

IN THE COURT OF THE DISTRICT JUDGE, NAGAPATTINAM.



Present: Thiru. T. H. Mohammed Farooq, M.A. M.L.,
District Judge.

Wednesday, the 12th day of August 2026

Original Suit No.28/2023
(CNR No.TNNG010040442020)

Gopalakrishnan

.... Plaintiff

-Vs-

1. Shanmuga vadivel @ Nandakumar
2. Ramakrishnan
3. Prasanna
4. Soundaravalli
5. Kannan

.... Defendants

This suit coming before me for final hearing on 15.07.2026 in the presence of Tvl. K. Veerapillai and B. Ilakkiya, Advocates for Plaintiff and Thiru. S. Raman, Advocate for the Defendants and after hearing the arguments on both sides and upon perusing the material records, having stood over till this day for consideration, this Court delivers the following ...

JUDGMENT

The suit is filed by the plaintiff for declaration that the plaintiff is an illegitimate son of late Gurusamy @ Gurusamy Pillai and also declare that the plaintiff is entitled a half share over the estate of deceased late. Gurusamy @ Gurusamypillai, S/o Vaithianathanpillai as illegitimate son, directing the

defendants to divide the schedule mentioned properties and allot half share to the plaintiff within a stipulated period and appoint a commissioner for division of the properties by metes and bounds and for separate possession and for costs.

2. **The Gist of the plaintiff in brief is as follows:**

2.1. The Plaintiff's father, namely, Gurusamy @ Gurusamy Pillai owned various immovable residential house buildings, non-residential buildings and wet lands properties in Nagapattinam District, Tamil Nadu State and Karaikal, U.T. of Puducherry. The said Gurusamy @ Gurusamy Pillai married one Punithavalli ammal. They had no legal issues. Meanwhile, the plaintiff's father married the plaintiff's mother, namely, Kulandhaiyammal under the System of Naduveettu thali. The said marriage was not registered. His father Gurusamy @ Gurusamy Pillai executed a registered deed of Will, dated 10.08.1966 recognizing the said Kulandhaiammal as Abimana Manavi. The plaintiff was born on 11.01.1964 at Velippalayam out of their relationship and his birth was duly registered in Nagapattinam Municipality. After the birth of the plaintiff, his father died on 02.11.1967.

2.2. After the death of the said Gurusamy @ Gurusamy Pillai on 02.11.1967, his wife, namely, Punithavalli filed a bare suit in O.S.No.342/1983 for injunction before the Principal District Munsif Court,

Karaikal against the mother of the plaintiff, namely, Kulandhaiammal regarding Item-II schedule (B) of suit property, and the same was decreed. The plaintiff filed a suit for injunction in O.S.No. 126/1990 against Punithavalli ammal for Item-II Schedule (A) of suit property, which is a residential house building with manai, and the same was dismissed on 28.02.1991 with the observation that the plaintiff failed to implead his mother as a party to the case and legal heir of deceased Gurusamy @ Gurusamy Pillai.

2.3. Subsequently, the plaintiff filed another suit in O.S.No.4/2000 for partition before the District Court, Karaikal claiming share over the suit property belonging to his father Gurusamy @ Gurusamy Pillai as a lawful legal heir. It was contested by Punithavalli on the ground that the suit is barred by limitation and the alleged Will executed by the said Gurusamy @ Gurusamy Pillai is not valid one and the plaintiff is not entitled to claim half share over the suit property as he is not lawful legal heir of the deceased Gurusamy @ Gurusamy Pillai. The above said suit was dismissed. Aggrieved by the said judgment, the plaintiff preferred an appeal in A.S.No.1016/2003 before the Hon'ble High Court of Judicature, Madras wherein issues were framed once again that whether the plaintiff is the lawful legal heir of deceased Gurusamy @ Gurusamy Pillai and whether the suit is barred by limitation. During the time of argument, the plaintiff's family was

under distress due to Tsunami December 2004. The counsel for the plaintiff failed to inform the plaintiff of the hearing date and failed to handle the case properly, resulting in the dismissal of the appeal on 27.10.2009.

2.4. In the meantime, the 1st defendant managed to get a document of title in favour of himself and his children, the defendants 2 & 3, through a deed of Will from 1st wife Punithavalli suppressing the material facts. The 1st defendant is not a recognized adopted son, in fact the said Punithavalli ammal was under the care and custody of him. Taking advantages, the 1st defendant challenged the right of the plaintiff right over the deceased Gurusamy @ Gurusamy Pillai. The plaintiff is a coolie and unable to get proper legal knowledge to claim over the suit property, however at last, the plaintiff also got a certificate from the Revenue authority of Nagapattinam that he is the legal heir of deceased Gurusamy @ Gurusamy Pillai.

2.5. In earlier judgments, the plaintiff's right as the legitimate legal heir of the deceased Gurusamy @ Gurusamy Pillai was denied. However, the plaintiff is entitled to claim a share over the property as an illegitimate son of Gurusamy @ Gurusamy Pillai, this issue has not been decided by any competent court of law so far. Further the suit in O.S.No. 4/2000 is a suit for partition over the estate of Gurusamy @ Gurusamy Pillai as his lawful legal heir and it will not bar the legal right of the plaintiff as an illegitimate son through court of law. When the plaintiff approached the 1st defendant

once again on 03.02.2020 to allot a share over the estate of Gurusamy @ Gurusamy Pillai as illegitimate son, the defendants challenged the legal right of the plaintiff and denied the genuine request of the plaintiff. Hence this suit.

3. The averments mentioned in the written statement filed by the 1st defendant and adopted by the other defendants (2 to 5) are as follows:

3.1. The defendants admitted the relationship as set out in para 1 of the plaint. Further it is true that the deceased Gurusamy @ Gurusamy Pillai also had executed a registered will on 10.08.1966. It is denied that Kulanthaammal is the legally wedded wife of the deceased. Even in the registered Will, she is referred to by Gurusamy @ Gurusamy Pillai as his abhimana manaivi, and is not described as his legally wedded second wife. While the first wife, Punithavalli Ammal, was very much alive, the alleged marriage of Kulanthaammal is not legally valid under the System of Naduveetu Thali. The plaintiff has to prove the status of the illegitimate son of Gurusamy @ Gurusamy Pillai to make any claim for partition over the suit properties. Moreover the claim of the Kulanthaammal as the legally wedded wife of deceased Gurusamy @ Gurusamy Pillai had already been negatived in O.S.No. 126/1990 and further the claim of the plaintiff as an illegitimate son had also been further negatived in the partition suit in O.S.No. 04/2000.

3.2. The plaintiff is debarred, estopped from claiming the status of the illegitimate son of the deceased Gurusamy @ Gurusamy Pillai and to make a claim of partition. The present suit is affected under the theory of re-litigation and also under the principles of res-judicata under the might and ought principle. The appeal in A.S.No.1012/2003 was dismissed by the Hon'ble High court on 27.10.2009 on merits, and the same is binding upon the plaintiff.

3.3. The plaintiff has suppressed the Will, wherein it is disclosed that the Kulanthaiaammal only as his Abhimana Manaivi. After the demise of Gurusamy @ Gurusamy Pillai, Kulanthaiaammal disturbed the enjoyment of the property by Punithavalli, who filed a suit in O.S.No. 342/1983 for permanent injunction as against Kulanthaiaammal before the Principle District Munsif Court, Karaikal, wherein, it has been specifically denied that Kulanthaiaammal is not legally wedded wife of the deceased Gurusamy @ Gurusamy Pillai and not a legal heir and therefore on proof and acceptance of the same, the suit was decreed on 28.03.1985 on merits. However, Kulanthaiaammal did not prefer any appeal and the said judgment and decree to become final and conclusive.

