

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, [FTC]  
THENI.

PRESENT : Tmt. G. Sree Devi, B.A., L.L.M  
Additional District Judge, [FTC], Theni.

Monday, the 06<sup>th</sup> day of April 2026.

ORIGINAL SUIT No. 58 of 2016  
(CNR No. TNTH010015182016)

G. Kala ... Plaintiff

/Vs/

1. Meenammal  
(Amended as per order in IA.No.1/25 dated 20.01.2025)  
2. Saroja  
3. Latha  
4. Sinduja @ Dhanalakshmi  
5. S.R.Harin  
(Amended as per the order in IA.No.7/22 dated 25.04.2022)  
6. Superintendent, Central excise Tax Department,  
Palanichettipatti ... Defendants

This case came up for final hearing before me on 24.03.2026 in the presence of Thiru.S.Manoharan, Advocate for the Plaintiff and Thiru.S.Selvakumar, Advocate for the 1, 2, 4, 5 Defendants and 3, 6 Defendants remained exparte and upon hearing both side arguments and upon perusing the case records, evidences and having stood over for consideration till this day, this Court delivered the following ...

**JUDGMENT**

Suit for Partition, for a preliminary decree for Partition of the suit properties by 2/8 share, to declare the Will dated 10.10.2012 as null and void, to declare the Gift settlement deed dated 24.10.2014 as null and void, for separate possession, for 2/8 share in respect of the 6<sup>th</sup> item of suit property and for future mesne profits arising out of the suit property, and for costs of the suit.

**2. The concise statement of the averments made in the plaint is as follows :**

(2.1) The 1<sup>st</sup> Defendant is the Plaintiff's mother, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are the Plaintiff's sisters, 4<sup>th</sup> and 5<sup>th</sup> Defendants are the wife and son of the Plaintiff's brother late. Ramanivas. The suit item 2 and 3 properties are the ancestral property of late.R.Srinivasan, the father of the Plaintiff, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and late. Ramanivas. He having acquired the same by way of the Partition deed dated 07.03.1961 in Document no.702/1961, Partition deed dated 29.11.1961 in document no.549/1961 and by way of sale deed dated 08.06.1972 in document no.1534/1972, the Plaintiff and 2<sup>nd</sup> and 3<sup>rd</sup> Defendants father was in joint possession and enjoyment of the suit schedule properties. The suit schedule item 1, 4 and 5 properties was purchased out of the joint family income. The late.R.Srinivasan and his sons were in joint possession and enjoyment and the Plaintiff and the Defendants 1 to 5 are the legal heirs of late.R.Srinivasan.

(2.2) The Plaintiff and Defendants 1 to 3 are entitled for 2/8 share and the 4<sup>th</sup> and 5<sup>th</sup> Defendants being the legal heirs of late. Ramanivas ( brother of the plaintiff) are entitled for 1/8 share each. When the Plaintiff requested for her share in the suit schedule properties the Defendants gave lame excuses. As the Defendants delayed the partition, the Plaintiff applied for E.C. and found that on 10.10.2012 late.R.Srinivsan (father of Plaintiff and Defendants 2 and 3) had executed a Will in favour of S.R.Harin the 5<sup>th</sup> Defendant herein. After execution of the Will on 10.10.2012, R.Srinivasan died on 14.10.2012. The Will was executed under duress and pressure. Later, on 24.10.2014 late.S.Ramanivas (brother of the Plaintiff) executed a Gift Settlement deed in favour of his wife, the 4<sup>th</sup> Defendant herein. The Gift Settlement deed was also executed under duress. After execution of Gift Settlement deed on 24.10.2014 late.S.Ramanivas died on 01.12.2014 within a month.

(2.3) In the suit 5<sup>th</sup> schedule property, the 6<sup>th</sup> Defendant is a tenant. The Defendant had collected rents from 20.10.2013 for a period of 36 months amounting

to Rs.4,32,000/-. The Plaintiff prays for her 2/8<sup>th</sup> share in respect of the rents collected by the Defendants and also for future prospects. The Will and Gift Settlement deeds which was executed under threat, and force is not binding on the Plaintiff. Further, the Defendants are trying to alienate the property by sale, mortgage and othi. Hence, prayed to partition the suit properties, and the Plaintiff being entitled to 2/8 share.

**3. The concise statement of the averments made in the Written statement filed by the Defendants 1, 2, 4 & 5 :**

(3.1) The relationship between the Plaintiff and Defendants are admitted. These Defendants denies all the allegations and averments contained in the plaint except these that are specifically admitted herein and put the Plaintiff to strict proof of the same. The Plaintiff has to prove that she was in joint possession and enjoyment of the suit properties. The Plaintiff is not entitled for any share alleged by the Plaintiff. The Will dated 10.10.2012 and the Settlement deed dated 24.10.2014 was executed by R.Srinivasan and Late.Ramanivas without any force and is valid in the eye of law. There was dispute between the Plaintiff and Defendants in respect of item nos.1, 2, 4 suit properties.

