

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

PRESENT:- Thiru. T.V.Mani, B.A., L.L.B.,
Additional District Judge,
Srivilliputhur.

Monday, the 6th day of July 2026

Appeal Suit No.16/2024

(CNR No.TNVR010011972024)

1. Veerakutty (Late)
2. Ramanujam
3. Gurugopalsamy
4. Muthukrishnaveni
5. Umayalmuthu ... Appellants/Defendants
(4th and 5th Appellants through their power agent of 3rd Appellant)
-VS-

R. Muniammal ... Respondent/Plaintiff

This Appeal against the Decree and Judgment passed by the Learned Subordinate Court, Sivakasi in O.S.No.81/2011 dated 07.07.2023.

ORIGINAL SUIT No.81/2011

Between

R. Muniammal ... Plaintiff
-VS-

1. Veerakutty (Late)
2. Ramanujam
3. Gurugopalsamy
4. Muthukrishnaveni
5. Umayalmuthu ... Defendants
(4th and 5th Appellants through their power agent of 3rd Appellant)
(Amended as per order in L.A.No.1/2021 dated on 20.12.2021)
(Amended as per order in I.A.No.251/2015 dated on 08.01.2016)

The Appeal in A.S.No.16/2024 was coming for final hearing on 12.06.2026 in the presence of Thiru.S.Duraisaravanan, Advocate and M/S.Mutharasu, Advocate appearing for Appellants and Thiru.P.Senthilkumar, Advocate appearing for Respondent. And on hearing of both sides of Arguments and perusing the notes of Arguments filed by both side and case records and having stood over the same and considered all their submissions, this court hereby delivered the following

JUDGMENT

This Appeal is preferred by the Appellants/Defendants against the Decree and Judgment passed by the Learned Subordinate Court, Sivakasi in O.S. No.81/2011 dated 02.07.2023

In order to avoid difficulty and for convenient reference, in this Appeal, the parties shall be hereinafter referred as per their status as Plaintiff and the Defendants before the trial court.

2) Brief facts of the Plaintiff case :

The Plaintiff and the 1st Defendant are siblings. The Plaintiff and the 1st Defendant's father, Gurusamy Thevar, and Annamalai Thevar are siblings. In respect of the properties inherited by Veerakutty Thevar, Gurusamy Thevar and Annamalai Thevar made an oral partition in the year 1950, in respect of the ancestral properties and the properties acquired from the joint family income. In such partition, the suit properties were received by the Plaintiff and the 1st Defendant's father, Gurusamy Thevar, and were enjoyed jointly by the Plaintiff, the 1st Defendant and Gurusamy Thevar. After the death of the Plaintiff's mother, the Plaintiff himself performed all the necessary services for the father, Gurusamy Thevar and brother, the 1st Defendant. In this situation, the marriage of the Plaintiff and Rajendran was performed on 02.05.1958. The Plaintiff continued to live with the 1st Defendant even after their marriage. In this situation, the Plaintiff and the 1st Defendant's father, Gurusamy Thevar, left the home in 1960 without telling anyone. The Plaintiff handed over the suit properties of the 1st Defendant and the Plaintiff and the 1st Defendant, to Annamalai Thevar, the Plaintiff's paternal brother, and the Plaintiff lived with her husband. Annamalai Thevar educated the 1st Defendant well, provided him with a job and arranged for his marriage. Thereafter, Annamalai Thevar handed over the suit properties again to the Plaintiff, the 1st Defendant. Since then, the Plaintiff and the 1st Defendant have been enjoying the suit properties jointly.

(ii) Annamalai Thevar died on 12.03.2003. While the properties that were allotted to Annamalai Thevar after the death of Annamalai Thevar were being enjoyed by his heirs, the heirs of Annamalai Thevar and the 1st Defendant, with the intention of defrauding the Plaintiff of the 1/2 undivided shares of the suit properties, have obtained a separate Patta in the name of the 1st Defendant through the Revenue Department. The title Deed obtained through the Revenue Department, concealing the Plaintiff's undivided half share in the suit properties, does not restrict the Plaintiff's rights in any way. The 1st Defendant is trying to encumber on the Plaintiff's half share in the suit properties using the Patta obtained through the Revenue Department. In this situation, the Plaintiff sent a notice through her lawyer on 23.04.2011, demanding the division of her 1/2 shares in the suit properties. The 1st Defendant, knowing the contents of the notice, returned the notice. The 1st

Defendant has no right to alienate the entire suit property, therefore the original suit has been filed by the Plaintiff seeking to divide and allot the Plaintiff's 1/2th share in the suit property.

3) Summary of the written statement filed by the 1st Defendant:-

The Plaintiff has to prove the other circumstances, except those admitted by the Defendant, in the Plaintiff's case. After the Plaintiff's marriage in 1958, the Plaintiff's husband was working as a teacher in Thiruppuvanam, so she lived in Thiruppuvanam from 1958 to 2010. Since the Defendant was minor, his maternal grandmother, Ammathai, brought up the Defendant and also maintained Gurusamy Devar. The Plaintiff did not live together with the Defendant after her marriage. Moreover, Ammathai arranged the marriage of the Defendant as his son's maternal uncle. In this situation, since Ammathai became old, while on partition she was given 1 acre and 6 cents of land in survey number 1037/3 of Tiruthangal village and 2 acre and 83 cents of land in survey number 1036/2 as pennati land. Similarly, the land measuring 0.95 acres in Thiruthangal village, survey number 1030/2, which was acquired in the name of the Defendant, was also given to the Plaintiff as a Pennadi land. Similarly, the suit properties were allotted to the Defendant and a Patta was given in his name and he is enjoying it. Based on the family arrangement made by the elders during the time when his mother was alive, a Patta was created in the name of the Defendant in 1966 and the Defendant is enjoying it as his separate property by paying the tax in his name. The Plaintiff has no right to any property in respect of the suit properties. The Plaintiff has filed the case without impleading the Defendant's father as a party in the original case. The Plaintiff's husband Rajendran and the Defendant's wife Ramanujammal are siblings. There was a grudge between the Plaintiff and the Defendant's wife Ramanujammal and a verbal dispute arose between them. On that basis, the Plaintiff has filed the case with false information with the intention of taking revenge on Ramanujammal. Therefore, it is prayed that the Plaintiff's case should be dismissed with the Defendant's costs.

4) Summary of the written statement filed by Defendants 2 to 5:

(i) The suit properties In the oral part held in the year 1964, leaving the 3rd item the other items 1, 2 and 4, 5 were allotted to the 1st Defendant's share and the 1st Defendant and Annamalai Thevar, who was born with the 1st Defendant's father, were jointly enjoying the properties numbered items 1 and 5 under Patta No. 1954 and for the items 2 and 4 under Patta No. 1916 as joint Patta and were enjoying the same. The item No.3 was enjoyed individually by the 1st Defendant under Patta No. 1278. In this case, since Annamalai Thevar died in the year 2003, the heirs of Annamalai Thevar and the 1st Defendant have obtained separate Patta for their respective properties for the suit

properties and another property were granted a Patta in the name of the 1st Defendant vide Patta No.3136 and enjoyed by the 1st Defendant as individual property. After the death of the 1st Defendant's mother, Muthammal, the 1st Defendant's father, Gurusamy Thevar has been missing from 1960. The father of the Defendant, Guruswamy Thevar, arranged the marriage of the Plaintiff in 1958 while he was alive. After the Plaintiff's marriage, the 1st Defendant was brought up and cared for by his mother's maternal grandmother, Ammathai alias Pathirakaliammal.

(ii) Gurusami Thevar, Muthammal. Periyasami Thevar alias Raja Thevar are the heirs of Ammathai alias Bhadrakaliammal. During the lifetime of Ammathai alias Bhadrakaliammal, the Plaintiff and to the 1st Defendant, as guardian, made an oral partition of the property in the year 1964. In the oral partition made, the suit property was allotted to the 1st Defendant. The separate property of Ammathai alias Bhadrakaliammal was allotted to the Plaintiff. After the death of Ammathai alias Pathirakaliammal in 1966, Gurusami Thevar, son of Ammathai alias Pathirakaliammal, and another son, Chinnanallathampi Thevar, son of Rajathevar alias Periyasamy Thevar, jointly executed a settlement Deed to the Plaintiff on 20.07.1968. Accordingly, they executed a settlement the Land measuring 1 Acre 6 cents in Eenjar village, in survey number 1037/3, and 2 acres and 83 cents of land in 1036, making a total of 3 acres and 89 cents, and out of it 7/9 shares measuring 3 Acres 3 cents shares of undivided land. Similarly, 1 acre 6 cents of land in Eenjar village plot number 1037/3 and 2 acres 83 cents of land in survey No.1036, making a total of 3 acres 80 cents, the undivided 2/9 shares of 86 cents of land were jointly executed gift Deed to the Plaintiff on 26.05.1979 by the heirs of Rajathevar named Periyasami Thevar, son of Ammathai alias Pathirakaliammal.

The above properties are acquired by the Plaintiff as per the said Deeds obtained Patta number 1452. Since the Plaintiff got married in the year 1958 and was living with her husband, the Hindu Women's Property Act, 1989 is not applicable to the Plaintiff. Moreover, the Plaintiff converted in to Christianity after marriage. The Plaintiff's son was married in the Christian church in Madurai in the year 1984 according to Christian rites. Since the Plaintiff has converted from Hinduism, he has no right to claim a share in the suit property as per the Hindu Succession Act. After the oral partition in the year 1964, the Plaintiff has not enjoyed the suit properties jointly with the 1st Defendant. The Plaintiff has paid less court fees claiming that the suit properties are from joint enjoyment. After the oral partition, the Plaintiff's right in the suit properties has been ousted and the 1st Defendant is enjoying them as his separate property. The Plaintiff has filed the original suit with the intention of seizing the Defendants' property. Therefore, it is prayed that the Plaintiff's suit be dismissed with costs of the Defendants.

5) After reading of the plaint and of the written statement, the trial court has framed the following issues and Additional Issues:

- 1) Whether the suit property was allotted to the Defendant way of family arrangement?
- 2) Whether the suit is bad for non-joinder of necessary parties?
- 3) Whether the Plaintiff is entitled to the preliminary Decree in respect of 1/2 shares as prayed for?
- 4) To what other relief the Plaintiff is entitled to?

Additional Issues:-

- 1) Whether the Plaintiff is entitled her share as per Hindu Succession Act?
- 2) Whether the Plaintiff was ousted from the suit property?
- 3) Whether the court fee paid properly for prayer valuation?

5) In the trial court, on the side of the Plaintiff, in this case, the Plaintiff was examined as PW1 and Ex.A1 to Ex.A3 documents were marked. And PW2 was examined. On the side of the Defendants, 3rd Defendant was examined as DW1 and Ex.B1 to Ex.B11 documents were marked. And DW2 to DW5 were examined on the side of Defendants. And through DW4 Ex.X1 and through DW5 Ex.X2 documents were marked.

6) Upon hearing arguments advanced by both sides, the trial court passed the Decree and Judgment by Decreeing the suit in O.S.No.81/2011 dated 02.07.2023 with out costs. Being aggrieved and dissatisfied with the Decree and Judgment of the trial court, the Appellants/Defendants filed this Appeal.

7) The brief facts of the Appeal Memorandum filed on the following grounds:-

A. The order of the Court below in the Preliminary Decree and Judgment is contrary to law and is manifestly erroneous and unjust.

B. The court below should have seen that the respondent/Plaintiff has not established that she is entitled to half share of the schedule mentioned properties.

C. The Hon'ble Trial court has failed to consider that the Appellants/Defendants side have filed documents Exhibits Nos.B1 to B11 and the same was confirmed that the respondent/Plaintiff was not entitled any relief from the Hon'ble Trial Court.

D. The Hon'ble Trial Court has failed to consider that the respondent/Plaintiff converted as a Christian after the marriage and thereafter the Plaintiff changed her name as Rathinamani.

E. The Hon'ble Trial Court has failed to consider that the respondent/Plaintiff had not filed any civil suit for declaration declaring that her father had died a civil death, since he is not traceable from 1960, without obtaining the above said declaration the present suit for partition is not at all maintainable.