3.4. Further in subsequent suit, the plaintiff herein filed the suit in O.S.No. 126/1990 for permanent injunction as against Punithavalli Ammal before the Principle District Munsif Court, Karaikal claiming that he is the

legally born son to deceased Gurusamy @ Gurusamy Pillai through Kulanthaammal and the same was denied by Punithavalli Ammal and finally the said suit was dismissed on merits on 28.02.1991. Thereafter the plaintiff filed the suit in O.S.No. 4/2000 for partition before the District Court, Karaikal claiming partition of his half a share over three schedule of properties impleading Kulanthaammal, the 1st defendant and the 4th defendant herein. In the said suit, necessary issues were framed over the legitimacy of the plaintiff, his right of claiming partition over the estate of the deceased Gurusamy @ Gurusamy Pillai and other aspects and the said suit was dismissed on 17.09.2002.

3.5. Thereupon, the plaintiff preferred an appeal in A.S. No. 1016/2003 before the Hon'ble High Court, Madras, wherein, the Hon'ble High court framed four points for determination including the claim of the legal heir of the plaintiff. After careful Consideration, the Hon'ble High Court has come to the conclusion that the claim of the plaintiff that he is the one of the legal heirs of the deceased Gurusamy @ Gurusamy Pillai has already been decided on merits in O.S.No. 126/1990 and therefore the said litigation is only a re-litigation and the same is barred by res-judicata and thereby dismissed the suit.

3.6. Further, the Hon'ble High Court of Madras, has held that the testator Gurusamy @ Gurusamy Pillai in his Will, dated 10.08.1966 has

stated that the properties not covered under the Will would also go to his wife Punithavalli Ammal and therefore, the Will executed by her in favour of the 1st defendant and his children on 13.05.1987 and the sale deed in favour of the 4th defendant on 04.02.1984 are all valid under law and therefore the plaintiff is not entitled to any relief in the said suit and finally dismissed the 2nd appeal. The right of inheritance, of an illegitimate son is only in respect of his father's separate properties and he cannot make any claim in the ancestral properties. The deceased Gurusamy @ Gurusamy Pillai has left a Will in favour of his wife Punithavalli on 10.08.1966 and therefore, under law deceased Gurusamy @ Gurusamy Pillai did not leave any properties to be devolved under the Hindu Succession Act to inherit. The testamentary disposition of the properties by Gurusamy @ Gurusamy Pillai is admitted by the plaintiff, so, he does not have a valid and sustainable cause of action to sustain the suit claim.

3.7. The 2nd item of the "A" schedule since bequeathed in favour of Punithavalli absolutely and thereby this defendant got the property under the Will dated 13.05.1987 with life estate and vested remainder in favour of his sons, the defendants 2 & 3 and therefore all of them have sold a portion to and in favour of the 5th defendant for valuable considerations through a registered sale deed dated 23.02.2015 which is valid in the eye of law. The 2nd item of the "B" schedule property had been sold by Punithavalli on 04.02.1984 to the

4th defendant, the same is also legally valid and both items are not available for partition.

3.8. The cause of action for seeking the necessary declaration arose in the earlier suit, and therefore the suit is barred by limitation. Further, the plaintiff cannot be deemed to be in joint possession in respect of the 2nd item of the suit properties, and therefore, the court fee fixed under Section 37(2) of the TNCF and SV Act cannot be sustained without paying the court fee under Section 37(1) of the Act. Hence the suit is liable to be dismissed with costs.

Issues:

4. Based on the above pleadings, the following issues were settled for trial on 05.03.2025:

1. வாதி தான் காலஞ்சென்ற குருசாமி பிள்ளைக்கு சட்டப்படி அல்லாத வாரிசு (முறைகேடாக பிறந்த மகன்) என வாதி கோரும் விளம்புகை பரிகாரம் வாதிக்கு கிடைக்க கூடியதா?
2. மேற்படி விளம்புகை பரிகாரத்தின் மூலம் தாவாவில் கோரியவாறு 1/2 பாக வீதம் சொத்து வாதிக்கு கிடைக்க கூடியதா?
3. வாதிக்கு கிடைக்கும் இதர பரிகாரங்கள் என்ன?

5. Upon hearing the arguments submitted on both sides, and perusing the pleadings and the evidence adduced on both sides, this court

considers it necessary that certain additional issues are to be framed by invoking the power under Order 14 Rule 5 of the CPC in order to adjudicate the suit in a complete manner. Accordingly, the following additional issues are settled while this suit is taken up for consideration at the time of judgment.

Additional Issues:

1. Whether the suit is barred by the principles of Resjudicata in view of the decisions rendered in earlier suits in O.S.No.342/1983 and O.S.No.126/1990 on the file of the Principal District Munsifi Court, Karaikal, and O.S.No.4/2000 on the file of Additional District Court, Karaikal?
2. Whether the relief claimed in the suit is barred under Order 2 Rule 2(3) of the CPC?

6. On perusing the record, the plaintiff has adduced evidence regarding the additional issues, and both parties have also submitted their arguments in respect of all the Issues as well as the Additional Issues. Hence, this court is of the considered view that there is no need to give any further opportunity for the purpose of adducing additional evidence on the subject matter of the additional issues framed at the time of taking this suit for judgment.

Evidence:

7. In this case, the plaintiff himself was examined as P.W.1 and Exs.A1 to A17 were marked. On the side of the defendants, no oral evidence was let in, but Exs.B1 to B7 were marked during the cross-examination of P.W.1.

8. On perusing the testimony of P.W.1, he has filed his proof affidavit in consonance with the plaint pleadings, and he was cross-examined by the defendants in line with the stand taken in their written statement. On perusing the documents, Ex.A1 is found to be the birth certificate of the plaintiff issued by the competent authority, namely, the Department of Municipal Administration & Water Supply. It indicates that the plaintiff was born on 11.01.1964, and his biological parents are Gurusamy Pillai and Kulanthaiammal. As such, this document was not denied by the defendants even during the cross-examination of P.W.1, thereby proving that the plaintiff was born from the relationship between the aforesaid parents. Ex.A2 is the Legal Heir Certificate issued in favour of the plaintiff, indicating that he is the legal heir of Kulanthaiammal, W/o Gurusamy. This is in accordance with the birth certificate, showing that he is the legal heir of the deceased Kulanthaiammal, wife of Gurusamy, who is the biological father of the plaintiff. The defendants have denied that the plaintiff is the legal heir of Kulanthaiammal. Ex.A3 is the Death Certificate of Gurusamy Pillai, who

died on 02.11.1967, issued by Karaikal Municipality. The date of death of Gurusamy Pillai is not disputed, as shown in Ex.A3.

9. Ex.A4 is the certified copy of a registered sale deed executed by Punithavalli Ammal on 04.02.1984, admittedly the first wife of Gurusamy @ Gurusamy Pillai, in favour of Soundaravalli, wife of Subramanian (the 4th defendant herein), alienating the Item-II of Schedule-B of the suit property. The fact that Punithavalli Ammal alienated the above-said suit schedule property in favour of the 4th defendant is not in dispute; consequently, the 4th defendant's possession and enjoyment of the said property is also not in dispute. Ex.A5 is a certified copy of the Will, dated 13.05.1987, executed by Punithavalli Ammal in respect of the Item-II of Schedule-A of the suit property. Ex.A6 is a downloaded copy of Patta No.341, which stands in the name of the plaintiff in respect of suit schedule item I property situated at Alathur village, Nagapattinam. Exs. A7 to A9 are the downloaded copies of the patta in respect of the Item-II of suit schedule properties, which stand in the name of Punithavalli Ammal, the defendants, and the subsequent purchaser. The fact that Punithavalli has made the disposition under Ex.A5 and Ex.A6 is not denied by the plaintiff. He has only question the validity of the same.

10. Ex.A10 is the certified copy of the judgment in O.S. No. 342/1983, filed by Punithavalli Ammal against Kulanthaiammal (the

plaintiff's mother) before the Principal District Munsif Court, Karaikal. This suit is for bare injunction to restrain the plaintiff's mother from interfering with the possession and enjoyment of the suit schedule property by Punithavalli, specifically the Rice Mill at Karaikal. The said suit has been decreed in favour of Punithavalli Ammal, which fact is not in dispute, thereby restraining the plaintiff's mother from interfering with the possession and enjoyment by Punithavalli.