(3.2) The 4<sup>th</sup> Defendant had filed a suit against the Plaintiff and her husband as the Plaintiff prevented the Defendants entry. Further, the Plaintiff's husband filed a suit in OS.No.27/15 on the file of the District Munsif Court, Theni with respect to the 4<sup>th</sup> item of suit property. The Plaintiff has intentionally suppressed the pendency of the above suits. This suit is filed suppressed pendency of the other civil suits and not entitled for the relief of Declaration. Further, the Plaintiff paid the court fee u/s 25(d), however has to pay the court fee u/s 40 of the Tamil Nadu Court Fee and Suits Valuation Act.

**4. The concise statement of the averments made in the Additional Written statement filed by the Defendants 1, 2, 4 & 5 :**

(4.1) The averments that the Plaintiff by mistake had mentioned Sec.37(1) of the Tamil Nadu Court Fee and Suits Valuation Act, instead of Section 37(2) is false and suit is liable to be dismissed. With respect to 4<sup>th</sup> relief instead of paying the court fee u/s 27(c), the court fee paid u/s 25(c). Further for the 5<sup>th</sup> relief instead of paying the court fee u/s 40 the court fee is paid u/s 25(c). The court fee paid with regard to 1<sup>st</sup> relief and 6<sup>th</sup> relief are contradictory. The Plaintiff is bound to pay the court fee u/s 37(1) of the TNCF and SV Act.

(4.2) With regard to item 5 of the suit property, the Plaintiff had by the Gift Settlement deed dated 28.10.2004, document no.5162/2004 executed in favour of Srinivasan and handed over the possession to him. As per the recitals of Settlement deed, the Srinivasan and his male decedent/legal heirs have entitlement over the suit property. After the demise of Srinivasan, his son Ramanivas was in possession and enjoyment and after his death the 5<sup>th</sup> Defendant is in absolute possession and enjoyment.

(4.3) Late.R.Srinivasan during his life time executed a Will dated 03.10.2013 document no.131/2012 with regard to item 1 to 3 properties in favour of the 5<sup>th</sup> Defendant. Probate OP.No.1/13 was filed and probate granted in favour of the 5<sup>th</sup> Defendant. Item 2, 3 properties were acquired by the Srinivasan through a Partition, item 1, 4 are the self acquired properties of Srinivasan and item 5 property, the Plaintiff executed a Gift settlement deed in favour of Srinivasan, accordingly, he has executed the Will in favour of the 5<sup>th</sup> Defendant.

**5. The concise statement of the averments made in the Reply Statement filed by the Plaintiff :**

(5.1) The court fee paid u/s 37(1) and 27(c) of Tamil Nadu Court Fee and Suits Valuation Act is correct. The 5<sup>th</sup> item of suit property the Settlement deed and

mutation of records was executed only for name sake. The Plaintiff is not aware of the probate proceedings. The Srinivasan has no legal right to execute the Will. The Defendants have examined 6 witnesses and marked 9 documents. DW1 is the 4<sup>th</sup> Defendant, DW2 and DW3 are the parents of D4. Even though Srinivasan acquired the property by way of sale deed, it was purchased from and out of the funds of the joint family properties is admitted in the cross examination.

(5.2) Ex.B1 and Ex.B2 are not relevant to decide the issues involved in this case. Srinivasan died within 4 days of execution of Ex.B3 obtained under undue influence. Ex.B4 to Ex.B9 are documents created subsequent to this suit and has no relevance. The settlement deed executed by the Late. Ramanivas in favour of the 5<sup>th</sup> Defendant is not binding on the Plaintiff. The Plaintiff's husband is not a necessary party to the suit as Srinivasan was entitled only for 1/2 share in the 4<sup>th</sup> item of suit property.

**6. Upon perusal of the pleadings and the documents filed this Court already framed the following issues :**

1. வழக்கு சொத்துக்கள் சீனிவாசனுக்கு பூர்வீக பாத்தியப்பட்ட மற்றும் பூர்வீக சொத்தின் வருமானத்திலிருந்து வாங்கப்பட்ட சொத்துக்களா ?
2. வழக்கு சொத்தைப் பொறுத்து 10.10.2012 ம் தேதி உயில் உண்மையானதா ? சட்டப்படி செல்லத்தக்கதா ?
3. வழக்கு சொத்தில் வாதிக்கு பங்கு உரிமையுள்ளதா ? எனில் பாகம் எவ்வளவு ?
4. வாதி தான் கேட்கும் பாகம் செயலுறுத்துக் கட்டளை பரிகாரம், விளம்புகை பரிகாரம் பெற அருகரா ?
5. வேறு என்ன பரிகாரம் ?

