockiam initially married the first defendant and the plaintiff was born to them is admitted. Even the description of property, the extent and survey numbers are not specified clearly, how A.V. Arockiam is entitled to the property are not specified, which shows that the plaintiff is not aware of these particulars and only out of the instigation of first defendant, the suit has been filed. Further, in the plaint, the fact that the second defendant is the wife of Arockiam is not divulged. The said Arockiam married the second defendant and out of their wedlock the defendants 3 to 5 were born. The first defendant alone refused to live with her husband A.V.Arockiam, and left him when she was pregnant and went on to live at her father's place. Therefore, A.V. Arockiam filed O.S. No.2/1982 as against the first defendant for restitution of conjugal rights. The said suit was decreed exparte and in spite of best efforts by A.V. Arockiam, the first defendant did not come forward to live with her husband. By a legal notice A.V. Arockiam, demanded that his wife live with him, but first defendant replied that she was willing to co operate and get a divorce subject to the claim of maintenance through her counsel, dated

07.04.1983. Subsequently, A.V. Arockiam filed for judicial separation and custody of the child in 1987. In the said proceedings, O.S. No.10/1987, though judicial separation was ordered, the custody was not granted. After this order, the first defendant has lost her status as that of wife and hence she is an unnecessary party in the suit. The suit properties 1 and 2 are not ancestral. The first item belonged to Savariammal and her sister Mariyaselvam. On 04.10.1974 Mariyammal settled her share in favour of Arockiam. Property was handed over to Arockiam on the same day and he was enjoying the property exclusively. Arockiam even filed O.S. No.1243/1985 before District Munsif Court as against his maternal aunt Packiyathammal and his sister Mariya Anthony in respect of the first item of the property. The suit ended in favour of Arockiam and he was enjoying the entire properties exclusively. The second item of the property belonged to the father of Arockiam, Viyagulam, who had purchased it on 08.03.1978 and then on 11.03.1987 settled it in favour of Arockiam. Thus, the first two items of the suit property belonged to A.V. Arockiam exclusively and it is his separate property. In respect of these two properties, A.V. Arockiam out of his own interest and volition executed a Will dated 08.10.1992 in favour of the third defendant herein. After the death of A.V. Arockiam, the first and second item of the suit properties exclusively belong to this third defendant and he is in possession and enjoyment. The plaintiff nor the first defendant were in possession and enjoyment at any point of time. The third item of property belonged to A.V. Arockiam, which he

purchased as a vacant site and by pledging the jewels of his wife the second defendant herein, a house was constructed by Arockiam and after his death, the said house is in the possession of the third defendant, by virtue of a Will dated 18.05.1995. Arockiam died at Chennai on 01.09.2007 and the plaintiff as well the first defendant have obtained a death certificate as if Arockiam died at Dindigul. The first defendant did not live with her husband and now after his death, to usurp his properties, has instigated the plaintiff to file this suit. The suit properties are not ancestral and by the Wills, Arockiam has bequeathed the same to the third defendant. From the said date, the third defendant is in possession and enjoyment of the suit properties. Hence, the suit needs to be dismissed with cost.

**4. Based on the above pleadings, the following issues were framed:**

- i) Whether the suit is bad for mis joinder of parties with regard to 2 to 5 defendants?
- ii) Whether the plaintiff is entitled to 2/3 share in 1 to 3 items of the suit property as sought for?
- iii) Whether the plaintiff is entitled to restrain the defendants 2 to 5 from in any way interfering with the plaintiff's peaceful possession of the suit properties as sought for?
- iv) To what other relief the plaintiff is entitled to?

5. The plaintiff examined himself as P.W.1 and one other person by name Vijay was examined as P.W.2, Ex.A.1 to Ex.A.4 were marked. The first defendant on her side, examined herself as D.W.1 and no exhibits were placed on her side.
6. During the cross examination of P.W.1, on the side of defendants 2 to 5 Ex. B.1 to B.3 were marked. Again during the cross examination of D.W.1 on the side of Defendants 2 to 5, another Ex.B.3 was marked on 03.12.2015. As there are two exhibits with the same number, the subsequent exhibit on 03.12.2015, is now renumbered as Ex. B.3A. The second defendant was examined as D.W.2 and Exhibits B.4 to B.12 were marked. With this, the submission of oral and documentary evidence on the side of plaintiff, first defendant and defendants 2 to 5 came to a close.
7. Upon conclusion of the trial, the learned trial Judge was pleased to decree the suit and declared the plaintiff 1/6 th share in the suit property and directed the defendant to divide the same into 6 equal shares and dismissed the relief of permanent injunction and held that the marriage between the Arockiam and 2<sup>nd</sup> Defendant is not established.
8. Aggrieved by the same the unsuccessful plaintiff filed the present appeal.