11. Ex.A11 is the certified copy of the judgment in the subsequent suit in O.S.No.126 of 1990, filed by the plaintiff against Punithavalli Ammal before the Principal District Munsif Court, Karaikal, for an injunction in respect of the property, namely, the house bearing Door No.137 at Bharathiyar Street, Karaikal, which was mentioned in this suit as the item-II of Schedule-A of the suit property, Old No. 137, new No. 80, the said suit was dismissed on 28.02.1991, and this fact is also not in dispute. Ex. A12 is the certified copy of the judgment in a subsequent suit, O.S. No. 4/2000, filed by the plaintiff before the Additional District Court, Karaikal, claiming partition against his mother Kulanthaammal, Shanmuga Vadivel @ Nandhakumar (1st defendant herein), and Soundaravalli (4th defendant herein), seeking a 1/2 share in the said suit property. Admittedly, the said suit for partition was also dismissed on 17.09.2002. Aggrieved by the judgment and decree, the plaintiff filed an appeal in A.S.No.1016/2003. The certified

copy of the judgment in A.S. No. 1016/2003 was marked as Ex.A13, wherein the judgment of the trial court was confirmed and the appeal was dismissed against the plaintiff. This fact is also not in dispute. Exs.A14, A15, and A16 are the downloaded copies of extracts from the register of guideline values for the suit property. Lastly Ex.A17 is a photocopy of the plaintiff's Aadhar card.

12. During the cross-examination of P.W.1, the defendants chose to produce Ex.B1, a certified copy of the Will dated 10.08.1966 executed by Gurusamy @ Gurusamy Pillai, the father of the plaintiff. It is admitted on both sides that, in the said Will, the plaintiff's mother Kulanthaammal has been described as Abimana Samsaram of Gurusamy. It is also admitted that Punithavalli Ammal has been described as the lawfully wedded wife of Gurusamy Pillai and that they had no issues, so, he took the plaintiff's mother as his wife, and the plaintiff was born on 11.01.1964, from their relationship. Further, he has bequeathed the 'A' schedule property therein to his wife, Punithavalli Ammal, by granting a life estate through a Will, and also bequeathed the 'B' schedule property therein to his Abimana Manaivi Kulanthai Ammal. The execution of the said Will by Gurusamy Pillai is not in dispute. However, the plaintiff has taken the stand that the Will did not come into force and was not accepted by both parties.

13. Ex.B2 is the same as Ex.A10, which is the certified copy of the judgment in O.S. 342/1983. Ex.B3 is the same as Ex.A11, which is the

certified copy of Judgment in O.S.No. 126/1990. Ex.B4 is the same as Ex.A12, which is the certified copy of Judgment in O.S.No. 4/2000. Ex.B5 is the certified copy of the decree in O.S. No. 4/2000. Ex.B6 is the same as Ex.A13, which is the certified copy of Judgment in A.S.No. 1016/2003 and Ex.B7 is the certified copy of the Decree in A.S.1016/2003.

14. Both sides submitted their respective arguments based on the oral and documentary evidence. The learned counsel for the plaintiff and the defendants cited their various judgments in support of their claims, which are referred at the appropriate place for reference. Thus, after considering the rival contentions of both sides and meticulously examining the oral and documentary evidence on record, the above issues are answered as below.

Answer to Additional Issue Nos.1 and 2:

15. The first and foremost contention by the defendants is that the present suit for declaration and partition is barred by the principles of *res judicata* as well as re-litigation on the same facts and cause of action.

16. The learned counsel for the plaintiff vehemently submitted that the principles of *res judicata* will not apply to the facts of this case. He submitted that in all the earlier suits filed by the plaintiff, the cause of actions were different. While his previous claim was rejected on the ground that he was not the lawful legal heir of Gurusamy @ Gurusamy Pillai, the plaintiff

has filed the present suit in his capacity as the illegitimate son born out of the relationship between Gurusamy Pillai and Kulanthaiammal. It is contended that the question of the illegitimate son was an issue directly and substantially in question in the earlier suits, and therefore, the earlier suits do not operate as *res judicata* to bar the present suit claiming a right of partition as the illegitimate son of Gurusamy Pillai. It is further submitted that the validity of the Will executed by Gurusamy Pillai was not decided in the earlier suits, so the plaintiff is entitled to challenge the said Will and claim partition.

17. Per contra, the learned counsel for the defendants refuted the above contentions by relying on the findings in the earlier judgments. He argued that the question of the plaintiff's character as legitimate and illegitimate son and legal heir of Gurusamy Pillai was directly and substantially in issue in the earlier suits. Because this issue was thoroughly analyzed and adjudicated by competent courts, the plaintiff's claim for partition has been rejected. It is submitted that the plaintiff's claim as a son born out of an lawful marital relationship with Kulanthaiammal was rejected based on the Will executed by Gurusamy Pillai in Ex.B1. It is submitted that in the earlier partition suit in O.S.No.4/2000, confirmed by the Hon'ble High Court in A.S.No.1016/2003, the Will was taken into consideration and the right of the plaintiff to claim partition in respect of same suit properties has

been denied. Therefore, it is submitted that filing the suit by clever drafting will not entitle the plaintiff to seek relief in this suit.

18. In the light of above rival contentions, it becomes pertinent to decide whether the earlier suits filed by Punithavalli Ammal in O.S. No. 342/1983, the suit filed by plaintiff in O.S. No. 126/1990 and O.S. No. 4/2000, operate as *res judicata* and whether this suit amount to re-litigation on the same cause of action and grounds. To decide the same, it primary question to be decided is whether the matter in Issue in this suit was directly and substantially in Issue in the earlier suits

19. In general, the subsequent suit is not maintainable if the earlier judgment has finally decided the plaintiff's character. So, if in the earlier suits the Courts have already decided that the plaintiff is not a legitimate son, and not decided that issue of his paternity, as to whether he was the biological son of his father or not, then a later suit claiming a distinct legal right as an illegitimate child may not be automatically barred. In the earlier suits, the matter of the plaintiff's biological paternity was directly and substantially in issue and has been finally decided and that whether the present claim as illegitimate son could and ought to have raised in the earlier suits, then the principle of constructive *res judicata* under Explanation IV of Section 11 of the CPC, will apply and the present suit will be barred. Section 11 of C.P.C. with Explanation IV read as below;

11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

....

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

20. Thus, the matter which might and ought to have been made as ground in the earlier suits will act as *res judicata*. Further, Order II Rule 2(2) C.P.C. will be relevant if both claim arose from the same cause of action the later claim ought to have been included in the earlier suits.

21. In light of the above legal position, the evidence on record has to be examined to find out whether the Issue in this suit was directly and substantially in Issue in the earlier suits, and findings were given in the prior judgments. It becomes necessary to refer to the relevant findings given in the earlier judgments to decide the aspect.

22. In the earlier suit filed by Punithavalli against Kulanthaammal in O.S. No. 342/1983, the Principal District Munsif Court, Karaikal, in his judgment marked as Ex.A10 = Ex.B2, has observed and answered Issue No. 3 "Whether the plaintiff has locus standi to maintain the suit?" as follows;

"In her written statement, the defendant contended that she is having equal shares with the plaintiff along with her son as co-sharer of the suit property and therefore the plaintiff has no locus standi to maintain the suit. But it has to be seen here that it is alleged by the plaintiff that her husband late Gurusamy Pillai has executed a Will and as per the terms of the Will certain properties were bequeathed to the plaintiff and also to the defendant and certain other properties were left without mention as if it should go to the plaintiff as per the wishes of the testator. It is admitted by the defendant that certain properties were bequeathed to the defendant and that no mention was made with regard to the properties at Pondicherry is admitted by the defendant during the course of her evidence. It is further admitted by her that the suit property is not bequeathed to her as per the Will the copy of which is marked as Ex.A1. Further it is not the case of the defendant that the plaintiff is not the wife of the late Gurusamy Pillai. The status of the plaintiff as the wife of the plaintiff is admitted by the defendant in her written statement. Therefore as the sole legal heir of late Gurusamy Pillai, the plaintiff has got title over the suit property and the suit filed by her for an order of injunction as against the defendant is maintainable and the

plaintiff has locus standi to file this suit. This issue is answered accordingly.”