**7. Trial :-**

On behalf of the Plaintiff, the Plaintiff was examined as PW1 and Ex.A1 to Ex.A9 were marked. On the defendants side, the 4<sup>th</sup> defendant Sinduja @

Dhanalakshmi was examined as DW1 and Ex.B1 to Ex.B6 were marked. One Subash was examined as DW2, who is the father of DW1/4<sup>th</sup> Defendant. 2<sup>nd</sup> Defendant Saroja was examined as DW3 and Ex.B7 to Ex.B9 were marked. One Booju was examined as DW4. One Easwaran was examined as DW5. One Subramani was examined as DW6.

#### **8. Discussions, Decisions with Reasons :-**

##### **Issue no 1, 2, 3 and 4 are intertwined and are decided together :-**

(8.1) The learned Advocate for the plaintiff vociferously submits, that the Plaintiff's father acquired certain properties ancestrally, and they are joint family properties of the Plaintiff and Defendants. The 1<sup>st</sup> Defendant is the wife of Late. Srinivasan and the mother of the Plaintiff, and Late. Ramanivas is the son of Late. Srinivasan and the 1<sup>st</sup> defendant, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are their daughters. The Late. Ramanivas (Son of late. Srinivasan) died and the 4<sup>th</sup> and 5<sup>th</sup> Defendants are his legal heirs. As far as the 5<sup>th</sup> item of the suit property is concerned, the 6<sup>th</sup> Defendant is the tenant in respect of the said property and the Defendants are collecting rent from the said property. The Plaintiff and the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are entitled for 2/8 share and the 4<sup>th</sup> and 5<sup>th</sup> Defendants as legal heirs of Late. Srinivasan are entitled for 1/8 share each.

(8.2) The Plaintiff contented that no partition was made among the Plaintiff and Defendants and that on 08.04.2015, she applied for the encumbrance certificate and found that on 10.10.2012, Late. Srinivasan executed a Will in favour of 5<sup>th</sup> Defendant/ grand-son (Son of late. Ramanivas and grand-son of late.Srinivasan). On 14.10.2012 Late.Srinivasan died. On 24.10.2014 Late.Ramanivas executed a Settlement deed in favour of the 4<sup>th</sup> Defendant and later on 01.12.2014 Ramanivas committed suicide and died. As the suit properties are ancestral properties the Will dated 10.10.2014 is not binding on the Plaintiff.

(8.3) On the side of the Defendants, the Learned Advocate fervently submitted that the Plaintiff has suppressed the suit OS.No.164/14 on the file the District Munsif Court, Theni and also suppressed the OS.No.25/17. Further, submitted that the proper court fee is not paid, that item no.1 & 4 of the suit properties are self-acquired properties of Late. Srinivasan, item no 2 & 3 properties are acquired by Partition Deed which was settled to Late.Srinivasan. Further, item 5 of the suit property, the Plaintiff had executed a Gift Settlement deed in favour of Late.Srinivasan (father of the Plaintiff) and hence, the Plaintiff cannot claim any share over the said property. Item 1 to 3 properties, Will was executed in favour of the 5<sup>th</sup> Defendant and Probate OP No.1/2017 was allowed by the Hon'ble Principal District Judge, Theni. In respect of item 4 property, there is 1/2 share in the name of Ganesan who is the Plaintiff's husband, he is not a party to the suit. The suit is liable to be dismissed for non-joinder of necessary party and pray to dismiss the suit.

(8.4) The relationship between the parties and properties remains undisputed. It is indisputably the 2<sup>nd</sup> and 3<sup>rd</sup> item of the suit properties are acquired by Late. Srinivasan by way of Ex. A2 ( 2<sup>nd</sup> item of property) and Ex A 3 ( 3<sup>rd</sup> item of property). It is relevant to extract, deposition of PW1, "1961 ல் பாகப்பிரிவினை செய்து விட்டு எனது அப்பா பெயரில் இருந்ததால் அது அவருடைய தனிப்பட்ட சொத்துக்கள் என்றும், அந்த சொத்துக்களில் நானோ, 2, 3 பிரதிவாதிகளோ பாகம் கேட்க முடியாது என்றும் சொன்னால் சரியல்ல ..... மேலும், என் அப்பாவிிற்கும் அவரது சகோதரர்களுக்குள்ளேயும் ஏற்கெனவே பாகம் ஏற்பட்டு விட்டதால் என் தகப்பனாருக்கு கிடைத்த சொத்துக்கள் அவரின் தனிப்பட்ட சொத்துக்கள் என்றும், அந்த சொத்துக்களில் பாகம் கேட்க எனக்கு உரிமை இல்லை என்றும் சொன்னால் சரியல்ல ..... நான் தென்னந்தோப்பை பொறுத்த மட்டிலும் பாகம் கேட்க வேண்டுமென்றால் என் அப்பா உயிருடன் இருக்க வேண்டும் என்று சொன்னால் சரியல்ல" PW1 has categorically denied, the suggestion put to her in cross examination that she is not entitled to the item 2<sup>nd</sup> and 3<sup>rd</sup> suit properties. While so, the defendants contend that suit item 2, 3 properties, though was acquired by Late.Srinivasan by way of Partition

deed, he has become the absolute owner of the property and that he has right to bequeath the property by way of a Will, according to his own will and volition.