**Grounds of Appeal in brief is as follows:**

9. According to the Appellant the judgment and decree passed by the learned Trial Court are contrary to law, opposed to the facts and probabilities of the case, and against the weight of evidence on record. The Trial Court failed to

properly appreciate the oral and documentary evidence in its correct perspective, resulting in confusion and an erroneous partial decree based on a misapplication of mixed questions of fact and law. The Trial Court acted with apparent prejudice against the appellant/plaintiff and approached the matter with a pre-determined mindset, thereby causing serious miscarriage of justice. Having held that the marriage between the 1st respondent/1st defendant and late A.V. Arockiam subsisted till his intestate death on 01.09.2007, and that the 2nd respondent/2nd defendant was not his legally wedded wife, the Court erred in inconsistently concluding that respondents 3 to 5 are the children of the said A.V. Arockiam. The Trial Court gravely erred in determining the parentage of respondents 3 to 5 without the production of primary and best evidence such as birth certificates or Secondary School Leaving Certificates, and in the absence of any convincing explanation for such non-production. Instead, the Court improperly relied upon a family card issued by the Tamil Nadu Food and Civil Supplies Department, which is not a conclusive document for establishing legal parentage, but merely intended for welfare purposes. The finding of the Trial Court that respondents 3 to 5 are the children of the deceased A.V. Arockiam solely on the basis that the 2nd respondent resided in the same house as the deceased is legally unsustainable and unsupported by evidence. Mere cohabitation, in the absence of proof of a valid marital relationship or other cogent evidence, cannot establish either marital status or legitimacy of children. The Trial Court further erred in placing reliance on the judgment in

O.S. No. 10/87 (Ex.B2) without properly appreciating its relevance or applicability to the present case. The Court also wrongly accepted the unsubstantiated claims of respondents 3 to 5 merely because the appellant was unable to produce evidence to disprove them, thereby incorrectly shifting the burden of proof. The finding that respondents 3 to 5 are the illegitimate children of late A.V. Arockiam through the 2nd respondent is unsupported by any reliable evidence and is legally untenable. Even assuming, without admitting, such a relationship, the Trial Court failed to apply the correct legal principles, as under the Indian Succession Act, illegitimate children are not entitled to inherit the property of their father and can claim only through their mother. The Trial Court failed to consider that, in the presence of a legally wedded widow and a legitimate son of a Christian intestate, no other persons can be treated as co-sharers in the estate. In the absence of proper proof of parentage, respondents 3 to 5 could not have been declared as legal heirs of the deceased. Furthermore, when the deceased himself had described the 2nd respondent as his niece and respondents 3 to 5 as her children, the Trial Court ought to have accepted such declarations and held that they are entitled, if at all, only to the property of the 2nd respondent and not to the estate of the deceased. Therefore, it is most respectfully prayed that this Hon'ble Court may be pleased to allow this appeal, set aside or suitably modify the judgment and decree passed by the learned Additional Sub-Judge, Dindigul in O.S. No.

188/2007 dated 08.01.2017, and decree the suit as prayed for with costs throughout, and thus render justice.

10. When the appeal is posted for hearing both sides, both parties have filed the joint memo of compromise is as follows:

11. மேற்படி அப்பீல் உபய வாதிகள் தரப்பில் CPC U/s 23 Rule 3 ன் படி வணக்கமாய் பணிந்து சமர்ப்பிக்கும் சமசர ராஜீனாமா மனு

12. மேற்படி அப்பீல்வாதி / வாதி தாவா பிராது சொத்துக்களைப் பொறுத்து தனக்குண்டான 2/3 பங்கு பாகமும், 1ம் அப்பீல்பிரதிவாதி / 1ம் பிரதிவாதிக்கு 1/3 பங்கு பாகமும் இருப்பதாக கூறி திண்டுக்கல் கூடுதல் சார்பு நீதிமன்றத்தில் அசல் வழக்கு எண் 188/2007 என தாக்கல் செய்து உபய தர்ப்பு விசாரணைக்குப் பின் கடந்த 18.01.2017ம் தேதி தீர்ப்புரை பகரப்பட்டுள்ளது. மேற்படி தீர்ப்பின் பேரில் அப்பீல்வாதி/வாதி சமூகம் கோர்ட்டில் தாவா மேல்முறையீட்டு வழக்கை தாக்கல் செய்துள்ளார்.

13. தாவா சொத்துக்களைப் பொறுத்து திண்டுக்கல் கூடுதல் சார்பு நீதிமன்றத்தில் வாதிக்கு 1/6 பங்கை ஒதுக்கியும், அதனை அவருக்கு தனிப்பட்ட உடைமையில் வைக்கும்படியும், 1ம் பிரதிவாதிக்கு வழக்கு சொத்துக்களில் 1/3 (2/6) பங்கு உரிமையும், 3 முதல் 5 பிரதிவாதிகளுக்கு தலா 1 பங்கு வீதம் 3/6 உரிமையும் உள்ளது என 18.01.2017 அன்று தீர்ப்பளிக்கப்பட்டுள்ளது.

14. மேற்படி அசல் வழக்கு எண் 188/2007ன் தீர்ப்பின் பேரில் வழங்கப்பட்ட உத்தரவின்படி உபய தர்ப்பினர்கள் தங்களுக்குரிய பங்கு பாகத்தை பெறுவதற்கு தயாராகவும், சுவாதீனம் பெறுவதற்கும்

தங்களுக்குள் சமரசம் செய்து உபய தரப்பினர்கள் ஒப்புக் கொண்டு இந்த ராஜீனாமா மனுவின் மூலம் அசல் வழக்கு எண் 188/2007ன் தீர்ப்பினை உறுதி செய்து உத்தரவாக வேண்டி தாழ்மையுடன் பிரார்த்திக்கப்படுகிறது.

In view of the above settlement reached between the parties, This Appeal is allowed and it is hereby ordered that a compromise final decree be passed in terms at the joint compromise memo filed on 01.04.2026 which shall form part of the decretal order of this appeal, and the judgment and decree passed by the Additional Subordinate Judge, Dindigul in O.S.No.188/2007 dated 18.01.2017 is hereby confirmed.

Directly dictated to the stenographer, transcribed and typed by her in computer, corrected and pronounced by me in the Open Court on this the 1<sup>st</sup> day of April 2026.

Additional District Judge,  
Dindigul.