So, from the answer given in the above issue, it has been observed in O.S. No. 342/1983 that Punithavalli is the lawful wedded wife of Gurusamy @ Gurusamy Pillai. It is also referred in the said judgment that under the Will executed by Gurusamy Pillai he has bequeathed certain properties to the plaintiff and other properties to the defendant Kulanthaïammal (his abimana manaivi), while certain remaining properties were not mentioned, those properties shall go to his wife, Punithavalliammal. Thereby, the learned Principal District Munsif observed that the plaintiff has the locus standi to file the suit for a permanent injunction restraining any interference with her possession and enjoyment of the suit property. Furthermore, in the said suit filed against Kulanthaïammal, the existence of the Will executed by Gurusamy Pillai is considered and acted upon. Kulanthaïammal, who is the mother of the plaintiff herein, did not deny the said Will in that suit.

23. In the earlier suit filed by Gopalakrishnan (the plaintiff herein) against Punithavalli in O.S. No. 126/1990 for bare injunction in respect of the item II(A) of suit schedule property situated at Door No.137, Bharathiyar street, Karaikal, the Learned Principal District Munsif Court, Karaikal, in his judgment marked as Ex.A11 = Ex.B3, has settled the following issues:

1. Whether the plaintiff is the legitimate son of the deceased Gurusamy Pillai?
2. Whether the plaintiff is in possession of the suit property?
3. Whether the suit is bad for non-joinder of necessary parties.
4. Whether the suit is under valued for the purpose of court fee and jurisdiction?
5. To what relief the parties are entitled to?

Thus, one of the issues is whether the plaintiff is the legitimate son of the deceased Gurusamy Pillai. While answering the said issue, the court has observed and given the finding as below;

“Plaintiff claimed himself to be the legitimate son of the deceased Gurusamy Pillai. According to his pleadings he had born to the said Gurusamy Pillai through his wife Kulandai ammal. In support of his, he has marked Ex.A2 a birth certificate. The birth certificate shows that he had been born in the year 1981 at Nagapattinam to one Gurusamy Pillai and Kulandai ammal. But the plaint is silent about the place of birth of the plaintiff. Whereas in Ex.A2 it is shown as Nagapattinam. Plaintiff had not adduced any evidence to prove the marital relationship between the said Gurusamy Pillai and his mother Kulandai ammal. In spite of being alive, the mother of the plaintiff did not appear before this court to speak about the same. During the course of cross examination the plaintiff had deposed that he was born only in Karaikal but the registration had been done as if he had been born in

Nagapattinam. Subsequently he corrected himself and said that he was born only in Nagapattinam. The defendant on the other hand examined DW1. He denied the fact of PW1 being the son of deceased Gurusamy Pillai. In the absence of any concrete evidence the plaintiff being the issue of the deceased Gurusamy pillai cannot be decided. Since Ex.A2 on which he is relied upon is very much doubtful in nature. Therefore this issue is answered in the negative and in favour of the defendant.”

Thus in the finding in the earlier suit in O.S. No. 126/1990 indicates that the court examined the legitimacy or illegitimacy of the plaintiff as the son of Gurusamy Pillai. In fact, the birth certificate for the plaintiff which was marked as Ex.A2 in the earlier suit, has been disbelieved and it is held that, “*In the absence of any concrete evidence the plaintiff being the issue of the deceased Gurusamy pillai cannot be decided* “. It is also held that the Birth Certificate to be highly doubtful. Therefore, the said Issue No.1 in the earlier suit has been answered in the negative, holding that the plaintiff has not proved that he is the son of Gurusamy Pillai. This observation of Learned District Munsif, Karaikal in O.S.No.126/1990 would lead to the inference that the trial court has negated the legitimacy of plaintiff, and also held that the plaintiff has failed to prove a valid marriage between Gurusamy Pillai and his mother, Kulanthaiammal, and that it is not proved that he is born to Gurusamy

Pillai. Therefore, the status of the plaintiff as a legitimate or illegitimate son was a directly and substantial issue in the earlier suit, O.S. No. 126/1990.

24. Another judgment in the earlier suit in O.S. No. 4/2000 filed before the Additional District Court, Karaikal is marked as Ex.A.12. It is the second suit filed by the plaintiff herein against his mother Kulanthaammal and the defendants 1 & 4 herein, namely, Shanmugavadivelu @ Nandhakumar and Soundaravalli respectively. In the said suit the following issues have been framed:

1. இந்த தாவா சொத்துக்கள் உரிய முறையில் மதிப்பிடப்பட்டு உரிய நீதிமன்றக்கட்டணம் செலுத்தப்பட்டுள்ளதா?
2. தாவா முன்தடை தீர்ப்பால் பாதிக்கப்பட்டுள்ளதா?
3. வாதி தாவா சொத்துக்களில் உரிமைகோரும் உயில் உண்மையானதா?
4. மேற்படி உயிலின் அடிப்படையில் வாதி தாவா சொத்துக்களை பெற அருகதையுடையவரா?
5. புனிதவள்ளி அம்மாள் சொத்துக்களை 2 ம் பிரதிவாதி பெயருக்கு விற்பதற்கோ அல்லது 3 ம் பிரதிவாதி பெயருக்கு உயில் எழுதிக் கொடுத்ததற்கோ உரிமை உள்ளதா?
6. வாதி 2, 3 பிரதிவாதிகளிடம் பாகம் கோர முடியுமா?
7. தாவாவிற்கு வழக்குமூலம் உள்ளதா?
8. தாவா காலவரம்பு தோஷத்தால் பாதிக்கப்பட்டுள்ளதா?
9. தரப்பினர்களுக்கு கிடைக்கக்கூடிய பரிகாரம் என்ன?

On perusing the above issues, the Issue Nos. 2 to 6 are relevant, and it seems they are direct and substantial in Issue in this present suit also. On perusing

the answer given by the Learned Additional District Judge, Karaikal for issue nos. 3 to 6, it is patent that the earlier suit has gone into the character of the plaintiff as legal heir of Gurusamy Pillai. Regarding the legitimacy of the plaintiff, as son of Gurusamy Pillai, the said court has observed in paragraphs 19 and 20 as follows:

“19. இருதரப்பு வாதங்களும் சீர்தூக்கிப் பார்க்கப்பட்டது.

வாதி தாக்கல் செய்துள்ள பிராதிற் குருசாமி பிள்ளை முதலில் புனிதவள்ளியை திருமணம் செய்துகொண்டதாகவும், அதன் பின்னிட்டு 1ம் பிரதிவாதியான தன் தாயாரை திருமணம் செய்து கொண்டதாகவும், அவ்வாறு நடந்த திருமணத்திற்கு பின்னிட்டு குருசாமி பிள்ளைக்கும் தன் தாயாரான 1ம் பிரதிவாதிக்கும் 11.01.1964 ல் தான் நாகப்பட்டினத்தில் பிறந்ததாகவும் தன்னுடைய பிறப்பு நாகப்பட்டினம் முனிசிபாலிட்டியில் பதிவு செய்யப்பட்டிருப்பதாகவும் குறிப்பிட்டுள்ளார். மேற்படி பிராதிற் வாதி குருசாமிபிள்ளை தன் தாயாரான 1ம் பிரதிவாதி குழந்தையம்மாளை எந்த தேதியில் திருமணம் செய்து கொண்டார் என்றோ எங்கு திருமணம் செய்துகொண்டார் என்றோ எந்த முறைப்படி திருமணம் செய்து கொண்டார் என்றோ குறிப்பாக சாட்டுரை செய்யவில்லை. மாறாக வாதியான வா.சா.1 தன் சாட்சியத்திலும் குருசாமி பிள்ளை தன் தாயாரை