F. The Hon'ble Trial Court has failed to consider that the suit is barred by time limitation since the suit was not filed within the period of limitation and hence the suit has to be dismissed.

G. The Hon'ble Trial Court has failed to consider that as per an oral partition in 1964, the 3rd appellant's father got the share item Nos. 1,2,3,4 and 5 of the suit schedule of properties and obtained some other properties also and based on that, the joint Patta no.1916 was issued by the Revenue Authority in so far as schedule properties item nos. 2&4 concerned to in favour of the 3rd appellant's father and the 3rd appellant's father had been in the possession and enjoyed the same and also the appellants have been in possession and enjoying the same till date without any hindrance.

H. The Hon'ble Trial Court has failed to consider that as per an oral partition in 1964, the appellant's father got the item Nos. 1.2.3.4 and 5 of the suit schedule of properties and obtained some other properties also and based on that, the joint Patta no. 1954 was issued by the Revenue Authority in so far as schedule properties item nos. 1&5 concerned to in favour of the 3rd appellant's father and the 3rd appellant's father had been in the possession and enjoyed the same and further the concerned Revenue Authority has issued a Patta no. 1278 to in favour of the 3rd appellant's father alone and during the lifetime of the 3rd appellant's father and after the death of the 3rd appellant's father, the 3rd appellant and other above said appellants have been in possession and enjoying the above said scheduled properties item nos. 1 to 5 till date without any hindrance.

I. The Hon'ble Trial Court has failed to consider that during the cross examination on the side of respondent/ Plaintiff side, the 3rd appellant stated that Patta no. 1278 was wrongly subdivided into 3 parts namely as 766/2I1,2I2, & 2I3 and based on that the 3rd appellant's father filed an appeal before the Revenue Division officer, Sivakasi and thereafter the RDO passed the order and restored the earlier subdivision survey No.766/2I2. Subsequently the legal heirs of Annamalai filed a writ petition in W.P.(MD). No.15306 of 2013 before the Hon'ble Madurai Bench of Madras High Court and the above said matter was dismissed on 04-11-2022 and confirmed the order of RDO which was confirmed that already suit schedule of property item No.03 and other property was belongs to the 3rd appellant's father only.

J. The Hon'ble trial court has failed to consider that the respondent/ Plaintiff got married in 1958 and settled in Tirupavanam and at the time of her marriage the appellants' grand father spent a lot of money and gave all sthreedhanam to the respondent/Plaintiff.

K. The Hon'ble trial court has failed to consider that the respondent/Plaintiff did not file any piece of evidence to prove that the respondent/ Plaintiff have been in possession and enjoyed the suit schedule of properties.

L. The Hon'ble Trial Court has failed to consider that the respondent/Plaintiff has suppressed the settlement Deed no. 1957/1968 and as per the oral partition in 1964 only the above said settlement Deed was executed in favour of the respondent/Plaintiff and the same was suppressed by the respondent/Plaintiff.

M. The Hon'ble Trial Court has failed to consider that Ammathai alias Bhadrakali's property was also gifted in favour of respondent/Plaintiff vide gift document No.1752/1979 by Nallaswami Thevar and Sevakadurai who all are grandsons of Ammathai alias Bhadrakali Ammal and the above and material facts were suppressed by the respondent/Plaintiff.

N. The Hon'ble Trial Court has failed to consider that the respondent/Plaintiff's husband was a school teacher and because of that she was permanently settled in Tirupavanam and she never looked after her father and her brother.

O. The Hon'ble Trial Court has failed to consider that the respondent/Plaintiff was married in 1958 and she left from the parent's house and hence she is not entitled any share from the suit schedule of properties.

P. The Hon'ble Trial Court has failed to consider that the respondent/Plaintiff's son Mr. Samuel married according to the Christian rituals in 1984 and the same was confirmed that entire family are converted Christians.

Q. The Hon'ble Trial Court has failed to consider that the respondent/Plaintiff did not file any piece of evidence to prove that the suit properties are enjoyed by the Plaintiff along with the 1st Defendant.

R. The Hon'ble Trial Court has failed to consider that the respondent/Plaintiff has no cause of action to file the above said suit against the defenafants.

S. The Hon'ble Trial Court has failed to consider that the respondent/Plaintiff had paid the deficiency of court fee and she is liable to pay the fee u/s 37 (1) of the Court Fee Act.

T. The Hon'ble Trial Court has failed to consider that after the oral partition in 1964 the 3rd appellant's father had possessed and enjoyed the suit schedule of properties item Nos. 1,2,3,4,5 and obtained the Patta in favour of him.

U. The Hon'ble Trial Court has failed to consider the respondent/Plaintiff has intended to grab the suit schedule of properties from the Defendants.

V. The Hon'ble Trial Court has failed to consider that the 3rd party document no. Ex.X2 was confirmed that the respondent/Plaintiff had converted Christian.

W. The Hon'ble Trial Court has failed to consider that during the cross examination the respondent/Plaintiff herself admitted that she was not wearing the customary Thali and Kumkum.

X. The Hon'ble Trial Court had failed to consider that the deposition of dw3 clearly revealed that the respondent/ Plaintiff had converted to Christianity and she is regularly going to church and her grandson & granddaughter of her daughter's married as per the Christian rituals.

Y. The Hon'ble Trial Court has failed to consider that Exhibits B1 -B6 and B11 revealed that as per the partition in 1964 the appellants' father was in possession and the same was confirmed by the revenue documents.

Z. The Hon'ble Trial Court has failed to consider that the above said suit is liable to be dismissed due to non joinder of party of Mr. Guruswamy Thevar.

AA. The Hon'ble trial Court has failed to consider that the appellants/Defendants have categorically stated in their written statement that the suit schedule properties obtained by the 3rd appellant's father through oral partition.

BB. The Hon'ble Trial Court has failed to consider that there was no material filed by the respondent/ Plaintiff to prove that the suit schedule of properties were enjoyed at any point of time.

CC. The Hon'ble Trial Court has failed to consider that the respondent/ Plaintiff did not file any documentary evidence or any oral evidence through her witness to prove that the respondent/ Plaintiff had jointly possessed the suit schedule of properties and hence the preliminary Decree and Judgment is liable to be set aside.

Hence the Appellants/Defendants prays to allow this Appeal by setting aside the Judgment and Decree passed by the Learned Subordinate Court, Sivakasi in O.S.No.81/2011 dated 02.07.2023

8) Point for consideration:

i) Whether the Decree and Judgment passed by the Learned Subordinate Court, Sivakasi in OS.No.81/2011 dated 02.07.2023 is liable to be set aside? or Not?

ii) Whether the AS.No.16/2024 is to be allowed or not?

iii) What other relief the Appellants/Defendants is entitled to?

(9) Points 1 to 3:

(9-i) The Appellants/Defendants have preferred this Appeal in AS.No.16/2024 being aggrieved and dissatisfied with the Decree and Judgment passed by the Subordinate Court, Sivakasi made in OS.No.81/2011 dated 02.07.2023.

(9-ii) During the course of Argument the Learned Counsel for the Appellants/2 to 6 Defendants would submit and draw this Courts attention by emphasising the Grounds of Appeal, which was necessitated to prefer the Appeal. And on both side, the Learned Counsels while on Argument reiterated their pleas respectively And to render a clear finding on this Appeal, this Court once again wanted to look in to their pleadings as referred below.

(9-iii) The case of the Respondent/Plaintiff is as follows:

The Plaintiff and the 1st Defendant are siblings. The Plaintiff and the 1st Defendant's father, Gurusamy Thevar, and Annamalai Thevar are siblings. In respect of the properties inherited by Veerakutty Thevar, Gurusamy Thevar and Annamalai Thevar made an oral partition in the year 1950, in respect of the ancestral properties and the properties acquired from the joint family income. In such partition, the suit properties were received by the Plaintiff and the 1st Defendant's father, Gurusamy Thevar, and were enjoyed jointly by the Plaintiff, the 1st Defendant and Gurusamy Thevar. After the death of the Plaintiff's mother, the Plaintiff himself performed all the necessary services for the father, Gurusamy Thevar and brother, the 1st Defendant. In this situation, the marriage of the Plaintiff and Rajendran was performed on 02.05.1958. The Plaintiff continued to live with the 1st Defendant even after their marriage. In this situation, the Plaintiff and the 1st Defendant's father, Gurusamy Thevar, left the home in 1960 without telling anyone. The Plaintiff handed over the suit properties of the 1st Defendant and the Plaintiff and the 1st Defendant, to Annamalai Thevar, the Plaintiff's paternal brother, and the Plaintiff lived with her husband. Annamalai Thevar educated the 1st Defendant well, provided him with a job and arranged for his marriage. Thereafter, Annamalai Thevar handed over the suit properties again to the Plaintiff, the 1st Defendant. Since then, the Plaintiff and the 1st Defendant have been enjoying the suit properties jointly.

(ii) Annamalai Thevar died on 12.03.2003. While the properties that were allotted to Annamalai Thevar after the death of Annamalai Thevar were being enjoyed by his heirs, the heirs of Annamalai Thevar and the 1st Defendant, with the intention of defrauding the Plaintiff of the 1/2 undivided shares of the suit properties, have obtained a separate Patta in the name of the 1st Defendant through the Revenue Department. The title Deed obtained through the Revenue Department, concealing the Plaintiff's undivided half share in the suit properties, does not restrict the Plaintiff's rights in any way. The 1st Defendant is trying to encumber on the Plaintiff's half share in the suit properties using the Patta obtained through the Revenue Department. In this situation, the Plaintiff sent a notice through her lawyer on 23.04.2011, demanding the division of her 1/2 shares in the suit properties. The 1st Defendant, knowing the contents of the notice, returned the notice. The 1st Defendant has no right to alienate the entire suit property, therefore the original suit has been filed by the Plaintiff seeking to divide and allot the Plaintiff's 1/2th share in the suit property.

(9-iv) The case of the Appellants/1st Defendant is as follows:

The Plaintiff has to prove the other circumstances, except those admitted by the Defendant, in the Plaintiff's case. After the Plaintiff's marriage in 1958, the Plaintiff's husband was working as a teacher in Thiruppuvanam, so she lived in Thiruppuvanam from 1958 to 2010. Since the Defendant was minor, his maternal grandmother, Ammathai, brought up the Defendant and also maintained Gurusamy Devar. The Plaintiff did not live together with the Defendant after her

marriage. Moreover, Ammathai arranged the marriage of the Defendant as his son's maternal uncle. In this situation, since Ammathai became old, while on partition she was given 1 acre and 6 cents of land in survey number 1037/3 of Tiruthangal village and 2 acre and 83 cents of land in survey number 1036/2 as pennati land. Similarly, the land measuring 0.95 acres in Thiruthangal village, survey number 1030/2, which was acquired in the name of the Defendant, was also given to the Plaintiff as a pennadi land. Similarly, the suit properties were allotted to the Defendant and a Patta was given in his name and he is enjoying it. Based on the family arrangement made by the elders during the time when his mother was alive, a Patta was created in the name of the Defendant in 1966 and the Defendant is enjoying it as his separate property by paying the tax in his name. The Plaintiff has no right to any property in respect of the suit properties. The Plaintiff has filed the case without impleading the Defendant's father as a party in the original case. The Plaintiff's husband Rajendran and the Defendant's wife Ramanujammal are siblings. There was a grudge between the Plaintiff and the Defendant's wife Ramanujammal and a verbal dispute arose between them. On that basis, the Plaintiff has filed the case with false information with the intention of taking revenge on Ramanujammal. Therefore, it is prayed that the Plaintiff's case should be dismissed with the Defendant's costs.

(9-v) The case of the Appellants/2 to 5 Defendants is as follows:

(i) The suit properties In the oral part held in the year 1964, leaving the 3rd item the other items 1, 2 and 4, 5 were allotted to the 1st Defendant's share and the 1st Defendant and Annamalai Thevar, who was born with the 1st Defendant's father, were jointly enjoying the properties numbered items 1 and 5 under Patta No. 1954 and for the items 2 and 4 under Patta No. 1916 as joint Patta and were enjoying the same. The item No.3 was enjoyed individually by the 1st Defendant under Patta No. 1278. In this case, since Annamalai Thevar died in the year 2003, the heirs of Annamalai Thevar and the 1st Defendant have obtained separate Patta for their respective properties for the suit properties and another property were granted a Patta in the name of the 1st Defendant vide Patta No.3136 and enjoyed by the 1st Defendant as individual property. After the death of the 1st Defendant's mother, Muthammal, the 1st Defendant's father, Gurusamy Thevar has been missing from 1960. The father of the Defendant, Guruswamy Thevar, arranged the marriage of the Plaintiff in 1958 while he was alive. After the Plaintiff's marriage, the 1st Defendant was brought up and cared for by his mother's maternal grandmother, Ammathai alias Pathirakaliammal.