(8.5) The properties and relationship between the parties remains undisputed. The Plaintiff would submit that amended Section 6 of the Hindu Succession Act, came into effect from 09.09.2005, the daughters recognized as coparcenary by birth in family, like son and has right to demand partition of the suit properties.

(8.6) Hindu coparcenary is a much narrower body. It consists of propositus and three lineal descendants. Before 2005, it included only those persons with sons, grand-sons and great grand sons who are the holders of joint property. The coparcenary will be formed only up to great grand-sons and the next coparcenary will ripen to three lineal descendants. Coparcenary property is the one which is inherited by a Hindu by his father, grand-father or great grand-father. Property inherited from others is held in his rights and cannot be treated as forming part of the coparcenary. The property in coparcenary is held as joint owners.

(8.7) It is a settled law that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same, shall revive only when a son is born to him. It is one thing to say that the property remains a coparcenary property, but in another thing to say that it revises. The distinction between the two is absolutely clear and unambiguous.

(8.8) A Hindu coparcener has six essential characteristics namely (1) That the lineal male descendant up to the third generation acquire an independent right of ownership by birth and not as representing their ancestors, (2) That the member of the coparcenary has the right to work out their rights demanding partition, (3) That until partition each member has got ownership extending over the entire property conjointly with the rest and so long as partition take place it is difficult for any coparcener to predicate the share which it may receive, (4) That as a result of such co-ownership the possession and enjoyment of the property is common, (5) That

there can be no alienation of the property without the concurrence of the other coparcener unless it is for legal necessity. (6) That the interest of deceased member lapses on his death and merges in the coparcenary property.

(8.9) The provisions contained in Section 6 of Hindu Succession Act, 1956, confers status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities. The rights can be claimed by the daughter born earlier to the amendment, the right by coparcenary is by birth and not necessary that the father of the person to be alive. The daughters are entitled for a share equally in par with the sons. In the case on hand, on the birth of the plaintiff and the defendants 2 and 3 and Late. Ramanivas, the item 2 and 3 properties revive as coparcenary properties and the plaintiff is entitled for her share. Hence, this court finds that the plaintiff is entitled for 2/8<sup>th</sup> share in the item 2 and 3 properties as a coparcener.

(8.10) Item 1 property, is the property which Late. Srinivasan, purchased by way of the sale deed dated 08.06.1972, which also bequeathed in the Will Ex,B3, he bequeathing his 1/2 share to the 5<sup>th</sup> defendant. It is not in dispute, that the property was purchased by Late.Srinivasan vide Ex.A3 Sale Deed dated 08.06.1972 Doc. No 1534/1972. The said property according to the plaintiff was purchased out of the joint family income, which is disputed by the defendants and claimed to be the self-acquired property of Late. Srinivasan. While, reading the recitals of the Will Ex.A7/Ex.B3, it is clear, the testator has never mentioned, the item 1 of the suit property was purchased by him, out of the joint family income and that it is the joint family property, whereas referred as "என்னால் P. நாட்டுத்துறை வகையறாவிடம் 08.06.1972 தேதியில் கிரையம் எழுதி தேனி SRO.1-1534/1972 நம்பராக பதிந்து வாங்கியுள்ள தஸ்தாவேஜுபடியும்" only, the clear intention of Late.Srinivasan, he had not blended the suit item 1 property with the joint family properties, and the property is the nucleus of the joint family income, and further the said recitals are silent on this

aspect, whether the property was purchased with the joint family funds or not. In addition to that, the Plaintiff has not adduced any evidence regarding source of income for purchasing the Item 1 property under Ex.A3 that her father purchased it from the income of the joint family properties. Hence, this court is unable to presume or assume so. Therefore, this court decides that, the item 1 property was his absolute self-acquired property.