எங்கு எந்த தேதியில் திருமணம் செய்து கொண்டார் என்று குறிப்பாக சாட்சியம் அளிக்கவில்லை. வாதியின் தயாரான 1ம் பிரதிவாதியான பி.சா.2 தன் எதிர் உரையிலும் தனக்கும் குருசாமி பிள்ளைக்கும் எங்கு எந்த தேதி எந்த முறைப்படி திருமணம் நடந்தது என்று சாட்டுரை செய்யவில்லை. பி.சா.2 தன் சாட்சியத்தில் மட்டும் தனக்கும் குருசாமி பிள்ளைக்கும் காரைக்கால் பொறையாறு பிரதான சாலையில் உள்ள குருசாமிபிள்ளை வீட்டில் திருமணம் நடந்ததாகவும், மேற்படி திருமணத்திற்கு தன்னுடைய சகோதரிகளும் உறவினர்களும் வந்திருந்ததாக சாட்சியம் அளித்திருந்தபோதிலும் குறுக்கு விசாரணையில் தனக்கு எந்த வருடம் திருமணம் நடந்தது என தெரியாது என்று சாட்சியம் அளித்துள்ளார். மேற்படி 1ம் பிரதிவாதியின் திருமணத்திற்கு வந்ததாக விசாரிக்கப்பட்டுள்ள பி.சா.3 ம் 1ம் பிரதிவாதிக்கும் குருசாமிபிள்ளைக்கும் நடந்த திருமணம் குறித்து ஒரு தெளிவான சாட்சியம் அளிக்கவில்லை. வாதியின் தாயாரும் 1ம் பிரதிவாதியும் ஆன பி.சா.2 தான் குருசாமிபிள்ளையை காரைக்காலில் அவரது வீட்டில் திருமணம் செய்து கொண்டதாக சாட்சியம் அளித்திருந்தபோதிலும் வழக்கு தாக்கல் செய்வதற்கு முன்பு வாதி கொடுத்துள்ள வா.சா.ஆ.5

ஆகிய 09.12.1998 ந் தேதியிட்ட வழக்கறிஞர் அறிவிப்பில் குருசாமிபிள்ளை 1ம் பிரதிவாதியை நாகப்பட்டினத்தில் திருமணம் செய்து கொண்டதாகவும் குறிப்பிட்டிருப்பது பி.சா.1 சாட்சியத்திற்கு முற்றிலும் முரணாக உள்ளது. எனவே குருசாமிபிள்ளை 1ம் பிரதிவாதியை இந்து சமய முறைப்படி 2 வது மனைவியாக திருமணம் செய்து கொண்டார் என்பதை வாதி தரப்பில் தெளிவான சாட்சியம் அளித்து நிரூபிக்கவில்லை என்று தீர்மானிக்கிறேன்.

20. வாதி தரப்பில் தாக்கல் செய்யப்பட்டுள்ள வா.சா.ஆ.1 ஆகிய வாதியின் பிறப்பு சான்றிதழில் தகப்பனார் பெயர் குருசாமிபிள்ளை என்றும் தாயார் பெயர் குழந்தையம்மாள் என்றும் குறிப்பிடப்பட்டிருப்பதை மட்டும் வைத்துக்கொண்டு மேற்படி குருசாமிபிள்ளைக்கும் 1ம் பிரதிவாதியான குழந்தையம்மாளுக்கும் திருமணம் நடந்தது என்றும் மேற்படி திருமணம் இந்து சமய முறைப்படி நடந்தது என்றும் தீர்மானிக்க இயலாது. மேலும் வாதி பிராதிலும் அவரது தாயாரான 1ம் பிரதிவாதி தன் எதிர்வழக்குரையிலும் மேற்படி திருமணம் எந்த முறைப்படி நடந்தது என்று குறிப்பிடாமல் இருந்தபோதிலும் 1ம் பிரதிவாதி சாட்சியத்தில் மட்டும் தனக்கு நடு வீட்டு தாலி என்ற

முறைப்படி திருமணம் நடந்ததாக கூறியுள்ளார். மேற்படி நடுவீட்டு தாலி என்ற முறை குருசாமி பிள்ளை மற்றும் 1ம் பிரதிவாதி சாதி வழக்கப்படி அமுலில் உள்ளது என்பதையும் அதன்படி திருமணம் நடந்தது என்பதையும் சாட்டுரை செய்து சாட்சியம் அளித்திருக்கவேண்டும். சாட்டுரை செய்யாமல் சாட்சியம் அளித்திருப்பதால் எந்த பயனுமில்லை. மேலும் பிரதிவாதிகள் தரப்பில் தாக்கல் செய்யப்பட்டுள்ள பி.சா.ஆ.12 ஆகிய (வா.சா.ஆ.4) 10.08.1966ந் தேதியன்று குருசாமிபிள்ளை எழுதி வைத்துள்ள உயிலில் "எனக்கு கல்யாணமான ஆலத்தூர் கூத்தப்பிள்ளை குமாரத்தி புனிதவள்ளியம்மாள் எனது சம்சாரம் ஆகவும், நாகப்பட்டினம் ஆரிய நாட்டுத்தெருவில் இருக்கும் சந்தானமுதலியார் குமாரத்தி குழந்தையம்மாள் என் அபிமான சம்சாரமாகவும் இருந்து வருகிறார்கள். எனது சம்சாரம் புனிதவள்ளியம்மாளுக்கு யாதொரு சந்ததியும் இல்லை. எனது அபிமான மனைவி குழந்தையம்மாளுக்கும் எனக்கும் 11.01.1964 ல் பிறந்த சுமார் 2-1/2 வயதுள்ள கோபாலகிருஷ்ணன் என்பவரும் எனக்கு பிறகு எனது வாரிசுகளாக இருந்து வருகிறார்கள். மேற்படியார்களைத் தவிர எனக்கு வேறு வாரிசுகள் கிடையாது" எனக் குறிப்பிடப்பட்டுள்ளது.

மேற்சொன்ன உயிலில் குறிப்பிடப்பட்டுள்ள வாசகத்திலிருந்தும்
1ம் பிரதிவாதி குருசாமி பிள்ளையின் மனைவியல்ல என்பதும்
அவர் அவரது "அபிமான மனைவி" என்பதும் தெள்ளத்தெளிவாக
புலனாகிறது. எனவே குருசாமி பிள்ளைக்கும் வாதியின்
தாயாரான 1ம் பிரதிவாதிக்கும் இந்த சமய முறைப்படி திருமணம்
நடந்தது என்பதையும் அவ்வாறு நடந்த சட்டப்படியான
திருமணத்தின் அடிப்படையில் மேற்சொன்னவர்களது மகனாக
வாதி பிறந்துள்ளார் என்பதையும் வாதி நிரூபிக்கவில்லை
என்றும் தீர்மானிக்கிறேன்.”

The findings of the said court clearly indicate that the plaintiff had pleaded that his mother was married to his father according to the customary practice of Naduveetu Thali, the same fact as in this case. Furthermore, the earlier judgment has also referred to the will executed by Gurusamy Pillai, in which Kulanthai Ammal was described as an Abimana Manaivi. It is observed that that the plaintiff has failed to prove a valid marriage between Gurusamy Pillai and Kulanthaammal. However, the said Court has not rejected the plaintiff's plea that Gurusamy Pillai is the biological father of the plaintiff. The said court has observed that, as per the birth certificate (Ex.A1) and the Will (Ex.A4), it is found that Gopalakrishnan is the son born out of the relationship with Kulanthaammal. However, it is held by the said court that

Kulanthaammal was not the legally wedded wife of Gurusamy Pillai, and that the plaintiff has failed to prove he was born through a valid marriage. Thereby, the question that the plaintiff was the son of Gurusamy Pillai from invalid marriage has been directly and substantially in Issue in the earlier suit in O.S. No. 4/2000. So, the plaintiff could and ought to have indirectly raised the plea of illegitimacy in the earlier suit based on the same set of facts pleaded in the present suit.