(ii) Gurusami Thevar, Muthammal. Periyasami Thevar alias Raja Thevar are the heirs of Ammathai alias Bhadrakaliammal. During the lifetime of Ammathai alias Bhadrakaliammal, the Plaintiff and to the 1st Defendant, as guardian, made an oral partition of the property in the year 1964. In the oral partition made, the suit property was allotted to the 1st Defendant. The separate property of Ammathai alias Bhadrakaliammal was allotted to the

Plaintiff. After the death of Ammathai alias Pathirakaliammal in 1966, Gurusami Thevar, son of Ammathai alias Pathirakaliammal, and another son, Chinnanallathampi Thevar, son of Rajathevar alias Periyasamy Thevar, jointly executed a settlement Deed to the Plaintiff on 20.07.1968. Accordingly, they executed a settlement the Land measuring 1 Acre 6 cents in Eenjar village, in survey number 1037/3, and 2 acres and 83 cents of land in 1036, making a total of 3 acres and 89 cents, and out of it 7/9 shares measuring 3 Acres 3 cents shares of undivided land. Similarly, 1 acre 6 cents of land in Eenjar village plot number 1037/3 and 2 acres 83 cents of land in survey No.1036, making a total of 3 acres 80 cents, the undivided 2/9 shares of 86 cents of land were jointly executed gift Deed to the Plaintiff on 26.05.1979 by the heirs of Rajathevar named Periyasami Thevar, son of Ammathai alias Pathirakaliammal.

The above properties are acquired by the Plaintiff as per the said Deeds obtained Patta number 1452. Since the Plaintiff got married in the year 1958 and was living with her husband, the Hindu Women's Property Act, 1989 is not applicable to the Plaintiff. Moreover, the Plaintiff converted in to Christianity after marriage. The Plaintiff's son was married in the Christian church in Madurai in the year 1984 according to Christian rites. Since the Plaintiff has converted from Hinduism, he has no right to claim a share in the suit property as per the Hindu Succession Act. After the oral partition in the year 1964, the Plaintiff has not enjoyed the suit properties jointly with the 1st Defendant. The Plaintiff has paid less court fees claiming that the suit properties are from joint enjoyment. After the oral partition, the Plaintiff's right in the suit properties has been ousted and the 1st Defendant is enjoying them as his separate property. The Plaintiff has filed the original suit with the intention of seizing the Defendants' property. Therefore, it is prayed that the Plaintiff's suit be dismissed with costs of the Defendants.

(9-vi) The Trial Court had framed the following Issues and Additional Issues for consideration:

- 1) Whether the suit property was allotted to the Defendant way of family arrangement?
- 2) Whether the suit is bad for non-joinder of necessary parties?
- 3) Whether the Plaintiff is entitled to the preliminary Decree in respect of 1/2 shares as prayed for?
- 4) To what other relief the Plaintiff is entitled to?

Additional Issues:-

- 1) Whether the Plaintiff is entitled her share as per Hindu Succession Act?
- 2) Whether the Plaintiff was ousted from the suit property?
- 3) Whether the court fee paid properly for prayer valuation?

(9-vii) And during the course of Trial In the trial court, on the side of the Plaintiff, in this case, the Plaintiff was examined as PW1 and Ex.A1 to Ex.A3

documents were marked. And PW2 was examined. On the side of the Defendants, 3rd Defendant was examined as DW1 and Ex.B1 to Ex.B11 documents were marked. And DW2 to DW5 were examined on the side of Defendants. And through DW4 Ex.X1 and through DW5 Ex.X2 documents were marked.

(9-viii) And during the course of Argument the Learned Counsel for the Appellants/Defendants submitted a Notes of Arguments along with the Hon'ble Apex Court Authorities and Hon'ble High Court's Authorities and further Argument was advanced by emphasising the case of the Appellants/Defendants and inviting this Court's attention by establishing the evidences which have been examining as DW1 to DW5 and the Exhibits which were marked as Ex.B1 to Ex.B11 and Ex.C1 and Ex.C2 and put forth the Grounds of Appeal and prayed to allow this Appeal by setting aside the Decree and Judgment made in OS.No 81 of 2011 dated 02.07.2023 on the file of Subordinate Court, Sivakasi.

(9-ix) And in turn, during the course of Argument the Learned Counsel for the Respondent/Plaintiff would submit the Trial Court discussed about the oral and documentary evidence adduced on either side and held that the Plaintiff/Respondent is entitled 1/2 share over the Plaint Schedule Properties and held, the Plaintiff is joint possession and enjoyment of the Plaint Schedule Property and the Plaintiff has a cause of action and the Court Fee paid was correct. And further it is submitted and filed Notes of Argument along with Hon'ble Apex Court's Authorities and the Hon'ble High Courts Authorities and further it is Argued that the plea of oral partition allegedly held in 1964 and exclusive possession of the Late Veerakutty and his Legal Heirs are not proved by the Appellants/Defendants in the Trial Court. And further it is Argued that the Respondent/Plaintiff got marriage in 1958. And after the marriage she was residing with her husband at Thirupooovanam. Where he was working not as Permanently and she maintained her Father and Brother. And further it is Argued that her Father had been missing from the year 1960-1961. And further it is Argued that the Defence as raised by the Defendants/Appellants in the suit, that the Plaintiff/Respondent has not filed a suit for Declaration for the Civil Death of her Father while before filing this Suit and further the Defence taken as the Plaintiff and her family members were converted into Christianity are discussed by the Trial Court and the Plea was negatived by the Trial Court. And further it is Argued that the plea of oral partition held in 1964 and therein the 1st Appellants/D1's husband Late Veerakutty got share items 1, 2, 3, 4 and 5 of the Plaint Schedule Properties and some other properties and based on that the joint Patta No.1916, was issued by the Revenue Authority in so far as the schedule of properties and items 2 and 4 are concerned to infavour of the 1st Appellant's Husband Late Veerakutty and the Plea of the Appellants/Defendants are in exclusive possession and enjoyment are all negatived by the Trial Court, by holding, these pleas are not proved by the Appellants/Defendants in the Trial Court.

(9-x) And further it is Argued it is admitted by the Respondent/Plaintiff that the Patta No.1278 was wrongly sub divided into 3 parts namely as 766/2I1, 766/2I2, 766/2I3 and based on that the 1st Appellant's husband Late Veerakutty filed an Appeal before the Revenue Division Officer, Sivakasi and thereafter the R.D.O passed the order and restored the earlier order as contended by the Appellant side is not denied by this Respondent/Plaintiff. And further it is Argued the Argument as Advanced by the Appellants that as against the order of R.D.O. the Legal Heirs of Annamalai Thevar filed a Writ Petition in W.P. (M.D.) No.15306 of 2013 before the Hon'ble Madurai Bench of Madras High Court is also not denied by the Respondent/Plaintiff but the same was dismissed on 04.11.2022, alleged by the Appellants are denied by the Respondent/Plaintiff.

(10-i) And further it is Argued the allegations were levelled against the Respondent/Plaintiff has suppressed the settlement Deed No.1957 of 1968 in favour of the Respondent/Plaintiff and Gift Deed vide document No.1752/1979 is denied as false. And further it is Argued the Trial Court has rightly held that the Respondent/Plaintiff has not suppressed these documents and these properties are in no way connected with the Appellants and their predecessors.

(10-ii) And further it is Argued the relationship as averred in the written statement by the Appellants are admitted by the Respondent/Plaintiff. And further it is Argued that the properties were belonged to the Veerakutty Thevar and the Ancestral properties were orally partitioned in the year of 1950 by Gurusamy Thevar and Annamalai Thevar. And while on Partition the Plaint Schedule Properties were allotted to the Plaintiff, D1's Father and the Plaintiff, D1 and his Father were enjoyed the same. And further by relying the Plaint pleadings it is Argued by the Respondent/Plaintiff. And further it is Argued Annamalai Thevar handed over all the properties to the Plaintiff and D1 (Husband of Appellant No.1) and from therein they are in possession and enjoyment of the Plaint Schedule Properties and Annamalai Thevar died on 12.03.2003 and after his demise, his Legal Heirs are colluded with D1 (Appellants Husband Late Veerakutty) and created troubles and while getting Patta against the Respondent/Plaintiff and the change of Patta does not bind upon the Respondent/Plaintiff.

(10-iii) And further it is Argued by the Respondent/Plaintiff that, " கீழமை நீதிமன்றம் வழங்கிய தீர்ப்பில் பாரா 17 முதல் 23 ல் 2 முதல் 5 பிரதிவாதிகள் தரப்பின்படி, வழக்குச் சொத்துக்களைப் பொறுத்து ஏற்கனவே கடந்த 1964 இது சம்பந்தமாக பாகப்பிரிவினையில் 1ம் பிரதிவாதிக்கு கிடைத்தது என்றும் வாதிக்கு அம்மரத்தாய் ஆண்டு நடைபெற்ற வாய்மொழி என்பவரின் சொத்துக்கள் அனைத்தும் வாய்மொழியாக கொடுக்கப்பட்டுவிட்டது என்றும் அதன் அடிப்படையில் அவரது வாரிசுகள் தான் செட்டில்மெண்ட் மூலம் சொத்துக்களைக் கொடுத்துள்ளதாகவும் கூறப்பட்டுள்ளது. பி.சா.ஆ.7, 8 ஆவணங்கள் குறியீடு செய்யப்பட்டுள்ளது. மேலும் பி.சா.ஆ.7 ஆவணத்தை கவனமாக 08.07.1968 தேதி வாதிக்கு தான் பரிசீலனை செய்தபோது, செட்டில்மெண்ட் அந்த மிக மூலம் கொடுக்கப்பட்டுள்ளது. அதில் சொத்துக்களைப் பொறுத்து பூர்வீகமாக கொடுக்கப்பட்ட நபர்களுக்கு பாத்தியப்பட்ட சொத்துக்களை தானமாக