(8.11) With regard to item 4 of the suit property, the property purchased by Late. Srinivasan and the plaintiffs' husband by the Sale Deed dated 09.03.1992 for a sale consideration of Rs.30,000/-. On reading the recitals of Ex.A4, reveals that the sale deed does not reflect any iota of evidence, to show that the said property was purchased out of the joint family income, or from the income accruing from the nucleus of the common funds of the joint family property. It could be presumed, that the property is the absolute property of the Late.Srinivasan with regard to his 1/2 share of the said property and the plaintiffs' husband is entitled for his 1/2 share. PW1 in her testimony replies that "பிராதில் 4 வது லக்க சொத்தாக காட்டியுள்ள 15 செண்டு இடம் என் அப்பாவிற்கும் , என் கணவருக்கும் பொதுப்பாத்தியப்பட்ட சொத்தாகும் . ..... 4 வது லக்க சொத்து என் தகப்பனாருக்கு கிடைத்த பாகத்தில் எனக்கு எந்த பாகமும் கிடைக்கத்தக்கதல்ல என்று சொன்னால் சரியல்ல ..... 4 வது லக்க சொத்து 1992 ல் வாங்கப்பட்டது". ..... this testimony of the PW1, fructifies the fact, that item 4 property is the property of the Late.Srinivasan and Ganesan/the husband of the plaintiff. Even in this document Ex.A4, no where it is reflected about the source of income for purchasing the said property and hence, this court, has no clue to decide that this property was purchased out of the joint family nucleus.

(8.12) It is pertinent to note that, it is a settled principle of law, that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting, that there was nucleus with which the joint family property could be acquired, then there would be presumption

of the property being joint and the onus would shift on the person who claims it to be self-acquired property, to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. That apart, while considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. **In R. Deivanai Ammal -VS- G Meenakshi Ammal-** dealt with the concept of Hindu law, ancestral property and the nucleus existing.

(8.13) The doctrine of blending of self-acquired property with joint family has to be carefully applied with reference to the facts of each case. No doubt it is settled that when members of a joint family by their joint labour or in their joint business acquired property that property, in the absence of a clear indication of a contrary intention, would be owned by them as joint family property and their male issues would necessarily acquire a right by birth in such property. But, the essential sine qua non is the absence of a contrary intention. If there is satisfactory evidence by an intention on the part of the acquirer of such property to treat it as its own, but not as joint family property, the presumption which ordinarily arises according to the personal law of Hindus that such property would be regarded as joint family property, will not arise.

(8.14) It is a well-established principle of law that when a party claims that any particular item of property is joint family property, the burden of proving that it is so rests on the party asserting it. Where it is established or admitted that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property is vested may have been acquired, the presumption arises that it was joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family funds, but no such presumption would arise if the nucleus is such that with its help the property claimed to be joint could not have been

acquired, In order to give rise to the presumption the nucleus should be such that with its help with the property claimed to be joint could have been acquired. A family house is the occupation of their members and yielding no income could not be nucleus out of which acquisitions could be made even though it might be of considerable value.

(8.15) In a Hindu joint family, if one members sues for partition on the foot that the properties claimed by him are joint family properties, then, three circumstances ordinarily arise. The first is an admitted case when there is no dispute about the existence of joint family properties at all. The second is a case where certain properties are admitted to the joint family properties and the other properties in which a share is claimed or alleged to be the accretions or acquisitions from the income available from joint family properties or in the alternative have been acquired by a sale or conversion of such available properties. The third head is that the property standing in the names of the female members of the family are benami and that such a state of affairs has been deliberately created by the manager or head of the family and that really the properties or the amounts standing in the names of female members are properties of the joint family. While considering the term 'nucleus', it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. The extent of the property, the income from the property, the normal liability with which such income could be charged and the net available surplus of such joint family property do all enter into computation for the purpose of assessing the context of the reservoir of such a nucleus from which alone it could, with reasonable certainty, be said that the other joint family properties have been purchased unless a strong link or nexus is established between the available surplus income and the alleged joint family properties. The person who comes to court with such bare allegations without any substantial back up should fail.

(8.16) It is also well-established doctrine of Hindu law that property which was originally self-acquired may become joint family if it has been voluntarily thrown by the coparcener into this joint stock with the intention of abandoning all separate claims up to it. But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred from acts which may have been done from kindness or affection. The important point to keep in mind is that what property of a Hindu Coparcener ceases to be his separate property and acquires the characteristics of his joint family or ancestral property not by mere act of physical mixing with his joint family or ancestral property, but by his own volition and intention by his waving or surrendering his special right in it as separate property.

(8.17) As stated in the paragraphs supra, Late.Srinivasan, has not specifically asserted as per law, that he throws the item 1 and 4 (  $\frac{1}{2}$  share in item 4 property) properties in the joint family nucleus, blending the self-acquired property into the joint family property for equal distribution among the family members. Hence, item 1 property, this court decides against the plaintiff and in favour of the defendants.

(8.18) However, though item 4 of the suit property was the self-acquired property of Late father, he has not settled or bequeathed in favour of any one, and he died intestate. Hence, the plaintiff, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are entitled for their respective  $\frac{2}{8}$  share (out of  $\frac{1}{2}$  share of Late. Srinivas), the 4<sup>th</sup> and 5<sup>th</sup> defendants, are entitled for  $\frac{1}{8}$ <sup>th</sup> share each (out of  $\frac{1}{2}$  share of Late.Srinivasan) from the  $\frac{1}{2}$  share of the Late.Srinivasan. Hence, the plaintiff is entitled for her  $\frac{2}{8}$ <sup>th</sup> share in respect of Late.Srinivasan's  $\frac{1}{2}$  share and answered in favour of the plaintiff.