25. Therefore, the plea of the plaintiff that he is not the legitimate son of Gurusamy Pillai was clearly a matter directly and substantially in issue in the earlier suit in O.S.No.4/2000, and by observing that the plaintiff has not proved he was born of a legal marriage between Gurusamy Pillai and Kulanthaammal, but born of an invalid marriage. Therefore, the biological relationship between Gurusamy Pillai and the plaintiff was answered in the earlier suit, which determined that he is an illegitimate son of Gurusamy Pillai. Since Kulanthaammal is said to be the abhimana manaivi and not a lawful wife, it is a void relationship. Thus, the direct and substantial question in this suit as to whether the plaintiff is an illegitimate son of Gurusamy Pillai was also a direct and substantial issue in the earlier suit. As rightly argued by the defendants, the plaintiff has set up the pleadings in the earlier suit, indicating that he was born to the second wife of Gurusamy Pillai, or as per the Will, the abhimana manaivi. So, the plaintiff has admitted that he was

born of a such illegal relationship, but he has failed to claim himself to be the illegitimate son of Gurusamy Pillai, while he had every opportunity to plead and seek relief for partition as the illegitimate son of Gurusamy Pillai. As rightly argued by the defendants, the said finding given in the earlier suit in O.S. No. 4/2000 attracts the principles of res judicata, under the Explanation IV of Section 11 of C.P.C. and also the bar under Order 2 Rule 2(3) of the CPC.

26. Furthermore, the will executed by Gurusamy Pillai, dated 10.08.1966, was adjudicated in the earlier suit in O.S. NO. 4/2000. In the present suit, the plaintiff has relied upon the Will to prove the relationship between his father and mother, but denies its admissibility to prove the bequeath claiming that the said Will (Ex.B2) was not acted upon by both the plaintiff and Punithavalli Ammal, and that the Will is not proved in accordance with law in the earlier suit.

27. But, the further finding and observation made in the earlier suit in O.S. No. 4 of 2000 would clearly negative the contentions on the side of the plaintiff. The learned Additional District Judge, Karaikal, has given the following findings to decide issues 3 to 6 in paragraph 21 as follows:

“21. வாதி, பிரதிவாதிகள் இருதரப்பிலும்

இறந்துபோன குருசாமிபிள்ளை 10.08.1966 ந் தேதியன்று

தனக்கு தமிழ்நாடு மற்றும் புதுவை மாநிலமான காரைக்காலிலுள்ள சொத்துக்கள் குறித்து தனது முதல் மனைவியான புனிதவள்ளி, அபிமான மனைவியான 1ம் பிரதிவாதி மற்றும் வாதி பெயருக்கு பி.சா.ஆ.12 படி மேற்படி உயிலில் கண்டுள்ள சொத்துக்களை எழுதிக் கொடுத்துள்ளார் என்பதையும் மேற்படி உயிலில் "..... இதில் எ மற்றும் பி ஷெடியூலில் கண்ட எனக்கு சொந்தமான சொத்துக்களைத் தவிர இதில் காணாமல் விட்டு போயிருக்கும் சொத்துக்களையும் என் ஆயுளுக்குப் பிறகு எனது சம்சாரம் புனிதவள்ளியம்மாள் ஏக தேசத்தில் சர்வ சுதந்திர பாத்தியமாக அடைந்து அனுபவித்துக்கொள்ள வேண்டியது...." என்று குறிப்பிடப்பட்டுள்ளது. மேற்சொன்ன உயிலில் உள்ள வாசகத்திலிருந்து மேற்படி குருசாமிபிள்ளை எழுதியுள்ள பி.சா.ஆ.12 ஆகிய உயிலில் குறிப்பிடாத சொத்துக்களான காரைக்காலில் உள்ள தாவா சொத்துக்கள் புனிதவள்ளியம்மாளுக்கு சர்வ சுதந்திரமாய் பாத்தியப்பட்டது என்பதும் அவர் ஆண்டு அனுபவித்துக்கொள்ள உரிமை வழங்கப்பட்டுள்ளது

என்பதும் தெரியவருகிறது. எனவே தாவா சொத்துக்கள்
 பி.சா.ஆ.12 ஆகிய குருசாமிபிள்ளை 10.08.1968 ந்
 தேதியன்று எழுதி வைத்துள்ள உயில்படி
 புனிதவள்ளியம்மாளுக்கு தனிப்பட்ட முறையில்
 பாத்தியப்பட்டது என்றும், அதில் வாதிக்கு எவ்வித
 உரிமையும் இல்லை என்றும் மேற்படி சொத்தை
 புனிதவள்ளியம்மாள் கிரயம் செய்து கொடுப்பதற்கோ
 உயில் மூலம் எழுதிக்கொடுப்பதற்கோ உரிமை உள்ளது
 என்றும் தீர்மானிக்கிறேன். 2 மற்றும் 3 பிரதிவாதிகள்
 தரப்பில் அளிக்கப்பட்டுள்ள. பி.சா.1 ன்
 சாட்சியத்திலிருந்தும் அவர்கள் தரப்பில் தாக்கல்
 செய்யப்பட்டுள்ள சான்றாவணங்களிலிருந்தும்
 புனிதவள்ளியம்மாள் 04.02.1984 ந் தேதியன்று தாவா
 சொத்தான முதல் அயிட்ட சொத்தை 3 ம் பிரதிவாதிக்கு
 பி.சா.ஆ.4 படி ரூபாய் 1,25,000/- க்கு கிரயம் செய்து
 கொடுத்துள்ளார் என்பதும், அதன் பின்னிட்டு மேற்படி
 சொத்து 3 ம் பிரதிவாதி வசம் ஒப்படைக்கப்பட்டு அவரது
 அனுபவத்திலும் சுவாதீனத்திலும் இருந்து வருகிறது
 என்பதும் தெரியவருகிறது. மேலும் புனிதவள்ளியம்மாள்

13.05.1987 ந் தேதியன்று பதிவு செய்யப்பட்ட உயில் மூலம் 2 ம் பிரதிவாதிக்கு மற்றொரு 2 வது அயிட்டம் தாவா சொத்தை எழுதிக்-கொடுத்துள்ளார் என்பதும் தெரியவருகிறது. எனவே புனிதவள்ளியம்மாள் 2 ம் பிரதிவாதி பெயருக்கு தாவா சொத்துக்களை விற்பதற்கும் 3 ம் பிரதிவாதி பெயருக்கு தாவா சொத்துக்களை உயில் எழுதிக் கொடுப்பதற்கும் உரிமை உள்ளது என்றும் வாதிக்கு தாவா சொத்துகளில் எவ்வித பங்கோ உரிமையோ கோரமுடியாது என்றும் தீர்மானிக்கின்றேன். மேலும் வாதி 2, 3 பிரதிவாதிகளுடன் கோ ஓனர் அல்ல. அவ்வாறு இருக்கும்போது வாதி 1/2 பங்கு தாவா சொத்துக்களில் பாகம் கோரி தாக்கல் செய்துள்ள தாவா நிலைக்கத்தக்கதல்ல என்று தீர்மானிக்கின்றேன். எனவே 2 மற்றும் 3 பிரதிவாதிகள் வசம் உள்ள தாவா சொத்துக்களில் வாதிக்கு எவ்வித உரிமையில்கலை என்று தீர்மானிக்கின்றேன்.”

In the said finding, it has been clearly held that while certain properties were given to Punithavalli Ammal under the Will marked as Ex.B12, the properties omitted to be mention in the Will also goes to her. It is clearly observed that Punithavalli Ammal has every lawful right to the said property. It is also

observed that the Will came into effect after the demise of Gurusamy Pillai.