கொடுப்பதாகக் கூறப்பட்ட நிலையில், அதிலுள்ள விபரங்களை கவனமாக பரிசீலனை செய்தபோது. சாதி ஆச்சாரப்படி கல்யாணம் செய்து கொடுத்தபோது நகை கூடுதலாகப் போடுவதாக கூறியிருந்ததாகவும் அவ்வாறு நகை கூடுதலாக கொடுக்காததால் வாதி தங்கள் குடும்பத்தில் வாழ்ந்தபோது அன்புடனும், பாசத்துடனும் நல்ல முறையில் பராமரித்து வந்ததால் அன்புடனும் பாசத்துடனும் அத்த சொத்துக்களை தானமாக கொடுப்பதாக, எனக் குறிப்பிட்டுக் கூறப்பட்டுள்ளது. நல்லதம்பித்தேவர் மற்றும் சேவுகத்துரை ஆகிய இருவரும் சேர்ந்து வாதி மீது இருந்த அதேபோல் பி.சா.ஆ.8 ஆவணத்தை வனமாக பரிசீலனை செய்தபோது வாதிக்கு 1037/3 ல் 1 ஏக்கர் 6 செண்டும், புல எண் 1038 ல் 2 ஏக்கர் 83 செண்டும் ஆக மொத்தம் அனுபவத்தில் இருந்ததை நன்கொடை பத்திரத்தின் மூலம் கொடுப்பதாக புல எண் அன்பிணாலும் பாசத்தினாலும் அவர்களுக்குப் பாத்தியப்பட்ட சொத்தை தங்கள் 3 ஏக்கர் 89 செண்டு இடத்தை கொடுத்ததாகக் கூறப்பட்டுள்ளது. இவ்வாறு பி.சா.ஆ.7, 8 ஆவணங்களில் இந்த சொத்துக்கள் அனைத்தும் வாதி மற்றும் 1ம் பிரதிவாதியின் தாயாணைப் பெற்ற தாயார் அம்மரத்தாய் என்ற பத்திரகாளியம்மாள் என்பவருக்கு பாத்தியப்பட்டதாக இருந்தது. என்பதற்கு எந்தவிதமான குறிப்புகளும் இல்லை. அதேபோல் பி.சா.ஆ.7, 8 கொடுக்கப்பட்டதாகவோ அதன் அடிப்படையில் ஆவணங்களில் அம்மாத்தாய் வாதிக்கு பாகமாகக் கொடுத்த வேண்டி அம்மாத்தாய் தன் அடிப்படையில் தானமாக மகன்களுக்குக் கொடுத்து அதன் கொடுக்கப்பட்டதாகவோ எந்தவிதமான வாசகமும் இல்லை. இதுகுறித்து வாதியிடம் குறுக்கு விசாரணையில் கேட்டபோது, தான் பணம் கொடுத்து இவ்வாறு செட்டில்மெண்ட் மூலம் சொத்துக்களை வாங்கியதாகவும் ஆனால் தான் எழுதப்பட்டதாகவும் சாட்சியம் அளித்துள்ளார். இது சம்பந்தமாக வா.சா.2 ஆக வாதியின் கணவர் ராஜேந்திரன் என்பவர் விசாரிக்கப்பட்டு அவ்வாறான வாய்மொழி பாகம் எதுவும் 1964ம் ஆண்டு ஏற்படவில்லை என சாட்சியம் அளித்துள்ளார். இது சம்பந்தமாக யிடம் குறுக்கு விசாரணையில் பல கேள்விகள் எழுப்பப்பட்டுள்ளது. அதில் "வழக்குச் சொத்துக்கள் அனைத்தும் பூர்வீக சொத்துக்கள் என்றால் இல்லை. 4 சொத்துக்கள் பூர்வீக சொத்துக்கள். ஒரு சொத்தானது எனது தாத்தா குருசாமி 1934ம் ஆண்டு கிரையம் பெற்ற சொத்து" எனக் கூறப்பட்டுள்ளது. அவ்வாறு கிரையம் பெற்ற சொத்து சம்பந்தமாக பி.சா.ஆ.10 ஆவணம் குறியீடு செய்யப்பட்டுள்ளது. இதனைப் பொறுத்து வழக்கு 3ம் இலக்கச் சொத்தைப் பொறுத்து வாதியின் தகப்பனார் குருசாமித்தேவர் தனிப்பட்ட முறையில் கிரையம் பெற்ற சொத்தாகும். இந்நிலையில், இந்த சொத்துக்கள் சம்பந்தமாக பி.சா.1 மிடம் குறுக்கு விசாரணையில் கேள்விகள் எழுப்பப்பட்டுள்ளது. அதில் கீழ்க்கண்டவாறு பதில். அளித்துள்ளார். அதன்படி, "வழக்குச் சொத்துக்கள் அனைத்தும் எனது அப்பா வீரக்குட்டி என்பவர் சுயமாக சம்பாதித்த சொத்துக்கள் இல்லை என்றால் சரிதான். 1960ம் ஆண்டு எனது தாத்தா குருசாமித்தேவர் காணாமல் போய்விட்டார். அவர் காணாமல் போன விபரம் எனக்கு நேரடியாக தெரியாது என் அப்பா மூலம் தெரியும். குருசாமித்தேவர் காணாமல் போனபோது எனது அப்பாவிற்கு 14 வயது இருந்தது. குருசாமித் தேவர் காணாமல் போனபோது அவரது மனைவி முத்தம்மாளுக்கு என்ன வயது இருக்கும் என்றால் அவர் அப்போது இறந்துவிட்டார்" என சாட்சியம் அளித்துள்ளார். மேலும் அவர் குறுக்கு விசாரணையின்போது, அண்ணாமலைத்தேவருக்கு 4 மகள்களும், 4 மகன்களும்

வாரிசுகள் ஆவார்கள். வீரகுட்டித்தேவர் இறந்தபிறகு அவருடைய வாரிசுகளான குருசாமியும், அண்ணாமலையும் சொத்துக்களை பாகம் பிரித்துக்கொண்டார்கள் என்றால் சரிதான். குருசாமி வழக்கு சொத்துக்கள் 4 ம் அதனுடன் சேர்ந்து கிரையம் பெற்ற சொத்துக்களை அனுபவம் செய்து வந்தார். அதேபோல் அண்ணாமலை பாகத்தைப் பொறுத்து சொத்துக்களை பிரித்துக் கொண்டார்கள். ஆனால் கூட்டுப்பட்டாவாக இருந்தது." என சாட்சியம் அளித்துள்ளார். இவ்வாறு குருசாமித்தேவர் பெயரில் பி.சா.ஆ.10 ன் அடிப்படையில் 3 ம் இலக்கச் சொத்தைப் பொறுத்து தனிப்பட்ட முறையில் கிரையம் வாங்கியிருந்தாலும் அந்த குருசாமித்தேவர் மற்ற வழக்குச் சொத்துக்களை சேர்த்து அனுபவம் செய்து வந்ததாகக் கூறப்பட்டுள்ளது. இவ்வாறு குருசாமித் தேவரும் அண்ணாமலைத் தேவரும் பாகம் பிரித்துக்கொண்டது உண்மை என்றும் ஆனால் கூட்டுப்பட்டாவாக இருந்ததாக ஒப்புக்கொள்ளப்பட்டுள்ளது. மேலும் பி.சா.ஆ.7, 8 ஆவணங்களில் கண்ட சொத்துக்கள் அம்மாத்தாய்க்கு பாத்தியப்பட்டதாக இருந்தது எனக் கூறப்படும் நிலையில் இது சம்பந்தமாகவும் பி.சா.1 யிடம் குறுக்கு விசரணையில் கேட்டபோது தன் தாய் வழிப்பாட்டி அம்மாத்தாய் பெயரில் இருந்த சொத்துக்களைப் பொறுத்து எந்த ஆவணமும் இல்லை என ஒப்புக்கொண்டு சாட்சியம் அளித்துள்ளார். இவ்வாறு வாய்மொழி பாகம் 1964 ம் ஆண்டு ஏற்பட்டதாகக் கூறப்பட்டாலும் இது சம்பந்தமாக உடனடியாக எந்தவிதமான வருவாய் ஆவணத்திலும் பதிவுகள் ஏற்பட்டதாக பிரதிவாதிகள் தரப்பில் கூறப்படவில்லை. ஆனால் இந்த வழக்கினைப் பொறுத்தவரை கடந்த 1964 ம் ஆண்டு வாதிக்கு வழக்குச் சொத்துக்கள் பாகமாகக் கிடைத்ததாகக் கூறப்பட்டாலும் அந்த 1964 ம் ஆண்டு வழக்குச் சொத்துக்களைப் பொறுத்து எந்த ஆவணம் இருந்தது. என்பது குறித்து 1 ம் பிரதிவாதிக்கு 18 வயது அடைந்த நிலையில் அப்போது 1 ம் பிரதிவாதி பெயரில் பிரதிவாதிகள் தரப்பில் எடுத்துரைக்கப்படவில்லை. பாத்தியப்பட்டதாக இருந்தது என்பதற்கும் அந்த சொத்துக்களைப் பொறுத்து அம்மாத்தாய் என்பவருக்கு வழக்குச் சொத்துக்கள் அதே 1964 ம் ஆண்டு வாதிக்கு கொடுத்ததாகக் கூறும் போது உடனடியாக வருவாய் ஆவணங்களில் எதேனும் பதிவுகள் ஏற்பட்டதா என்பது குறித்தும் 2 முதல் 5 பிரதிவாதிகள் கரப்பில் கூறப்படவில்லை. ஆனால் அம்மாத்தாய் பொறுத்து எந்தவிதமான ஆவணமும் முன்னிலைப்படுத்தப்படாத நிலையில் பெயரில் வாதி தான் செட்டில்மெண்ட் மூலம் பெற்ற சொத்துக்களைப் 1 ம் பிரதிவாதிக்கும் கடந்த 1964 ம் ஆண்டு வாய்மொழி பாகப்பிரிவினையில் அம்மாத்தாயின் சொத்துக்கள் அனைத்தும் வாதிக்கும் வழக்குச் சொத்துக்கள் பிரிக்கப்பட்டு கொடுக்கப்பட்டது என்பதையும் 2 முதல் 5 பிரதிவாதிகள் எடுத்துரைக்கப்படவில்லை என நீதிமன்றம் முடிவு செய்கிறது. இவ்வாறு வழக்குச் சொத்துக்களைப் பொறுத்து 1 ம் பிரதிவாதி கடந்த 1964 ம் ஆண்டு ஏற்பட்டதாகக் கூறும் பாகம் எதுவும் குறித்து நீதிமன்றத்தில் எந்தவித ஆவணமும் பிரதிவாதிகள் தரப்பில் முன்னிலைப்படுத்தப்படவில்லை. மேலும் அவ்வாறு வாய்மொழி பாகம் ஏற்பட்டதாகக்கூறும்போது யாரை வைத்து பேசப்பட்டது குறித்தோ எந்தவிதமான ஆவணமும் முன்னிலைப்படுத்தப்படாத நிலையில், வழக்குச் என்பது குறித்தோ அதன்பிறகு ஏற்பட்ட ஆவணங்களின் பெயர் மாற்றம் சொத்துக்கள் அனைத்தும் குருசாமித்தேவருக்கு பாத்தியப்பட்ட சொத்துக்கள் என்பதை 2 முதல் 5 பிரதிவாதிகள் தரப்பில் எடுத்துரைக்கப்படவில்லை. மேலும் நிலஉடமை மேம்பாட்டுத் திட்டம் வழக்குச்