(8.19) Item 5 property, originally stands in the name of the plaintiff, she having purchased by way of the Sale Deed dated 01.10.1990 from R.P.Chellaiah vide Document No.2745/1990, and was under her possession and enjoyment. While that

be the case, the plaintiff had out of her love and affection by the Settlement deed dated 28.10.2004 settled the said property in favour of her father Late.Srinivasan. The recitals of the Settlement Deed reads as, "தாங்களும், தங்களின் ஆண் வாரிசுகளும் என்றென்றும் சர்வ சுதந்திர பாத்தியமாய் ஆண்டு அனுபவித்துக் கொண்டு வரவும் ." From the above recitals it is clear that the Settlement deed was executed in favor of Late.Srinivasan and after his life time the property to vest with the male descendants of Late.Srinivasan. Further, PW1 deposed that "5 வது லக்க சொத்தின் சர்வே எண் 1434/2 ல் கண்ட 1716 சதுரடி உள்ள இடம் 28.10.2004 ம் தேதி என் தகப்பனாருக்கு இந்த இடத்தை ஒரு தானசெட்டில்மெண்ட் எழுதிக் கொடுத்திருந்தேன் என்றால் சரிதான். She has not denied the execution of the settlement deed in favour of her father.

(8.20) From a conjoint reading of the recitals of the settlement deed Ex.A6, it is revealed that the plaintiff executed a non-revocable Settlement deed in favor of Late. Srinivasan (her father) and after his lifetime the property to vest with the next male descendants of Late.Srinivasan. From the genealogy of Late.Srinivasan, it is clear that Late.Ramanivas, inherited the said property, as the next male descendant of Late. Srinivasan (his father) and he was in possession and enjoyment of the item 5 of the suit property. After the demise of Late. Ramanivas, his son the 5<sup>th</sup> defendant being the next male descendant has become the absolute owner of the 5<sup>th</sup> item of suit property and is entitled fully. The plaintiff may not approbate and reprobate, on the one hand executed the Settlement deed, and on the other hand, claiming share in this suit, and the plaintiff is estopped from claiming any share in the said property. In this regard, this court, decides, that item 5 of the suit property, is the absolute property of the 5<sup>th</sup> defendant having inherited from the father Late. Srinivasan as the male descendant, as per the Ex.A6, Settlement deed executed by the plaintiff and is answered in the negative and against the plaintiff.

(8.21) Further with regard to, item 1 and 2 properties, the Late S. Ramanivas executed a Settlement Deed in favour of his wife Sinduja/the 4<sup>th</sup> defendant with

regard to his 1/2 share. It is relevant to extract the recitals of the Settlement Deed executed by Late.Ramanivas, marked as Ex.A8 dated 24.10.2014 in Document No.7067/2014.

"எனது தகப்பனார் சீனிவாசன் அவர்களும், நானும் பாகம் பிரித்துக் கொண்டதில் எனக்கு ஏற்பட்டசொத்துக்களையும் மேற்படி எனது தகப்பனார் சீனிவாசன் அவர்களால், எனக்கும் நமது மகன் S.R.ஹரின் மைனருக்கு கார்டியன் தாயாரான உனது பெயருக்கும் 10.10.2012 ம் தேதி ஒரு உயில் சாசனம் எழுதி வைத்து அதை தேனி SRO 3-131/2012 எண் ஆவணப்படி பதிவு செய்யப்பட்ட பிரகாரம் உயில் சாசனம் எழுதி வைத்த சீனிவாசன் அவர்கள் காலஞ்சென்ற பின்பு மேற்படி கண்ட உயில் சாசனத்தை 03.10.2013 ம் தேதியில் தேனி மாவட்ட நீதிமன்றத்தில் (Probate Order) Succession O.P.க்காக கோர்ட்டில் தாக்கல் செய்து O.P. எண் 1/2013 ன் பிரகாரம் முதன்மை மாவட்ட நீதிபதி திரு.டி.அருள்ராஜ், பி.எஸ்.சி., பி.எல்., அவர்களால் தீர்ப்பு வழங்கப்பட்டு மேற்படி கண்ட தீர்ப்பின் பிரகாரம் எனக்கும் பாத்தியப்பட்டு என்னுடைய அனுபவத்திலும், பாத்தியத்திலும் இருந்து வருகின்றதும், எனது தகப்பனார் சீனிவாசன் அவர்கள் பெயரில் வீட்டு வரி வகையறாக்கள் ஏற்பட்டும் இருந்து வருகின்ற இதன் அடியில் கண்ட சொத்தின் மதிப்பு ரூ .15,14,850/-ல் பிரிவின்றி பாதி எனக்கு ஏற்பட்ட சொத்தின் மதிப்பு". From the above recitals it is clear that the suit item 1 and 2 properties, Late. Srinivasan and Late.Ramanivas, made an oral partition and Late.Ramanivas, executed the said Settlement deed in favour of his wife. Further, it was also acted upon as the Late.Ramanivas executed Settlement deed Ex.A8 in favour of 4<sup>th</sup> defendant apart from got the mutation of revenue records done in favour of the 4<sup>th</sup> and 5<sup>th</sup> defendants.