Further, in O.S. No. 4/2000, while answering Issue No. 2 “தாவா முன்தடை தீர்ப்பால் பாதிக்கப்பட்டுள்ளதா?” the learned Additional District Judge, Karaikal, addressed the said issue in the affirmative by observing as follows in paragraph 22 ;

“22. வழக்கெழு வினா எண்.2 வாதி இதற்கு முன்பு புனிதவள்ளியமாளுக்கு எதிராக காரைக்கால் டிஸ்ட்ரிக் முன்சீப் கோர்ட்டில் தாக்கல் செய்திருந்த அசல் வழக்கு எண்.126/90 பி.சா.ஆ.3 ஆக 28.02.1991 தேதியிட்ட தீர்ப்பின் நகல் தாக்கல் செய்யப்பட்டுள்ளது. மேற்படி அசல் வழக்கை இந்த வழக்கிலுள்ள வாதி தான் காரைக்கால் பாரதியார் ரோடு 137 என்ற கதவு எண் உள்ள வீட்டில் 2/3 பங்கில் வசித்து வருவதாகவும், புனிதவள்ளியம்மாள் 3.11.1989 ந் தேதியன்று வாதியின் சுவாதினத்தை தடை செய்ய முயற்சித்ததாகவும், எனவே தான் சுவாதினத்தில் உள்ள பகுதியை தடை செய்யக்கூடாது என நிரந்தர உறுத்துக்கட்டளை வழங்க வேண்டுமென கோரியுள்ளார். மேற்படி வழக்கில் காரைக்கால் டிஸ்ட்ரிக் முன்சீப் கோர்ட் வாதி குருசாமிபிள்ளையின் சட்டப்படியான வாரிசா என வழக்கெழுவினா 1 வனைந்து அதற்கு தீர்வு கண்ட வகையில்

வாதி குருசாமிபிள்ளையின் வாரிசு எனத் தீர்மானிப்பதற்கு
 போதுமான சாட்சியங்கள் இல்லை எனக்குறிப்பிட்டு மேற்படி
 எழுவினாவிற்கு வாதிக்கு எதிராக தீர்வு கண்டுள்ளது. எனவே
 மேற்படி அசல் வழக்கு எண்.126/90 ல் காரைக்கால் டிஸ்ட்ரிக்
 முன்சீப் கோர்ட் இந்த வழக்கில் உள்ள வாதி
 குருசாமிபிள்ளையின் சட்டப்படியான வாரிசு இல்லை என
 தீர்மானித்திருந்தபோதிலும் மீண்டும் வாதி தான்
 குருசாமிபிள்ளையின் சட்டப்படியான வாரிசு என இந்த வழக்கில்
 சாட்டுரை செய்து அதன் அடிப்படையில் தாவா சொத்துக்களில்
 பாகம் கோரி இருப்பதால் வாதி தாக்கல் செய்துள்ள இந்த தாவா
 அசல் வழக்கு எண்.126/90 ல் தீர்மானித்துள்ள முடிவினால்
 முன்தடை தீர்ப்பினால் பாதிக்கப்பட்டுள்ளது என
 தீர்மானிக்கிறேன்.”

Therefore, the issue in the present suit as to whether the Will has come into force and that Punithavalli ammal has acquired right and title in the present plaint schedule Item-II properties was directly and substantially in issue in the earlier suit in O.S. No. 4/2000, and that same has already been determined by that judgment holding that Punithavalli ammal has acquired title to the said property under the Will, and that the plaintiff herein cannot claim any partition.

28. Aggrieved by the said judgment, the plaintiff has preferred an appeal in A.S.No.1016/2003. By a judgment dated 27.10.2009, marked as Ex.A13 =Ex.B6, the Hon'ble High Court has dismissed the appeal by framing the following points for determination:

1. Whether the plaintiff is the legal heir of deceased Gurusamy Pillai?
2. Whether the suit is barred by the principles of res judicata?
3. Whether defendants 2 and 3 have got title to the suit properties?
4. Whether the plaintiff is entitled to the relief of partition and separate possession?

29. The Hon'ble High Court was pleased to observe on point nos. 1 and 2 as below.

“The issue in the present suit as to whether the plaintiff is the legal heir of Gurusamy Pillai has been directly and substantially in issue in the former suit between the same parties and it was heard and finally decided as mentioned above and in such circumstances, it cannot be gone into in the present suit in view of the principles of res judicata as rightly contended by the learned counsel for the respondents. The points are answered accordingly.”

Therefore, it is clearly seen that the plaintiff right as a legal heir of Gurusamy Pillai, either as a legitimate son or illegitimate son, has been decided in the earlier suit. So, it is held that he is not a legal heir of Gurusamy Pillai. The defendants herein have not denied the claim that the plaintiff is not the biological son of Gurusamy Pillai. Thereby, it is clearly established that the plaintiff's status as a legal heir or not had already been determined in earlier suits and confirmed by the Hon'ble High Court on appeal.

30. While determining point no. 3, the Hon'ble High Court has held that;

“8. The second defendant is the grand son of Gurusamy Pillai and according to him, he was brought up by Punithavalli Ammal and she bequeathed Item B of the suit properties in his favour by registered Will dated 13.05.1987 and he is in possession and enjoyment of the property. Ex.B5 is the registered Will dated 13.05.1987 in which Item B of the suit properties has been gifted to the second defendant. In this context it is relevant to note that Item B is not covered under Ex.A4 Will dated 10.08.1966 executed by Gurusamy Pillai. In the averments in the said Will, the testator has stated that the properties not covered under Ex.A4 Will would go to his wife Punithavalli ammal. As already seen, Punithavalli has gifted the said property in favour of the second defendant.

9. The case of the third defendant is that Punithavalli ammal sold Item A of the suit properties to her by sale deed dated 04.02.1984 and she purchased the same for a sale consideration

of Rs.1,25,000/- and she is in possession and enjoyment of the said property. Ex.B4 is the registered sale deed dated 04.02.1984 in which Item A of the suit properties was sold to the third defendant. It is relevant to note that Item A was one of the properties dealt with under Ex.A4 Will of Gurusamy Pillai and the testator Gurusamy Pillai had gifted it to his wife Punithavalli as mentioned in the recitals therein. Subsequently, Punithavalli ammal had sold the same under Ex.B4 to the third defendant herein. The oral testimonies of D.Ws.1 to 3 coupled with the documents, referred above, make it clear that defendants 2 and 3 have got title to the suit properties. The point is determined accordingly. “

Thus, on perusing the observations made by the Hon’ble High Court, it is patently clear that the Hon’ble High Court has fully took into consideration the Will (marked as Ex.A4 in the earlier suit). That same Will was produced and marked as Ex.B1 by the defendants in this suit. The Hon’ble High Court has held that the Will had come into force and that, according to the testator's wishes, the suit property was bequeathed to Punithavalli Ammal. She, in turn, executed a registered Will bequeathing the property to Shanmuga Vadivel @ Nandakumar (the 1st defendant herein). Consequently, the Hon’ble High Court decided the title of defendants 1 & 4 (respondents 2 & 3 in A.S. No. 1016/2003), and ruled that they had already acquired the title to the present Item-II of suit schedule properties. The plaintiff herein has not preferred any

appeal against the judgment of the Hon'ble High Court confirming the title of defendants 1 and 4 in the suit properties, and it has become final.

31. On careful examination of the above facts, circumstances, and evidence on record, this court is of the considered view that the claim as legal heir by the plaintiff as the son of Gurusamy Pillai, either legal or illegal son, as well as the validity of the Will, has already been determined in the earlier suits. The transfer of the right under the Will has also been determined in the earlier suits and confirmed by the Hon'ble High Court. More particularly, the rights and title of defendants 1 and 4 herein based on the said Will have been determined in the earlier suits and confirmed in the appeal. Therefore, the plaintiff cannot once again raise the same issue in the present suit and seek for partition.

32. In the present suit, the plaintiff's main contention is that the Will was not proved in accordance with law in the earlier suits, and therefore, its validity must be decided in this suit. Further, the plaintiff contends that the status of the illegitimate son was not adjudicated previously. Perusing all the findings given in the earlier suits as extracted supra, it is clear that both contentions have been decided in the earlier suits and have reached finality. Hence, the contention of the plaintiff that the suit is not barred by res judicata deserves to be rejected. Instead, the defendants' contention that the suit is barred by constructive res judicata must be sustained.

