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S.A.No.598 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2025

CORAM:

THE HON'BLE MR.JUSTICE **V.LAKSHMINARAYANAN**

S.A.No.598 of 2000 &
C.M.P.Nos.12026 of 2001 &
C.M.P.No.1692 of 2008 &
Cros.Obj.No.122 of 2001

Chakrapani

... Appellant

Vs.

- 1.Rathinasabapathi
- 2.Vasundra (Died)
- 3.Rajendran
- 4.Madanavalli Ammal
- 5.Palanivel
- 6.Anusuya
- 7.Sivagamasundari
- 8.Santha Sakkubai (Deceased)
- 9.Alluvani
- 10.Anandhavalli
- 11.Sathiyabama
- 12.Sathivathi
- 13.Sathiyavani
- 14.Sathiyakala

(R11 to R14 brought on
record as LR's of the
deceased R8 vide order of
this Court dated
01.02.2018 made in
CMP.Nos.577 to 579 of



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2016 in S.A.No.598 of
2000)

15.G.R.Selvendran

16.G.R.Mehanadhan

17.Jayanthi Arjunan

18.Malasanmugam

19.Kavitha Sankar

(R15 to R19 brought on
record as LR's of the
deceased R2 vide order of
this Court order dated
24.06.2025 made in
CMP.Nos.7760, 7701 &
7702 of 2025 in S.A.No.598
of 2000)

... Respondents

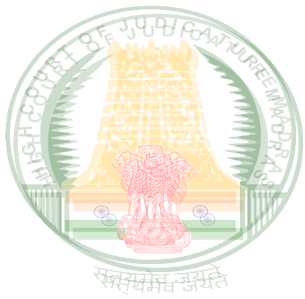
PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgement and decree dated 11.10.1999 in A.S.No.109 of 1998 on the file of Additional District Judge cum CJM Court, Cuddalore, partially allowing the appeal filed by the respondents 1, 5 & 6 along with others against the judgment and decree dated 22.07.1998 in O.S.No.59 of 1989 on the file of Sub Court, Chidambaram.

For Appellant : Mr.Anand for
Mr.Ilayaraja Kandasamy

For Respondents
1 to 7 : Mr.R.Srinath Sridevan,
Senior Counsel for
Mr.Girish

For Respondents
9 & 10 : Mr.R.Silambarasan

For Respondents
11 to 14 : Mr.G.Srivenkatesh



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For Respondents
15 to 19 : Mrs.Avanthika Vasu

R8 – Died

In Cros. Obj.No.122 of 2001

1.Rathinasabapathi

2.Vasundra (Died)

3.Rajendran

4.Madanavalli Ammal

5.Palanivel

6.Anusuya

7.Sivagamasundari

... Appellants

Vs.

1.Chakrapani

2.Santha Sakkubai

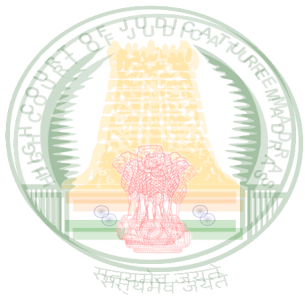
3.Allirani

4.Anandhavalli

... Respondents

PRAYER: Cross Objection filed under Order XII Rule 22 of the Code of Civil Procedure against the judgement and decree dated 11.10.1999 in A.S.No.109 of 1998 on the file of Additional District Judge cum Chief Judicial Magistrate Court, Cuddalore, confirming the judgment and decree dated 22.07.1998 in O.S.No.59 of 1989 on the file of Sub Court, Chidambaram.

For cross objectors : Mr.R.Srinath Sridevan,
Senior Advocate for
Mr.Girish



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For Respondent 1 : Mr.Anand for
Mr.Ilayaraja Kandasamy

COMMON JUDGMENT

This second appeal arises out of the judgment and decree of the Court of Additional District Judge cum Chief Judicial Magistrate, Cuddalore in A.S.No.109 of 1998 dated 11.10.1999, in partly allowing the appeal and modifying the decree of the learned Subordinate Judge at Chidambaram in O.S.No.59 of 1989 dated 22.07.1998.

2. The appellant is the plaintiff in the suit. He is aggrieved by the modification of the decree of the lower appellate court. Insofar as the portion of the decree granting the relief to the plaintiffs is concerned, the defendants have preferred a cross objection in Cros.Obj.No.122 of 2001.

3. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

4. O.S.No.59 of 1989 is a suit for partition and separate possession. For ready understanding, the undisputed genealogy tree

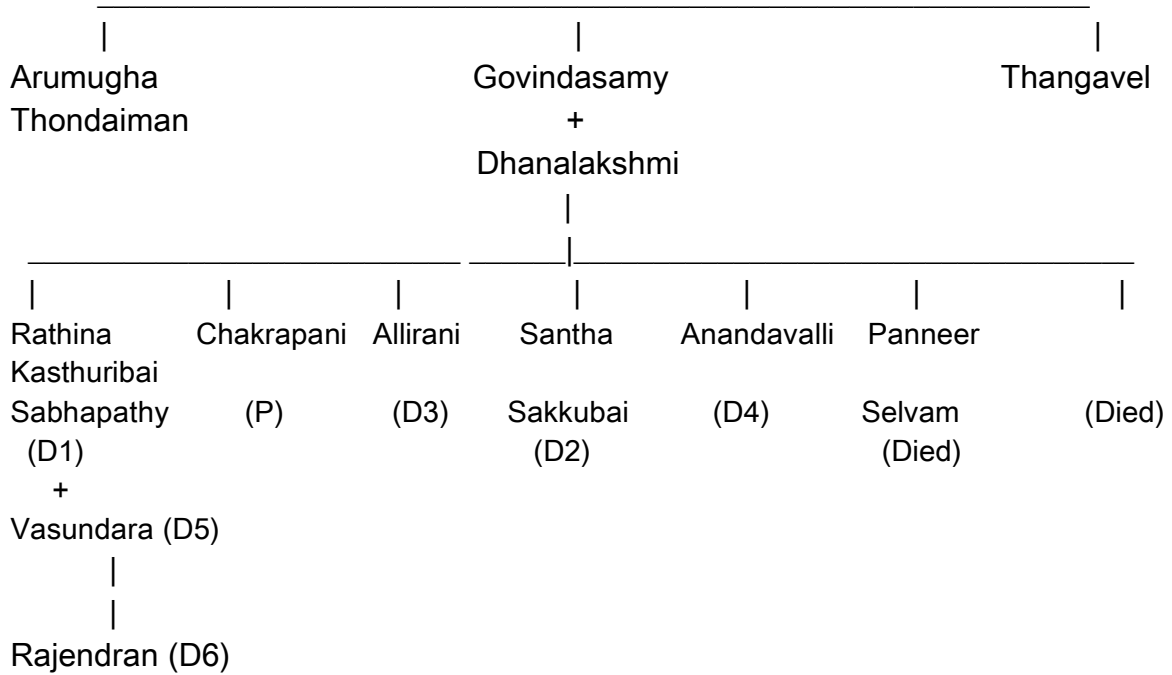


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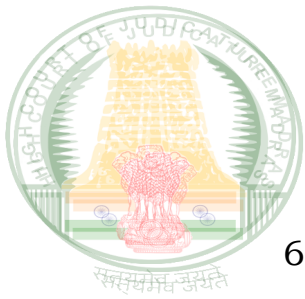
is hereunder:

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Genealogical Tree



5. The plaintiff Chakrapani, the defendants 1 to 4, viz., Rathina Sabhapathi, Santha Sakkubai, Allirani and Ananthavalli are siblings. They were born to one, Govindasamy Padayatchi and his wife, Dhanalakshmi Ammal. Govindasamy Padayatchi died intestate in 1974. Dhanalakshmi Ammal died in 1981. Apart from the plaintiff and the defendants 1 to 4, the couples had two other children, namely Kasthuri Bai and Panneerselvam. Kasthuri Bai expired in 1972. Panneerselvam died in 02.04.1981.



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6. The plaintiff pleaded that Govindasamy Padayatchi had purchased the properties, described under Schedule 'A' to the suit both in his name, as well as in the name of the first defendant. The purchases were made from and out of the income derived from the joint family property. Govindasamy Padayatchi was the karta of the family. Govindasamy Padayatchi had his fingers in several businesses. He was running a brick chamber with a capacity of 3,00,000 bricks. Apart from this business, Govindasamy Padayatchi was also running a business in tobacco, and simultaneously carried on plantain and agricultural activities. The plaintiff asserted that Govindasamy Padayatchi performed the wedding of the defendants (D1 to D4) from and out of the income from the joint family property, as well as the aforesaid joint family businesses.

7. On the death of Govindasamy Padayatchi, the eldest brother - 1st defendant / Rathina Sabapathy took over the business of the joint family. From the income generated from the business, he purchased the properties in the name of his wife, Vasundra, the 5th defendant. The plaintiff alleged that, as the properties were purchased by the 1st defendant in the name of the 5th defendant, utilizing the joint family income, those properties also have to be deemed as joint family properties. Hence, he impleaded Vasundra



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and the son of the first defendant, Rajendran as parties to the suit.

They were arrayed as defendants 5 and 6.

8. The 7th defendant, Kanakasabhpathi, was alleged to be a cultivating tenant under Govindasamy Padayatchi with respect to the suit item No.22, which was leased out to the 7th defendant by Govindasamy Padayatchi. Pending the suit, Kanakasabapathi passed away and the defendants 9 to 13 were brought on record as his legal representatives.