சொத்துக்களைப் பொறுத்து அண்ணாமலைத்தேவர் பெயரும் குருசாமித்தேவரின் வாரிசான 1ம் பிரதிவாதி வீரக்குட்டி ஆகியோர் பெயரில் பதிவுகள் இருந்த நிலையில் நிலஉடமை மேம்பாட்டு திட்டத்திற்கு பிறகு பி.சா.ஆ 3 ன் படி தனிப்பட்ட முறையில் 1ம் பிரதிவாதி பெயருக்கு பட்டா ஏற்பட்டுள்ளது. கற்றறிந்த 2 முதல் 5 பிரதிவாதிகள் தரப்பு வழக்கறிஞர் வாதிடும்போது, இந்த வாதி திருமணத்திற்கு பிறகு திருப்புவனத்தில் குடியிருந்து வந்த நிலையில் இதுநாள்வரை வழக்குச் சொத்துக்களை அனுபவம் செய்யவில்லை என்றும் அவர் வழக்குச் சொத்திலிருந்து வெளியேற்றப்பட்ட நபர் என்பதால் அதனைப் பொறுத்து எந்தவிதமான பாகமும் கிடைக்கத்தக்கதல்ல என வாதிட்டார். ஆனால் சொத்துக்களில் விபரங்கள் சம்பந்தமாக ஆவணங்களில் பெயர் ஏற்பட்டதால் மட்டும் அந்த நபர் அந்த சொத்துக்களை அனுபவம் செய்து வந்தார் என்பதோ அனுபவம் செய்யவில்லை என்பதோ கூற தேவர் பெயரில் ஏற்கனவே சொத்துக்கள் இருந்த நிலையில் அவர் இயலாது. ஒரு கூட்டுக்குடும்ப சொத்துக்களைப் பொறுத்து குருசாமித் திறந்துவிட்டதால் அவருடைய வாரிசான 1 ம் பிரதிவாதி பெயரிலும் அவருடைய சகோதரர் ணாமலைத்தேவர் பெயரிலும் தொடர்ந்து பொறுத்து வாதி பெயரில் இல்லை எனக் கூறுவதற்காக வாதி வழக்குச் சொத்திலிருந்து பி.சா.ஆ.1 முதல் 6 ஆவணங்களின்படி பதிவுகள் இருந்த நிலையில் இதனைப் வெளியேற்றப்பட்டவராக கருத முடியாது. மேலும் வழக்குச் சொத்துக்களில் கணிப்பட்ட முறையில் 1ம் பிரதிவாதி தனக்கு வாய்மொழி பாகமாக கிடைத்ததாகக் இதுநாள்வரை விவசாயம் செய்யப்படாமல் குரிசாக உக்ட்டுங் நிலையில் அவ்வாறு கூறும்போது விவசாயம் செய்து வந்ததாகவோ அல்லது வேறு வகையில் பயன்படுத்தி வந்ததாகவோ தீர்வை ரசீது அல்லது வேறு எந்த இரசீதுகளும் நீதிமன்றத்தில் முன்னிலைப்படுத்தப்படவில்லை அவ்வாறு சொத்துக்கள் முன்னிலைப்படுத்தப்படாமல் பிரதிவாதிக்கு வழக்கு வாய்மொழி பாகத்தில் கிடைத்தது கூறப்பட்டுள்ளதால் வெளியேற்றப்பட்டார் எனக் கூறுவது ஏற்றுக்கொள்ளத்தக்கதாக இல்லை. ஆகவே, இதனைப் பொறுத்து வாதியும் 1 ம் பிரதிவாதியும் வழக்குச் சொத்துக்களைப் பொறுத்து கொள்நிலை அனுபவத்தில் இருந்ததாகவே கருத வேண்டும். மேலும் வாதி இந்து அதனைப்பொறுத்து வாதி கூட்டுக்குடும்பத்திலிருந்து கூட்டுக்குடும்பத்திலிருந்து வெளியேற்றப்பட்டார் என்பதற்கு வேறு எந்த சாட்சியங்களோ ஆவணங்களோ இல்லை. ஆகவே, கூடுதல் எழுவினா 2 யை பொறுத்து வழக்குச் சொத்துக்களைப் பொறுத்து வாதி இந்து கூட்டுக்குடும்பத்திலிருந்து வெளியேற்றப்படவில்லை செய்யப்படுகிறது. முடிவு செய்து வாதிக்கு சார்பாக முடிவு செய்யப்படுகிறது. மேலும் வழக்குச் சொத்துக்களைப் பொறுத்து கடந்த 1964ம் ஆண்டு வாதிக்கும் 1ம் பிரதிவாதிக்கும் பாகம் ஏற்பட்டதாக தகுந்த ஆவணங்கள் தனிப்பட்ட முறையில் 1ம் பிரதிவாதி வீரக்குட்டி பெயருக்கு வழக்குச் சொத்துக்களைப் மூலம் எடுத்துரைக்கப்படாத நிலைகே அந்த வாய்மொழி பாகப்பிரிவினையில் பொறுத்து பாகம் கிடைத்ததாகவோ தத்தின் அடிப்படையில் 1ம் பிரதிவாதி பெற்று அனுபவம் செய்து வந்ததாகவோ எந்தவிதமான ஆவணமும் நீதிமன்றத்தில் இதுநாள்வரை வாதிக்கும் முன்னிலைப்படுத்தப்படாமல் எந்தவிதமான பாகப்பிரிவினையும் நடைபெறவில்லை என்றும் ஏற்கனவே வழக்கு 1, 2, 4, 5 இலக்கச் சொத்துக்களைப் பொறுத்து 1ம் பிரதிவாதிக்கும் குருசாமித்தேவரின் தகப்பனார் வீரக்குட்டித்தேவருக்கு

பாத்தியப்பட்டு பின்னர் குருசாமித்தேவருக்கு வாரிசுரிமையில் அடைந்து வழக்கு 3 ம் இலக்கச் சொத்தைப் பொறுத்து குருசாமித்தேவர் தனிப்பட்ட முறையில் கிரையம் பெற்றநிலையில் வழக்குச் சொத்துக்கள் அனைத்தும் குருசாமித்தேவருக்கு பாத்தியப்பட்டதாக இருந்ததால் அதனைப் பொறுத்து வாதியும் 1 ம் பிரதிவாதியும் சேர்ந்து அனுபவம் செய்து வந்ததாகவே நீதிமன்றம் முடிவு செய்கிறது. ஆகவே, எழுவினா 1யை பொறுத்து வாதிக்கு சார்பாக முடிவு செய்யப்படுகிறது என்று கீழமை நீதிமன்றம் வழங்கிய தீர்ப்பில் தெளிவாக குறிப்பிட்டுள்ளது. கூட்டு பட்டாவாக குருசாமித்தேவரின் சகோதரர் வழக்குச் சொத்தில் வாதிக்கு வாதிகோரியபடி 2ல் 1 பாகம் கிடைக்கத்தக்கது? பார்க்கும்போது ஏற்கனவே முடிவு செய்துள்ளபடி வழக்குச் சொத்துக்கள் பொய்விட்டதால் வாரிசுரிமையில் வாதியும் 1ம் பிரதிவாதியும் மட்டுமே உள்ள நிலையில் அனைத்தும் குருசாமித் தேவருக்கு பாத்தியப்பட்டு பின்னர் அவர் காணாமல் செய்யப்படாமல் இருப்பதால் மட்டும் கடந்த 1954ம் ஆண்டு நடைபெற்ற வாய்மொழிப் அண்ணாடிலைத்தேவருடன் இருந்த நிலையில் அதில் வாதியின் பெயர் பதிவு செய்ய இயலாது. அவ்வாறு 1ம் பிரதிவாதிக்கு மட்டும் தனிப்பட்ட முறையில் வழக்குச் பாகத்தில் வழக்குச் செர்த்துக்கள் அனைத்தும் 1ம் பிரதிவாதிக்கு கிடைத்தது என முடிவு பிரதிவாதிகள் தரப்பில் எடுத்துரைக்கப்படவில்லை. அதேபோல் வாதிக்கு அம்மாத்தாயின் சொத்துக்களைப் பொறுத்து வாய்மொழி பாகத்தில் கிடைத்துவிட்டது என 2 முதல் 5 சொத்துக்கள் அனைத்தும் பெண்ணடி சொத்தாக கிடைத்ததாகவோ அவ்வாறு பி.சா.ஆ.7, 8 ஆவணங்களின் அடிப்படையில் வாதி மூலம் பெற்ற செட்டில்மெண்ட் தான் சொத்துக்களானது அம்மாத்தாய்க்கு தனிப்பட்ட முறையில் பாத்தியப்பட்ட சொத்துக்களாக இருந்ததாகவோ எடுத்துரைக்கப்படாத நிலையில் வழக்குச் சொத்துக்களில் வாதி கூட்டுக்குடும்பத்தில் இருந்து அனுபவம் செய்து வருவதாக ஏற்கனவே வாதி தரப்பில் கூறியுள்ளபடி முடிவு செய்யப்படுகிறது. ஆகவே, வாதி வேறு மதத்திற்கு மாறினார் எனக் கூறப்பட்டாலும் அதனைப் பொறுத்து 2 முதல் 5 பிரதிவாதிகள் தரப்பில் எடுத்துரைக்கப்படாததால் இந்த வழக்குச் சொத்துக்களில் வாதிக்கு 2ல் 1 பாகம் கிடைக்கத்தக்கது என்றும் அதனைப் பொறுத்து 2ல் 1 பாகத்திற்கு வாதி கோரியபடி முதல்நிலை தீர்ப்பாணை கிடைக்கத்தக்கது. "

(10-iv) And prayed to dismiss the Appeal with costs by confirming the Trial Courts Judgment and Decree.

(10-v) And on the side of Appellants/Defendants it is further Reply Argued as follows:

As per oral Partition 1964, the deceased Veerakutty got the share item Nos.1, 2, 3, 4 and 5 of the Suit schedule properties and obtained some other properties also and based on that, the joint Patta No.1916 was issued by the Revenue Authority in so far as the schedule properties items No.2 and 4 concerned to infavour of the deceased Veerakutty and the deceased Veerakutty had been in the possession and enjoyed the same. And the Respondent/Plaintiff has knows about that and filed a false claim in 2011Appellants or.

(10-vi) And further it is Argued Appellants or the deceased Veerakutty have never colluded with Annamalai Thevars Legal Heirs for getting Patta and As Argued in the earlier paragraphs vide in Grounds of Appeal, the Patta

No.3135 was challenged by the Veerakutty and filed an Appeal before the R.D.O and R.D.O, Sivakasi, passed an order and restored the earlier Sub Division S.No.766/2I2 and subsequent the Legal Heirs of Annamalai Thevar filed a W.P. (M.D) No.15306 of 2013 before the Hon'ble Madurai Bench of Madras High Court and the above said matter was dismissed on 04.11.2022. And now it is not denied by the Respondent/Plaintiff. And further it is Argued the Respondent only colluded with the Legal Heirs of Annamalai and filed the vexatious suit. And further it is Argued the Respondent/Plaintiff did not file a single evidence to show that the Respondent/Plaintiff and deceased Veerakutty have jointly possessed the Suit property. Now it is fairly admitted by the Respondent/Plaintiff during the course of Argument. And on the side of Appellants/Defendants the Dismissal order passed by the Hon'ble Madurai Bench of Madras High Court, Madurai in W.P.(M.D) No.15306 of 2013 dated 04.11.2022 is also produced. And the said Veerakutty was arrived as R5.

(10-vii) And further it is Argued that the Respondent/Plaintiff did not file any piece of evidence to prove that the Respondent/Plaintiff had been in possession and enjoyment of the suit schedule of properties. It is admitted except Ex.A1 to Ex.A3, no other document was filed and on the side of Respondent/Plaintiff is admitted that Ex.A1 was not proved through the witnesses and through Revenue Department.

(10-viii) And further it is Argued with regard to settlement Deed No.1957/1968 as per the oral partition only, the settlement Deed was executed and the properties were belonged to one Ammathai alias Bhathrakali and based on that her son and Grand son namely Chinna Nallathambi had executed a settlement Deed 1957/1968 and it was confirmed in Patta No.405 and as 1452, by the Revenue Authority dated 16.07.1983 and with regard to settlement Deed No.1752/1979 also gifted infavour of Respondent/Plaintiff and for the very same Patta No. 405 and as 1452. And it is not denied by the Respondent/Plaintiff. And this Court feels the Respondent/Plaintiff ought to have pleaded in the Plaint and let in evidence and by marking of documents on her side.

(10-ix) It is further Argued that Ex.B1 to Ex.B6 and Ex.B11 revealed that as per the partition in 1964 the deceased Veerakutty was in possession and enjoyed the suit schedule and enjoyed the suit schedule of properties and the same was confirmed by the Revenue Documents. Now it cannot be denied by the Respondent/Plaintiff.

(10-x) And further it is Argued that the deceased Veerakutty had obtained the suit schedule of properties and other properties through oral partition. There was no material filed by the Respondent/Plaintiff to prove that the suit schedule of properties was jointly enjoyed. The Respondent/Plaintiff did not file any document evidence or any oral evidence through her witness to prove that the Respondent/Plaintiff jointly possessed the suit properties and further argued that the Trial Court had not discussed in all the way as the Appellants/Defendants have raised their defences and without going into merits of the defence, the Trial

Court decreed the suit and wrongly passed the Preliminary Decree and prayed to set aside the same by allowing this Appeal Suit.