(8.22) This court, in the aforementioned paragraphs, finds, that item 2 property is the coparcenary property and that the plaintiff is entitled for 2/8<sup>th</sup> share, will also apply to this Settlement deed and accordingly, the Settlement Deed Ex.A8 is declared as null and void with regard to item 2 of the suit property. As regards, item 1 of the suit property, as decided supra, the plaintiff had not produced any documentary proof, to assert the property is purchased out of the joint family nucleus, and hence, the

Settlement deed, with regard to, item 1 of the suit property holds good, as even in the Will of the Late.Srinivasan, he has described about his intention with the Late. Ramanivas of having entered into an oral partition and the said Settlement Deed holds good and binding on the plaintiff.

(8.23) The plaintiff has challenged the Will Ex.A7/Ex.B3, that it was shrouded with suspicion as Late.Srinivasan, died within 4 days of the execution of the Will. The Will Ex.A7/Ex.B3 was executed by Srinivasan in favour of his grand-son with respect to the suit item 1, 2 and 3 properties of his 1/2 share. For the purpose of brevity, it is relevant to extract certain clauses of the Will dated 10.10.2012 Ex.A7/Ex.B3 "1 வது, 2 வது, 3 வது அபிட்ட சொத்துக்கள் எனக்கும் , எனது மகன் S.ராமநிவாஸ்க்கும் பாத்தியப்பட்டு வாய்க்கரலாக பாகம் பிரித்துக் கொண்டதில் எனக்கு ஏற்பட்ட பாதி பாகம் சொத்தும் , என்னுடைய பாத்தியத்திலும் சுவாதீனத்திலும் இருந்து வருகிறது". From the above recitals it reads that with respect to the item 1, 2, 3 of the suit properties, only 1/2 share of late.Srinivasan was bequeathed by way of the Will Ex A7/Ex.B3 in favour of the 5<sup>th</sup> defendant. It was contended by the plaintiff that the Will was made under undue influence and immediately after execution of the said deed Late.Srinivasan died within 4 days.

(8.24) At this point, is necessary to decided, whether the Will was proved in the manner known to law as per section 68 of the Indian evidence act. DW1 Sinduja who is the wife of Late.Ramanivas and mother of 5<sup>th</sup> Defendant in her cross examination stated that "10.10.2010 ம் தேதி சீனிவாசன் தன் பேரணான 5 ம் பிரதிவாதிக்கு உயில் பத்திரம் எழுதி வைத்துள்ளார் என்றால் சரிதான். அந்த உயிலில் வழக்குரை 1, 2, 3 லக்க சொத்துக்களைப் பொறுத்து எழுதி வைத்துள்ளார் என்றால் அந்த சொத்துக்களில் பாதி சொத்தை தான் எழுதி வைத்துள்ளார்.....".

பி.வா.சா.ஆ.4 பிரகடன மனு (Probate) கடந்த 11.02.2013 ம் தேதி தாக்கல் செய்யப்பட்டது என்றால் சரிதான். இந்த பிரகடன மனுவில் சீனிவாசனின் வாரிசுகளை தரப்பினராக எதிர்வாதிகளாக சேர்க்கவில்லை என்றால் சரிதான்.

அந்த உயிலில் உங்கள் தாத்தா அவருக்கும், அவரின் மகனுக்கு மட்டும் ஏற்பட்ட வாய்வழி பாகப்பிரிவினை மூலம் கிடைத்த சொத்தில் பாதியை உங்கள் மகனுக்கு எழுதி வைத்ததாக குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான்".

(8.25) It is no doubt that the Will Ex.A7/Ex.B3 order for probate of the Will was passed in Probate OP. No.1/2013, and the 5<sup>th</sup> defendant subsequently became a major and the mutation of the revenue records made in his favour. For the due execution of the Will the attestors of the Will to be examined, to prove the genuineness of the Will. It is pertinent to note, that the attestors of the Will were examined in the probate OP. Even in the case on hand, the attestors were examined as, DW6 Subramani is the first attestor to the Will, DW4 Booju is the second attestor of the Will and DW5 Easwaran is the scribe and the attestor of the Will.