33. Further, the question of the plaintiff's legitimacy, as well as the status of the legal heir of Gurusamy Pillai, was determined in the earlier suits. The plaintiff has clearly pleaded that he is the son of the 2nd wife or Abimana Manaivi, as described in the Will. That being so, it is admitted by the plaintiff that he is not a son born to the legally wedded wife, Punithavalli Ammal. It goes without saying that the marriage or relationship with the plaintiff's mother is not approved by law and therefore it is an illicit relationship. Even assuming that there was marriage, it is during the life time of the first wife, so it be a void marriage under Section 11 of Hindu Marriage Act. The plaintiff, born out of such relationship, would be an illegitimate son. The plaintiff has filed the suit based on the same set of pleadings and facts. He had every opportunity to raise the plea in the earlier suits that he is an illegitimate son and to seek relief based on that status. The plaintiff has completely omitted to seek relief for partition or other reliefs by claiming himself to be an illegitimate son. He had every opportunity to raise such a plea and seek the appropriate relief in the earlier suit, having failed to do so. This court is of the considered view that such a claim by the plaintiff is also barred by Order 2 Rule 2(3) of the CPC. Accordingly, this Court determines both Additional Issue Nos. 1 and 2 in the affirmative and against the plaintiff.

Issue Nos.1 & 2:

34. It is clearly proved from the evidence on record that the plaintiff was born out of an illicit relationship involving Kulanthai Ammal, the plaintiff's mother. Therefore, he would fall within the ambit of Section 16 of the Hindu Marriage Act, which legitimates the child born out of such marriage. Section 16 (1) of Hindu Marriage Act reads as follow;

16. Legitimacy of children of void and voidable marriages.—(1) Notwithstanding that a 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.

35. Any child born of a void marriage is granted the status of a legitimate child.. The child is not branded as illegitimate child. Such a child will be entitled to inherit or succeed to the property of his/her parent in the event of their death intestate under Section 16(3) of Hindu Marriage Act. The Hon'ble Supreme Court in the case of ***Revannasoddappa Vs. Mallikarjun and other (2023 INSC 783)***, has addressed the critical issue pertaining to the

inheritance rights of children born out of void and voidable marriage and has affirmed that children legitimized under Section 16 of Hindu Marriage Act are equally entitled to ancestral/co-parcenary property, limited to the parent's estate. The learned Advocate of the plaintiff also referred to the article published in the International Journal of Creative research Thoughts (IJCRT) on a study on illegitimate children and their rights in India under various personal laws, and contended that the plaintiff in the capacity of an illegitimate son will be entitled for partition. There is no dispute on this proposition of law. However, in view of the finding given on the additional issue nos. 1 and 2 supra, the court has found that the present suit is barred by *res judicata* and is also hit by Order 2 Rule 2(3) of the CPC, therefore, the plaintiff cannot seek the relief of a declaration that he is an illegitimate son by filing this suit. Moreover, as rightly argued by the defendants, the Will (Ex.B1) has been found to be valid and has come into force. Under this Will, Gurusamy Pillai bequeathed some properties to his first wife, Punithavalli Ammal, and to his second wife, Kulanthai Ammal, while clearly leaving the remaining unmentioned properties to his legally wedded wife, Punithavalli Ammal. He died on 02.11.1967, and the Will came into force immediately thereafter. Ex.B1 clearly proves that the deceased, Gurusamy Pillai, did not die intestate, but rather died leaving a Will/testament for the succession of his property. The plaintiff being an illegitimate son can only claim a share in his

father's estate, only if the father dies intestate. Because Gurusamy Pillai left a valid testamentary Will, so he did not die intestate. Therefore, the property will devolved according to the Will, which determines the title over the property. There is nothing left for the plaintiff to inherit as an legitimate or illegitimate son upon the death of his father, Gurusamy Pillai. So, the suit properties bequeathed under the Will (Ex.B1) are not available for partition as a legal heir of Gursamy Pillai. At best the plaintiff will inherit to the share bequeathed to his Kulanthaiammal under Ex.B1/Will. Therefore, the reasons discussed above the plaintiff is not entitled for any of relief as prayed in the suit.

36. Further, the plaintiff has filed a suit for partition and paid the court fee under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, stating he is in joint possession and enjoyment of the suit property. In A.S.No.1016/2013, it was clearly held that the suit property in Item II belongs to defendants 1 and 4, and that they are in possession and enjoyment of it under a registered sale deed dated 04.02.1984 and a Will dated 13.05.1987 executed by Punithavalli Ammal. Therefore, the plaintiff has been clearly out of possession of the suit property. Hence, the court fee paid by the plaintiff claiming joint possession and enjoyment under Section 37(2) of the TNCF & SV Act is incorrect. For these reasons, the plaintiff's

claim must fail. Accordingly these Issues 1 and 2 are answered against the plaintiff.

Answer to Issue No.3:

37. In view of the findings on the above issues, this court is of the considered view that the plaintiff is not entitled to any of the reliefs prayed for, and the suit is liable to be dismissed. Considering the relationship between the parties, each party shall bear their own cost. Accordingly this Issue No.3 is answered.

RESULT:

38. **In the result**, the suit is dismissed. Considering the relationship between the parties, each party shall bear their own cost.

//Dictated to the Steno-typist, transcribed by her in Computer, printed out corrected and pronounced by me in Open Court on this the 12th day of August 2026//.

DISTRICT JUDGE,
NAGAPATTINAM.

List of witnesses and documents

Plaintiff's side witness:

P.W.1 Gopalakrishnan (Plaintiff)

Defendants' side witness : NIL

Exhibits marked on the side of Plaintiff:

Ex.A. 1	16.02.2013	Birth Certificate of Gopalakrishnan (Plaintiff)	Xerox Copy
Ex.A. 2	16.07.2020	Legal Heir Certificate of Kuzhanthaiyammal	Downloaded Copy
Ex.A. 3	29.11.2012	Death Certificate of Gurusamy Pillai	Original
Ex.A. 4	04.02.1984	Sale deed executed by Punithavalliyammal in favour of Soundara Valli	Certified Copy
Ex.A. 5	13.05.1987	Will executed by Punithavalliyammal	Certified Copy
Ex.A. 6	13.10.2020`	Patta Copy in the name of Gopalakrishnan (Patta No.341)	Downloaded Copy
Ex.A. 7	---	Patta Copy in the name of Punithavalliyammal (Patta No.1126)	Downloaded Copy
Ex.A. 8	---	Patta Copy in the name of Ramakrishnan and Prasanna (Patta No.4898)	Downloaded Copy
Ex.A. 9	---	Patta Copy in the name of Kannan (Patta No.4895)	Downloaded Copy
Ex.A. 10	28.03.1985	Judgment in OS No.342/83 on the file of the Principal District Munsif Court, Karaikal	Certified Copy
Ex.A. 11	28.02.1991	Judgment in OS No.126/90 on the file of the Principal District Munsif Court, Karaikal	Certified Copy
Ex.A. 12	17.09.2002	Judgment in OS No.04/2000 on the file of the Additional District Court, Karaikal	Certified Copy
Ex.A. 13	27.10.2009	Judgment in AS No.1016/2003 on the file of the Hon'ble High Court, Madras	Certified Copy

Ex.A. 14	---	Extract from the Register of Guideline values for the year 2021-2022	Downloaded Copy
Ex.A. 15	18.01.2021	Extract from the Register of Guideline values	Downloaded Copy
Ex.A. 16	---	Extract from the Register of Guideline values for the year 2021-2022	Downloaded Copy
Ex.A. 17	---	Aadhaar Card of Gopalakrishnan (Plaintiff)	Xerox Copy

Exhibits marked on the side of Defendants: (By P.W.1 cross)

Ex.B. 1	10.08.1966	Will executed by Gurusamy pillai	Certified Copy
Ex.B. 2	28.03.1985	Judgment in OS No.342/83 on the file of the Principal District Munsif Court, Karaikal	Certified Copy
Ex.B. 3	28.02.1991	Judgment in OS No.126/90 on the file of the Principal District Munsif Court, Karaikal	Certified Copy
Ex.B. 4	17.09.2002	Judgment in OS No.04/2000 on the file of the Additional District Court, Karaikal	Certified Copy
Ex.B. 5	17.09.2002	Decree in OS No.04/2000 on the file of the Additional District Court, Karaikal	Certified Copy
Ex.B. 6	27.10.2009	Judgment in AS No.1016/2003 on the file of the Hon'ble High Court, Madras	Certified Copy
Ex.B. 7	27.10.2009	Decree in AS No.1016/2003 on the file of the Hon'ble High Court, Madras	Certified Copy

DISTRICT JUDGE,
NAGAPATTINAM.