(11-i) Heard the Arguments of both side and perused notes of arguments filed by both side and perused the material records of the case and evidences of both side and exhibits. And on a perusal of records, the Respondent/Plaintiff was examined as PW1 and her husband was examined as PW2. And while analysing the cross examination of PW1, she has deposed, "It is submitted that during the cross examination on the defendant side the plaintiff herself admitted that "எனது பெற்றோர்கள் தேவர்குளத்தில் தான் குடியிருந்து வந்தார்கள். எனது தகப்பனார் ஆசிரியராக பணிபுரிந்து 1961ம் ஆண்டு காணாமல் போய்விட்டார். எனக்கு திருமணம் 1958 ஆண்டு நடைபெற்றது. அதன்பிறகு 3 வருடங்களுக்கு கழித்து எனது தகப்பனார் காணாமல் போய்விட்டார். எனது அப்பா இறந்துவிட்டது சம்பந்தமாக இறப்புச்சான்றிதழை சட்டப்படி வாங்கியுள்ளேனா என்றால் இல்லை. எனது கணவர் திருப்புவனம், அல்லிநகரம், வயல்சேரி ஆகிய ஊர்களில் வேலை செய்தார். கடைசியாக திருப்புவனத்தில் தான் வேலை செய்தார். எனது ஊர் மண்குண்டாம்பட்டி பாட்டியின் என்றால் சொந்த சரிதான், எனது தகப்பனாரின் சொந்த ஊர் தேவர்குளம் என்றால் சரிதான். தேவர்குளத்திற்கும், மண்குண்டாம்பட்டிற்கும் இடையே 2 கி.மீ தொலைவு இருக்குமா என்றால் இருக்கும். எனது பாட்டி அம்மாதாயம்மாளின் குடும்பம் வசதியான குடும்பம் என்றால் ஓரளவுக்கு வசதியான குடும்பம் தான். நிலங்கள் இருந்தது. எனது தாயார் இருக்கும்போது எனது பாட்டி எனது அம்மாவையும் எங்களையும் பார்த்து செல்வார் என்றால் சரிதான் எனக்கு திருமணம் நடைபெறுவதற்கு முன்னரே எனது தாயார் இறந்துவிட்டார். எனது தகப்பனார் 1960ம் ஆண்டு காணாமல் போய்விட்டார். எனது அப்பா இறந்துவிட்ட சம்பந்தமாக நீதிமன்ற உத்தரவு ஏதேனும் வாங்கியுள்ளேனா என்றால் இல்லை எனது அப்பாவை காணவில்லை என கூறி தினசரி நாளிதழில் விளம்பரம் கொடுக்கப்பட்டுள்ளது. அந்த பேப்பர் விளம்பரம் என்னிடம் உள்ளதா என்றால் என் சித்தப்பா வைத்துள்ளார். என் சித்தப்பாவும் இறந்துவிட்டார். என் சித்தப்பாவிற்கு குழந்தைகள் உள்ளனரா என்றால் உள்ளனர். அந்த பேப்பர் விளம்பரம் தற்போது வாங்கி நீதிமன்றத்தில் தாக்கல் செய்யமுடியுமா என்றால் அந்த பேப்பர் விளம்பரம் தற்போது இல்லை. என்னை திருமண செய்துகொடுத்துவிட்டார்கள். திருப்புவனத்தில் எனக்கு சொந்த வீடு உள்ளதா என்றால் உள்ளது. திருப்புவனத்தில் உள்ள வீட்டிற்கு ரேசன் அட்டை உள்ளது. எனது மகன்கள் 4 பேருக்கும், மகள் 1 வருக்கும் எனக்கும் எனது கணவருக்கும் திருப்புவனம் முகவரியில் ரேசன் அட்டை உள்ளது. 2011ம் ஆண்டு வரை திருப்புவனத்தில் ரேஷனில் அனைத்து பொருட்களும் வாங்கியுள்ளோம். 2011 வரை நான் திருப்புவனத்தில் தேர்தலில் வாக்களித்தேன். திருமணம் ஆனவுடன் என் கணவருடன் திருப்புவனத்திற்கு சென்றேன் என்றால் என் தம்பியுடன் சென்றேன். இந்த வழக்கிற்கு அனைத்து விவரங்களையும் என் கணவர் தான் சொன்னார் என்றால் சரிதான். வழக்குவிபரங்களுக்கு சொன்ன விபரங்களை நான் படித்துபார்த்துள்ளேன். என் வழக்குரையில் திருப்புவனத்திற்கு நான் செல்லும்போது எனது தம்பியை

அழைத்துசென்ற விபரத்தை சொல்லவில்லை என்றால் சரிதான். என்ன என்ன சொத்துக்களை பொறுத்து வழக்கு தாக்கல் செய்யப்பட்ட விபரம் தெரியும். வழக்கு சொத்துக்களுக்கு நான்கு மால்கள் தெரியுமா என்றால் தெரியாது. தீர்வை எவ்வளவு தொகை செலுத்தினேன் என்றால் சரியல்ல. ரூ.110. ரூ.120 என செலுத்தியுள்ளேன். தீர்வை ரசீதுகள் என்னிடம் உள்ளது. தீர்வை ரசீதுகளை நீதிமன்றத்தில் தாக்கல் செய்யவில்லை என்றால் சரிதான். அதன் புல எண்கள் தெரியுமா என்றால் ஆவணத்தை பார்த்து தான் சொல்ல முடியும். தற்போது தெரியாது. குருசாமி தேவரும், இராஜா தேவரின் மகன் சின்ன நல்லதம்பி தேவரும் சேர்ந்து எனக்கு 3 ஏக்கர் 3 செண்டை ஏஞ்சர் கிராமம் புல எண் 1037-3 ல் 1 ஏக்கர் 6 செண்ட், 1036-2 ல் 2 ஏக்கர் 83 சென்ட் மொத்தம் 3 ஏக்கர் 3 செண்டை பொறுத்து 1968ல் தான செட்டில்மென்ட் எழுதிக் கொடுத்தார் என்றால் சரிதான். மீண்டும் 1979ம் ஆண்டு மொத்தம் 3 ஏக்கர் 89 செண்டில் மீதமுள்ள 86 செண்டை கொடுத்து சேவுகதுரை மற்றும் நல்லம்பி தேவர் சேர்ந்து தானசெட்டில்மென்ட் கொடுத்தார்கள் என்றால் சரிதான். 1984க்கு முன்னர் நிலவுடமை மேம்பாடு திட்டத்திற்கு முன்னர் 1ம் பிரதிவாதி பெயருக்கு 1 சொத்தை பொறுத்து பட்டா ஏற்பட்டுள்ளது என்றால் எனக்கு தெரியாமல் பட்டா ஏற்பட்டுள்ளது. அவ்வாறு பட்டா மாற்றம் செய்தது எப்போது தெரிந்தது என்றால் உடனே தெரிந்தது. அந்த பட்டாவை ரத்து செய்யகோரி நேரடியாக மனு எதுவும் கொடுக்கவில்லை என்றால் சரிதான். மற்ற சொத்துக்களை பொறுத்து 1ம் பிரதிவாதி பேரிலும், அண்ணாமலை தேவர் பேரிலும் கூட்டுபட்டா உள்ளது என்றால் சரிதான். அண்ணாமலை தேவர் என்பவர் எனது சித்தப்பா ஆவார். அண்ணாமலை தேவர் பெயரிலும், 1ம் பிரதிவாதி பெயரிலும் இருந்த சொத்துக்களை பொறுத்து இருவரும் தனிதனியாக பட்டா வாங்கி கொண்டார்கள் என்றால் சரிதான். எனது குழந்தைகள் அனைவருக்கும் திருமணம் நடந்துவிட்டது. என மூத்த மகன் பெயர் சாமுவேல் என்றால் வேல்வேந்தன் ஆகும். நான் வாரத்திற்கு எத்தனை முறை தேவலாயம் செல்வேன் என்றால் அங்கு செல்வதில்லை. எனது கணவர் தற்போது என்னுடன் நீதிமன்றத்திற்கு வந்துள்ளார் என்றால் சரிதான். இந்து பெண்கள் அணியும் திருமாங்கல்யம் அணியவில்லை என்றால் அணியவில்லை. எனது தாயார் இறந்தபிறகு எனது தகப்பனாரையும், எனது தம்பியையும் நான் தான் பராமரித்து வந்தேன் என்றால் எனது தகப்பனார் தான் எங்களை பராமரித்து வந்தார்". And from the evidence of PW1 it is seen, the plaintiff herself admitted that the plaintiff has not filed as piece of evidence to prove that the plaintiff has been in possession and enjoy the same and Further, plaintiff admitted that plaintiff did not file a suit for declaration to "declare that his father died as a civil death." The plaintiff herself admitted that the defendants have separately obtained the patta and she did not file any appeal to cancellation of patta and she further admitted that at the time of obtaining the patta she was well aware about that. Later, she filed suit in the year of 2011. The fact remains that the patta was mutated more than five decades. And though it was challenged by the Annamalai Thevar and it was went in to vein.

It is submitted that the PW1 further deposed that

"நான் மொத்தம் 3 சொத்துக்களுக்கு புல எண்.748, 749, 766 ஆகிய சொத்துக்களுக்கு மட்டும் தான் வழக்கு தாக்கல் செய்துள்ளேன். இந்த மூன்று புல எண்களிலும் எவ்வளவு சொத்து உள்ளது என்றால் மூன்று ஏக்கர் இருக்கும்"

It is pertinent to note that the respondent Plaintiff has filed the above said suit without knowing the properties details and boundaries and further she did not know about her own plaint averments and details of the schedule of properties and the above said deposition revealed that the respondent/plaintiff seems never enjoyed and possessed the suit schedule of properties even on prior and on the date of filing of the suit.

(11-ii) And while analysing the cross examination of PW2, he has deposed " எனது மாமனார் குருசாமி எந்த ஆண்டு பணி ஓய்வு பெற்றார் என்றால் பணியில் இருக்கும்போதே 1960 ல் காணாமல் போய்விட்டார். நான் ஆசிரியராக பணிபுரிந்தேன். எனது மாமனார் காணாமல் போகும்போது பரமக்குடியில் ஆசிரியர் பயிற்சி பள்ளியில் இருந்தேன். எனது மாமனார் காணாமல்போய்விட்ட பிறகு ஏதேனும் காவல்நிலையத்தில் புகார் அளித்து நடவடிக்கை எடுத்தேனா என்றால் நான் எடுக்கவில்லை. இதுநாள் வரை மாமனார் காணாமல் போனது சம்மந்தமாக ஏதேனும் சட்டப்படியான நடவடிக்கை எடுத்துள்ளேனா என்றால் இல்லை. எனது மாமனார் தற்போது உயிருடன் உள்ளாரா, இல்லையா என்பதை உறுதிபடுத்துவதற்கு எந்த ஆவணமும் இல்லை என்றால் சரிதான். வாதியின் தகப்பனார் குருசாமி தேவர், அண்ணாமலை ஆகியோர்களுக்கு பூர்வீக சொத்துக்கள் என்ன இருந்தது என்று நான் ஆவணத்தை பார்த்து தெரிந்துகொண்டேனா என்றால் பாகப்பிரிவினை அடிப்படையில் பட்டா வாங்கியுள்ளார்கள் அதனை பார்த்து தெரிந்து கொண்டேன். குருசாமியும், அண்ணாமலையும் ஏற்கனவே 1950 ஆண்டு வாய்மொழியாக பாகம் பிரித்துக்கொண்டு அனுபவம் செய்து வந்தார்கள். அதனை பொறுத்து வாரிசுகள் பட்டா பெற்றுள்ளார்கள்.

எனக்கு சீமைச்சாமி, அன்பரசு, குருசாமி, வேல்வேந்தன் ஆகியோர் எனது மகன்கள் ஆவர்கள். வேல்வேந்தனுக்கு சாமுவேல் என்ற பெயர் உண்டு என்றால் எனது மகன் கிறிஸ்துவ பெண்ணை காதலித்து திருமணம் செய்தபோது சர்ச்சில் அவருடைய பெயர் சாமுவேல் சேர்க்கப்பட்டது. ஆனால் அரசிதழ் மற்றும் சான்றிதழில் பெயர் மாற்றம் செய்யப்படவில்லை. சர்ச்சில் வைத்து ஓலை வாசிக்கப்பட்டு வேல்வேந்தன் என்ற சாமுவேலுக்கு திருமணம் நடைபெற்றது என்றால் சரிதான். சீமைச்சாமி விப்ரோ நிறுவனத்தில் சீனியர் மேனேஜராக இருந்தார். சீமைச்சாமியின் மனைவி பெயர் அம்சவேணி என்றால் சரிதான். அம்சவேணியின் தகப்பனார் பெயர் ஜெகநாதன் என்றால் சரிதான். ஜெகநாதன் அண்ணாமலையின் மகன் என்றால் சரிதான். சர்வே எண். 766-2 i3 மொத்தம் 40 சென்ட் ஆகும். அவ்வாறு புல எண்.766-2i என்ற புல எண் கிடையாது. சர்வே எண். 766-2i ல் மொத்தம் 2 ஏக்கர் 34 சென்ட் இருந்தது என்றால் 2 ஏக்கர் 30 சென்ட் இருந்தது. அதில் 17 சென்ட் ரோட்டிற்கு எடுத்துவிட்டார்கள் மீதம் 2 ஏக்கர் 13 சென்ட் உள்ளது. புல எண். 766-2i என்பது 2i 1 முதல் 2i 3 வரை உட்பிரிவு செய்யப்பட்டுள்ளது என்றால் சரிதான்.