(8.26) They have deposed that the Will was executed by the Late. Srinivasan in favour of the grand-son/the 5<sup>th</sup> defendant. The 5<sup>th</sup> defendant has proved the Will in the manner known to law. Further the Will is executed and duly registered before the Sub Registrar, and if any doubt would have arisen, the Sub-Registrar would have refused to register the Will. Hence, this court concludes, that the Will is true and genuine one with regard to the item 1 of the suit property, and the issue is answered in favour of the defendants, and against the plaintiff. The 5<sup>th</sup> defendant is entitled for 1/2 share of late.Srinivasan from the Will and the 4<sup>th</sup> defendant is entitled for 1/2 share of Late. Ramanivas, as per the Settlement deed Ex.A8.

(8.27) As far as the item 6 property, in which, the 6<sup>th</sup> defendant is a tenant, the Plaintiff had marked Ex.A9 Lease Deed, is concerned, as this court decided, that item 5 property became the absolute property of the 5<sup>th</sup> defendant, by way of the Settlement deed executed by the plaintiff in favour of the Late.Srinivasan and, his father acquired as the male descendant of late.Srinivasan and after the death of late. Ramanivas, the 5<sup>th</sup> defendant being the next male descendant is the absolute owner of the property, the plaintiff is not entitled for the mesne properties arising out of the

said property and the issue is decided in favour of the defendants and against the plaintiff.

(8.28) With regard to the mesne profits claimed by the 5<sup>th</sup> item is concerned, as this court held that, the plaintiff is not entitled any share in the said property the claim of mesne profits does nor arise. However, separate possession of her 2/8<sup>th</sup> share in item 2 and 3 suit properties, is concerned the plaintiff is at liberty to proceed as per Rule 18 of Order XX CPC by filing final decree application.

9. In the result, the suit is partly decreed,

- (i) the plaintiff is entitled for 2/8 share in respect of the 2<sup>nd</sup> and 3<sup>rd</sup> item of the suit properties as a coparcener,
- (ii) The Will dated 10.10.2012 Doc. No 131/2012, in favour of the 5<sup>th</sup> defendant with regard to item 2<sup>nd</sup> and 3<sup>rd</sup> of the suit properties of the Late.Srinivasan's undivided 1/2 share is declared as null and void.
- (iii) The settlement deed dated 24.10.2014 Doc. No 7067/2014, in favour of the 4<sup>th</sup> defendant with regard to item 2 of the suit property of the Late.Ramanivas's undivided 1/2 share is declared as null and void.
- (iv) With no order as to costs because of the relationship of the parties.
- (v) As the judgment of the Hon'ble Supreme Court in the case of Kattukandi Edathil Krishnan Vs. Kattukandi Edathil Vasan, the final decree proceedings shall be taken in accordance with this Preliminary decree, call on 30.06.2026.

Dictated by me, directly typed by Steno-Typist into computer, corrected and pronounced by me in the open Court, this the 06<sup>th</sup> day of April 2026.

Additional District Judge,  
Theni

**Plaintiff side witnesses :**

PW1            ...        Kala

**Plaintiff side exhibits :**

Ex.A1	...	Partition deed dated 07.03.1961 – Certified copy
Ex.A2	...	Partition deed dated 29.11.1961 – Certified copy
Ex.A3	...	Sale deed dated 08.06.1972 – Certified copy
Ex.A4	...	Sale deed dated 09.03.1992 – Certified copy
Ex.A5	...	Partition deed dated 12.03.1992 – Certified copy
Ex.A6	...	Settlement deed dated 28.10.2004 – Certified copy
Ex.A7	...	Will deed dated 10.10.2012 – Certified copy
Ex.A8	...	Gift deed dated 24.10.2014 – Certified copy
Ex.A9	...	Lease Agreement dated 02.05.2013 – Certified copy

**Defendants side witness :-**

DW1	...	Sinduja @ Dhanalakshmi
DW2	...	Subash
DW3	...	Saroja
DW4	...	Booju
DW5	...	Easwaran
DW6	...	Subramani

**Defendants side exhibits :-**

Ex.B1	...	Amended Plaint in OS.No.164/2014 on the file of District Munsif Court, Theni.
Ex.B2	...	Plaint in OS.No.27/2015 on the file of District Munsif Court, Theni.
Ex.B3	...	Will deed dated 10.10.2012 – Original
Ex.B4	...	Probate OP No.1/13 Order passed by Principle District Judge, Theni dated 03.10.2013 – Certified copy
Ex.B5	...	Natham Patta dated 20.01.2022
Ex.B6	...	Computer Patta No.9210

- Ex.B7 ... Cr.M.P.No.5714/24 Petition u/s 156(3) Cr.P.C. on the file of the  
Judicial Magistrate court, Theni
- Ex.B8 ... Judicial Magistrate court, Theni in Cr.M.P.No.5714/24 order dated  
16.08.2024.
- Ex.B9 ... Palanichettipatti P.S. Cr.No.445/2024

Additional District Judge,  
Theni.