அவ்வாறு வீரக்குட்டி எபெயரில் 2 ஏக்கர் 13 செண்ட் பட்டா கொடுக்கப்பட்டதை எதிர்த்து அண்ணாமலை தேவரின் வாரிசுகள் தங்களுக்கும் பட்டா கொடுக்கவேண்டும் என சிவகாசி வட்டாட்சியரிடம் மனு கொடுத்தார்கள் என்றால் இல்லை. சிவகாசி வட்டாட்சியர் அண்ணாமலையின் வாரிசுகளுக்கு 90 செண்ட் இடத்தை பட்டா கொடுத்தது எதிர்த்து 2 முதல் 5 பிரதிவாதிகள் மேல்முறையீடு தாக்கல் செய்தார்கள் என்றால் சரியல்ல. 2010ம் ஆண்டு பட்டா பெற்றபிறகு சிவகாசி கோட்டாட்சியரிடம் மேல்முறையீடு தாக்கல் செய்தார். அந்த விசாரணையில் 2 ஏக்கர் 13 செண்ட் 2 முதல் 5 பிரதிவாதிகள் பெயரில் பட்டா கொடுத்துள்ளார் என்றால் சரிதான். அந்த உத்தரவை எதிர்த்து அண்ணாமலை வாரிசுகள் உயர்நீதிமன்றத்தில் வழக்கு தாக்கல் செய்துள்ளார்கள் சரிதான். வருவாய் கோட்டாட்சியர் அண்ணாமலை தேவரின் வாரிசுகளுக்கு கொடுத்த பட்டாவை இரத்து செய்துவிட்டதால் பழிவாங்கவேண்டும் என்ற எண்ணத்தில் என் மனைவி இந்த வழக்கை தாக்கல் செய்துள்ளார் என்றால் சரியல்ல".

(11-iii) And from the every point of Admission it is borne in mind Admittedly the Civil Appeal No.16 of 2024 was filed on 01.03.2024 and taken on file on 04.03.2024 by the Principal District Court and made over to this Court and received by this Court on 14.03.2024. And pending Appeal the Application IA.2 of 2024 under Order 41, Rule 27 and read with Section 151 of C.P.C was came to be filed on 03.07.2024 and taken on file with 6 documents by the Appellants/Defendants. Admittedly all these documents are Registered one.

(11-iv) And for the said Application counter was filed on 13.12.2024. And enquiry on the side of Petitioners/Appellants was heard on 01.02.2025. And it was adjourned to 14.02.2025, 14.03.2025 for the Respondent/Plaintiff side Argument. And on 14.03.2025 Notes of Argument was filed by the Petitioners/Appellants and it was adjourned to 20.03.2025 and Respondent/Plaintiff side Argument was heard and reserved for orders by 03.04.2025 and 04.04.2025 and on 04.04.2025, Suo motu Reopened by this Court for clarification and adjourned to 04.07.2025. And on 04.07.2025 at request of both side counsel, it was adjourned to 31.07.2015. And on 31.07.2025, both side counsels were present and made endorsement as "the Application may be heard along with main Appeal" considered the same. And along with the main Appeal the Application was heard and Notes of Arguments was filed by both side also. And this Court also passed an order in the IA.No.2 of 2024 in a detailed manner even on a careful perusal of petition, counter and 6 documents.

(11-v) And during the course of Argument the Learned Counsel for the Appellants/Defendants would submit "This is the Application filed by the 3rd Petitioner/3rd Appellant/3rd Defendant for himself and on behalf of the other 2, 4, 5 Petitioners/2, 4, 5 Appellants/Defendants and the Appellants 4, 5 gave a Power to conduct the case even in OS No.81 of 2011 instant Appeal has been preferred as against the Judgment Decree in OS No.81 of 2011 on the

file of the Hon'ble Subordinate Court, Sivakasi and the same is pending in AS No.16 of 2024 before this Court. And that the Respondent/Plaintiff married on 1958 and thereafter, permanently she settled at Tirupuvanam because her husband was working as school teacher and the same was suppressed by the Respondent/Plaintiff never looked after her father and her brother. She left the parent's house and hence she is not entitled any share from the suit schedule properties. And that the Respondent/Plaintiff herself admitted in her plaint and deposition that her father namely Gurusamy was missing since 1960 and thereafter the Respondent/Plaintiff has not filed any suit for declaration to declare that her father had died as civil death since he has not been traceable from 1960, without obtaining the above said declaration and filed OS. No. 81/2011 is not at all maintainable. And that the respondent/the plaintiff suit is not at all maintainable because the respondent's father was a necessary party in the above said suit and hence the suit is liable to be dismissed on the ground due to the non-joinder of Gurusamy. It is admitted and that the respondent/the plaintiff had not filed any civil suit for declaration to declare that her father had died as civil death, since he has not been traceable from 1960. Also, the suit is barred by time limitation since the suit was not filed within the period of limitation. And that as per an oral partition 1964, my father got the share item Nos. 1,2,3,4 and 5 of the suit schedule of properties and obtained some other properties also and based on that, the joint patta no.1916 was issued by the Revenue Authority in so far as schedule properties item nos. 2&4 concerned to in favour of my father and my father had been in the possession and enjoyed the same. And that as per an oral partition 1964, my father got the item Nos. 1,2,3,4 and 5 of the suit Schedule of properties and obtained some other properties also and based on that, the joint patta no.1954 was issued by the Revenue Authority in so far as schedule properties item nos. 1&5 concerned to in favour of my father and my father had been in the possession and enjoyed the same. Further the concerned revenue authority has issued a Patta No. 1278 to infavour of my father alone. During the lifetime of my father and after the death of my father, myself and other above said petitioners/appellants have been in possession and enjoying the above said scheduled properties item Nos. 1 to 5 till date without any hindrance. And that during the cross examination of the respondent/the plaintiff side, myself stated that patta No. 1278 was wrongly subdivided into 3 parts namely as 766/2I1,2I2 & 2I3 and based on that my father filed an appeal before the Revenue Divisional officer, Sivakasi and thereafter the RDO passed the order and restored the earlier survey no.766/2I2. Subsequently the legal heirs of Annamalai filed a writ petition in W.P. (MD). No. 15306 of 2013 before the Hon'ble Madurai Bench of Madras High Court and the above said matter was dismissed on 4-11-2022 and confirmed the order of RDO which was confirmed that already suit schedule of properties were partitioned between my father and legal heirs of deceased Annamalai. And that the respondent/ the

plaintiff got married in 1958 and settled in Tirupuvanam and at the time of her marriage my grandfather spent a lot of money and gave all stridhan to the respondent/the plaintiff. And that the respondent/the plaintiff did not file any piece of evidence to prove that the respondent/the plaintiff had been in possession and enjoyed the suit schedule of properties. The respondent/ the plaintiff has suppressed the settlement Deed No. 1957/1968 and as per the oral partition only the above said settlement deed was executed in favour of the respondent/the plaintiff and the same was suppressed by the respondent/the plaintiff. And that Ammathai alias Bhadrakali's property was also gifted in favour of the respondent/the plaintiff vide gift document No. 1752/1979 by Nallaswami Thevar and Sevakadurai who all are grandsons of Ammathai alias Bhadrakali Amman and the above said material facts were suppressed by the respondent/the plaintiff. And that the Respondent/the Plaintiff's son Mr.Samuvel married according to the Christian rituals in 1984 and the same was confirmed that the entire family members are converted Christians. And that the respondent/the plaintiff did not file any piece of evidence to prove that the suit properties are enjoyed by her along with my father. And that the respondent/the plaintiff has no cause of action to file the above said suit against my deceased father because without getting declaration of declaring that her father had died as civil death since he has not been traceable from 1960, without obtaining the above said declaration and filed OS. No. 81/2011 is not at all maintainable. And that the respondent/ the plaintiff had paid the deficiency of court fee and she is liable to pay the fee u/s 37 (1) of the Court Fee Act. Veerakutty Thevar has possessed and enjoyed the scheduled properties and based on that he obtained joint patta and individual patta. The respondent/ plaintiff has the intended to grab the scheduled properties from us. And that the Ex.B1-B6 and B11 revealed that as per the partition in 1964 my father was in possession and enjoyed the suit schedule of properties and the same was confirmed by the revenue documents. There was no material filed by the respondent the plaintiff to prove that the suit schedule of properties was jointly enjoyed at any point of time. The Respondent/the Plaintiff did not file any documentary evidence or any oral evidence through her witness to prove that the respondent/the plaintiff had jointly possessed the suit scheduled properties. And that during the course of Argument it is Argued by relying the 6 documents that at the life time of deceased G.Veerakutty and Mr.Annamalai Thevar, Veilmuthu Thevar, Muthaiah Thevar, Thirumeni Thevar had executed a mortgage deed on 11.02.1971 to in favour of Bank of India vide document No.869 of 1971 which was suit schedule property item No.1 and thereafter, on 22.05.1980. G.Veerakutty Thevar and Annamalai Thevar had executed a settlement deed to in favour of Muthuswamy Thevar vide document No.182 of 1980 on their ancestor's property in Natham survey No.732/1 and the said recital reveals that the said Veerakkutty Thevar and Annamalai Thevar have been in possession and

enjoyment including ancestral property and also they were only owner of the property and they have executed a settlement deed to infavour of Muthuswamy Thevar and the same was suppressed by the respondent/the plaintiff and also the said documents also reveal that the respondent/the plaintiff never possessed or enjoyed the schedule of properties. Also it is pertinent to note that as per the partition only the above said transaction did by my father and Annamalai Theyar and the said facts were well known to the respondent/the plaintiff, however the respondent/the plaintiff suppressed the above said facts and filed the suit and obtained a decree and judgment. And further it is Argued that on 23.03.1995 Veerakutty had executed a sale deed to infavour of Avudiyammal and Krishnaswamy vide document No. 611 of 1995 and the same was registered before the sub-registrar office of Thiruthangal. The property is situated in survey No. 732/1 at Thevarkulam village 240 sq.ft build up house. As per the partition only he had been in possession and enjoyed and he had executed a sale deed to in favour of the above said persons. The above said facts suppressed by the respondent /the plaintiff in above said suit. Further, during the life time of G.Veerakkutty and Chinna Guruswamy had executed a power of Attorney on 21.07.2008 to infavour of one Mr. R.Ganesan vide document No. 469 of 2008 and the same was registered before the sub-registrar office Thiruthangal, which was suit schedule property item No. 5. Based on that the said Ganesan and Veilmuthu Thevar had executed a sale deed to in favour of Linguswamy. It is pertinent to note that the above said Ganesan had executed the share of Veerakkutty and chinna Guruswamy and the above said Veilmuthu Thevar had executed his part of the share to Linguswamy and the same was confirmed the oral partition was happened in 1964. The Encumbrance certificate and the above said documents from the concerned Sub-Registrar office in Virudhunagar District, the above said facts were suppressed by the respondent/the plaintiff and obtained Decree and Judgment from the Subordinate Court, Sivakasi. At this juncture it is pertinent to note that the plea as per the oral partition in 1964 my father had been in possession and enjoyed the above said property including the suit schedule of properties and based on that only he had executed the above said documents. Before filing of the O.S.No. 81 of 2011 by MUNIYAMMAL before the Sub-Court, Sivakasi there was an oral partition in 1964 was happened and based on that only my father had executed a mortgage deed, sale deed, settlement deed and power of Attorney in the above said property from the schedule of properties item 1 and 5 can be taken in to consideration. Therefore, the respondent/the plaintiff did not file a piece of evidence to prove that she has enjoyed and possessed the schedule of properties. In the suit Veerakutty was not examined and he was bedridden and due to his illness, my mother only gave evidence on behalf of my father. The Documents in Nos. 12 to 17 are relevant to decide the issues in the above said Appeal and suit. Filing the above said documents Nos. 12 to 17 belatedly is

neither willful nor wanton and due to the above said bona-fide reason only filing this present petition. And prayed this Court to receive the above said document as additional documents and to mark as Ex.B12 to 17. If the Hon'ble court does not allow the petition, it will cause irreparable loss to the me and my entire family. It is therefore prayed before this court may be pleased to receive documents nos. 12 to 17 and to mark as Exhibits Nos.Ex.B12 to Ex.B17 in A.S.No. 16 of 2024 pending before this Court.

(11-vi) And during the course of Argument the Learned Counsel for the Respondent/Plaintiff would submit "1) The petition filed by the petitioners is neither legally nor equitably tenable and warrants outright dismissal even the Appeal also.

2) It is admitted that the Respondent/Plaintiff got married in 1958. And the averments are stated that after the marriage she was residing with her husband at Thirupooanam and not maintained her Father and Brother is denied as false. And it is true, that the Respondent's Father had been missing from 1960 and where about is not known. And the averments that the Father of the Respondent is a necessary party to the Suit and the Suit is bad for non-joinder of party is denied as false. And the averments which are stated that the Respondent converted into Christianity and no civil death suit was filed to declare that her Father was missing from 1960, and the Respondent/Plaintiff has no share over the Plaint schedule properties and she cannot file the suit for partition, is denied as false.

3) And the averments which are stated in the petition by the petitioners that as per an oral partition in 1964, the 1st petitioner's Husband got the share item Nos.1, 2, 3, 4 and 5 of the suit schedule of properties and obtained some other properties also based on that, the joint Patta No.1916 was issued by the Revenue Authority in so far as schedule of properties, and item Nos. 2 and 4 concerned to infavour of the 1st petitioner's Husband and the petitioners had been in the possession and enjoying the same is totally denied as false. And further the averments which are stated is admitted only in respect of the fact that the Patta No.1278 was wrongly sub divided into 3 parts namely as 766/2I1, 2I2, 2I3 and based on that the 1st petitioner's husband filed an Appeal before the Revenue Divisional Officer, Sivakasi and thereafter the R.D.O passed the order and restored the earlier subdivision S.No.766/2I2 and subsequently the Legal Heirs of Annamalai Thevar filed a writ petition in W.P. (MD) No.15306 of 2013 before the Hon'ble Madurai Bench of Madras High Court. And the above said matter was dismissed on 04.11.2022 as stated by the petitioners is denied as false.

4) The averments which are stated in the petition that at the time of Marriage of the Respondent, her Grandfather spent a lot of money and give all the shreedhanam to the Respondent/Plaintiff is denied as false. And the allegation levelled against the Respondent that she has suppressed the settlement Deed No.1957/1968 in favour of her and Gift Deed vide document

No.1752/1979 is denied as false. And further the averments which are stated in the petition that the Respondent's son Mr.Samvel married according to the christian recitals in 1984 is no way connected to the suit. And the averments which are stated the Respondent was not weaning the customary Thali and Kumkumam and she has admitted in her cross is denied as false. And the averments that the Respondent's Grand children were converted into christianity is denied as false. And the averments that the Respondent/Plaintiff has no cause of action for filing this suit and the court fee paid under Section 37(2) of TNCF Act is not correct are denied as false. And the averments that the Trial Court has failed to consider while passing preliminary decree that Ex.B1 to Ex.B6 and Ex.B11 revealed that as per the partition in 1964 the petitioners Husband and others are in possession are denied as false.

5) And further it is Argued the Plaintiff and the 1st Defendant are siblings. The Plaintiff and the 1st Defendant's father, Gurusamy Thevar, and Annamalai Thevar are siblings. In respect of the properties inherited by Veerakutty Thevar, Gurusamy Thevar and Annamalai Thevar made an oral partition in the year 1950, in respect of the ancestral properties and the properties acquired from the joint family income. In such partition, the suit properties were received by the Plaintiff and the 1st Defendant's father, Gurusamy Thevar, and were enjoyed jointly by the Plaintiff, the 1st Defendant and Gurusamy Thevar. After the death of the Plaintiff's mother, the Plaintiff himself performed all the necessary services for the father, Gurusamy Thevar and brother, the 1st Defendant. In this situation, the marriage of the Plaintiff and Rajendran was performed on 0205:1958. The Plaintiff continued to live with the 1st Defendant even after their marriage. In this situation, the Plaintiff and the 1st Defendant's father, Gurusamy Thevar, left the home in 1960 without telling anyone. The Plaintiff handed over the suit properties of the 1st Defendant and the Plaintiff and the 1st Defendant, to Annamalai Thevar, the Plaintiff's paternal brother, and the Plaintiff lived with her husband. Annamalai Thevar educated the 1st Defendant well, provided him with a job and arranged for his marriage. Thereafter, Annamalai Thevar handed over the suit properties again to the Plaintiff, the 1st Defendant. Since then, the Plaintiff and the 1st Defendant have been enjoying the suit properties jointly.

(ii) Annamalai Thevar died on 12.03.2003. While the properties that were allotted to Annamalai Thevar after the death of Annamalai Thevar were being enjoyed by his heirs, the heirs of Annamalai Thevar and the 1st Defendant, with the intention of defrauding the Plaintiff of the 1/2 undivided shares of the suit properties, have obtained a separate Patta in the name of the 1st Defendant through the Revenue Department. The title Deed obtained through the Revenue Department, concealing the Plaintiff's undivided half share in the suit properties, does not restrict the Plaintiff's rights in any way.

The 1st Defendant is trying to encumber on the Plaintiff's half share in the suit properties using the Patta obtained through the Revenue Department. In this situation, the Plaintiff sent a notice through her lawyer on 23.04.2011, demanding the division of her 1/2 shares in the suit properties. The 1st Defendant, knowing the contents of the notice, returned the notice. The 1st Defendant has no right to alienate the entire suit property, therefore the original suit has been filed by the Plaintiff seeking to divide and allot the Plaintiff's 1/2th share in the suit property.

And pending the suit the 1st petitioners Husband Veerakutty died and the petitioners were impleaded as parties/Defendants to the suit. After full contest the suit was decreed and Preliminary Decree was passed on 07.07.2023. And the Respondent/Plaintiff has filed an Application in IA 7 of 2024 praying for passing of Final Decree. And the Petitioners has no merit in the suit as well as in the Appeal and has come forward with malafide intention and filed the Application.

6) And the averments now which are stated in the Application is denied as false and it is to be proved by the Petitioners. And the above said documents are irrelevant to decide the issues in the said Appeal suit. And further filing the above said documents Nos.12 to 17, are not only belated one, but also to fill up the lacuna and it is not entertainable. And the reasons now are stated in the petition is not an appreciable one. And no adequate reason is mentioned in the Application for filing of these documents. The petitioners have not come with clean hands. If the petition is allowed, the Respondent/Plaintiff put into untold hardship and the petition has no merit. And it is prayed that the petition may be dismissed with costs. as well as the Appeal "

(11-vii) Heard both side. And in the instant Appeal, both side Arguments were advanced by the Respective counsels and have been discussed in detail in the aforesaid paragraphs. Now, as far as this application is concerned it is to be seen, whether the Application has been filed in a Bonafide Manner and whether the 6 documents are relevant to decide the matter in issue in the Appeal as well as in the suit. And as far as the Application in IA 2 of 2024 is concerned point for consideration is framed for determination. And having been conjointly read with the Plaint, Written Statement and both side evidences and documents and the Grounds of Appeal along with this 6 documents. And having been read the Application, the reason mentioned as that the deceased Veerakutty had obtained the suit schedule of properties and other properties through oral partition. There was no material filed by the Respondent/Plaintiff to prove that the Suit schedule of properties was jointly enjoyed at any point of time. The Respondent/Plaintiff did not file any documentary evidence or any oral evidence through her witness to prove that the Respondent/Plaintiff had jointly possessed the suit scheduled properties. Further it is stated during the pending of the suit

Mr.Veerakutty was bed ridden and due to his witness, his wife only gave evidence on behalf of him and also at present only they (Petitioners/Appellants) came to know about the said related to 6 documents and they have filed the Application and obtained documents Nos.12 to 17. And once again the court emphasizes the proviso though it has been quoted.

(11-viii) 4(i) to (iii) (1)

It is pertinent to note, under Order 41 Rule 27 of CPC production of Additional evidence whether oral or documentary is permitted only under Three circumstances which are :

(1) (i) Where the Trial Court had refused to admit the evidence through it ought to have been admitted

(ii) the evidence was not available to the party despite exercise of due diligence and

(iii) the Appellant Court required the Additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

An application for production of additional evidence cannot be allowed if the Appellant was not diligent in producing the relevant documents in the Lower Court.

However in the interest of justice and when satisfactory reasons are given, Court can receive additional documents. It is to be seen that the said proviso is applicable to the petitioners. It is discussed in the following passages.

(11-ix) 4(i) to (iii) (II)

(II) And during the course of enquiry on this Application the Learned Counsel for the Appellants/Defendants would submit that even the documents were not produced before the Trial Court nor were there reference to those documents in the pleadings. If the document has a direct bearing on the main issue in the suit the same may be received as Additional evidence and prayed to allow the Appeal.

(11-x) 4(i) to (iii) (III)

(III) And the learned counsel appearing on behalf of the Respondent/Plaintiff vehemently contended that there is no infirmity in the Trial Court Judgment and the same needs to be sustained. And further it is Argued there is no due diligence and the Petitioners/Appellants have not taken steps in earlier and it is filed belatedly and prayed for Dismissal of the Application. Appeal. Admittedly the burden shifts upon the Respondent/Plaintiff to prove that the Plaint Schedule Properties are deriving from the Annamalai Thevar and his Legal Heirs and whether they had jointly enjoyed the same with the Appellants/Defendants.

(12-i) Admittedly along with the main Appeal the said IA No.2 of 2024 was heard and the plea is raised in the petition before filing of the suit by the Respondent/Plaintiff there was an oral partition in 1964 and the Late Veerakutty had been in possession and enjoyed the suit property based on that

only during these periods Veerakutty had executed the above said 6 documents in the above said property from the schedule of properties item and 5. And in order to prove that the Respondent/Plaintiff having a piece of evidence that she has not produced as she has enjoyed and possessed the plaint schedule of properties. The documents are filed Having been analysed with every aspect the Court finds the Trial Court Judgment is not in a sound manner

(12-ii) As referred in the earlier paragraphs for answering to the main Appeal and for answering to the IA.2 of 2024 under Order 41 Rule 27 read with Section 151 of CPC, this Court has elaborately discussed for the main Appeal as well as to the said Application this Court finds that the Respondent/Plaintiff is not objected the documents of the suit properties and this Court finds these documents are related to the issues are concerned. And these documents are liable to be testified by the both parties. And this Court feels opportunities shall be given to both parties for marking of documents with their respective. The Judgment and Decree of the Trial Court in OS.No.81 of 2011 on the file of Sub Court, Sivakasi is hereby is liable to be set aside. And the Appeal Suit is liable to be allowed and remanded back to the Learned Sub Court, Sivakasi with a direction for a fresh disposal in accordance with Law, Both parties are directed to bear with their own costs. And the Points 1 to 3 are answered accordingly.

As a Result, the Appeal Suit in AS. No.16 of 2024 is allowed. And Decree and Judgment passed in OS No.81 of 2011 dated 07.03.2023 is hereby set aside. And further in view of the order is passed in IA No. 2 of 2024, under Order 41 Rule 27 read with 151 of CPC, the suit is remanded back to the Learned Sub Court, Sivakasi, for fresh Disposal according to Law. The Learned Sub Court is directed to restore the suit on original filing number and issue Notices to both parties and to their Learned Advocates who are on record and to give adequate opportunities to both parties while on marking of six additional Documents as described in IA No.2 of 2024 and for cross examination in this regard and to afford much more opportunities for letting of evidence and marking of documents and for cross examination vice-versa. And from the date of receipt of the Records and after complying all the directions the suit shall be disposed of within 6 months in the manner known to Law. Both parties are directed to bear with their own costs.

Dictated to steno-typist, directly typed by her in the computer, corrected and pronounced by me in the open court, this the 6th day of July 2026.

Additional District and Sessions Judge,
Srivilliputhur.

Copy to:-

The Subordinate Court, Sivakasi.

Additional District and Sessions Court,
Srivilliputhur.
AS.No.16/2024
Draft/Fair – Judgment
Dated: 06.07.2026