9. The plaintiff alleged that when his mother was living with the first defendant, Rathina Sabapathy, he took possession of 15 sovereigns of her jewels with a promise to return the same but did not keep up the promise. This resulted in a misunderstanding. Therefore, the first defendant chased his mother out of his house, and she came to live with the plaintiff at Vallampadugai village. As the plaintiff was taking care of his mother, Dhanalakshmi Ammal executed a "WILL" in favour of the plaintiff on 05.09.1981, bequeathing her properties in his favour.

10. On account of the misunderstanding between the plaintiff



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and the first defendant, he issued a notice demanding his share.

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11. Originally, there were only 24 suit items. Thereafter, an application for amendment was filed to include suit item 25. The plaintiff claimed that it was his exclusive property.

12. Summons were served on the defendants.

13. Rathinasabapathi filed his written statement, which was adopted by his wife and son, namely, Vasundra and Rajendran. In the written statement, the relationship between the parties were



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accepted. However, it was denied that Govindasamy Padayatchi ever had joint family properties. The first defendant claims that Govindasamy Padayatchi was never the joint family manager nor did he own any brick klin. He also denied that after the death of his father, 1st defendant was the joint family manager. It was pleaded that the 1st defendant was in possession and enjoyment of the property in his own right as the absolute owner. The stand taken in the reply notice was reiterated.

14. The 1st defendant pleaded that he was brought up by his uncle, Arumugha Thondanar from his childhood. Out of natural love and affection, that Arumugha Thondanar had for the 1st defendant, the suit items 2 to 12 were purchased in his name, out of the monies gifted by Arumugha Thondanar. Since the purchase was made from and out of the funds given by his uncle, they could not be treated as joint family properties.

15. Insofar as suit item 1 is concerned, it was pleaded that the 1st defendant had purchased the same out of his own income and he had been paying kist and having other revenue receipts in his own name. Insofar as suit items 14 to 18, 23 and 24 are concerned, he



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pleaded that they are the absolute properties of the 5th defendant his wife and the same is the situation in suit item 19, which was purchased in the name of his son, the 6th defendant. With respect to all the properties, he pleaded the possession and enjoyment of the same, asserting hostile title with patta standing in the names of the individual defendants. He pleaded that suit item 12 does not belong to the family as it is owned by a 3rd party and the suit item 20 belongs to Arumugha Thondanar. Suit item 24 belongs to Thangavel Padayatchi, another uncle of the plaintiff and the first defendant. Hence, the plaintiff cannot claim a share in the same. Suit item 22 belongs to the seventh defendant. He denied having taken jewels from his mother and turning her out of his house, and also the existence of the 'WILL'. He pleaded that the suit is barred by virtue of Benami Transaction (Prohibition) Act, 1988. On these pleas, he sought for dismissal of the suit in its entirety.

16. The fourth defendant Ananthavalli filed a written statement, which was adopted by the third defendant, Allirani. She admitted the relationship between the parties and to the fact that Govindasamy Padayatchi had died intestate. She accepted the nature and character of the suit properties and to the plea of the



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plaintiff that Dhanalakshmi Ammal had executed a “WILL” on 05.09.1981. She stated that the plaintiff is entitled to a decree as prayed for and that, she is also entitled to a share in the suit properties. Both the daughters reserved their rights to take appropriate action in appropriate time to get a share in the property by way of a decree, after paying court fees.

17. The eighth defendant, a co-operative Bank, pleaded that the first defendant had borrowed monies for the purchase of a tractor and its accessories, from it. He had mortgaged the suit items 2 to 11 as security for the said amount on 24.02.1988. The Bank urged that it is entitled to recover its dues by proceeding against the mortgaged properties, and that even if the court were to come to a conclusion that the mortgaged property are the joint family properties, the said mortgage is also binding on the plaintiff. Therefore, it sought for dismissal of the suit.

18. The seventh defendant, having died, his legal heir namely, the ninth defendant had filed a written statement, which was adopted by defendants 11 and 12, who are the other legal heirs of the seventh defendant. They pleaded that the suit item 22 did not



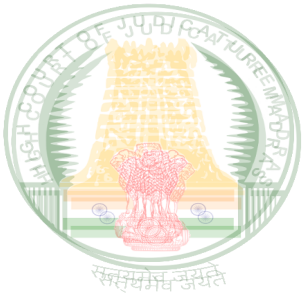
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belong either to the plaintiff nor to the first defendant but it was the property of the seventh defendant. He stated, 7th defendant was never a tenant & absolute owner in possession. On his death, they pleaded that the property was inherited by the defendants 9 to 12 and hence, item 22 is not open for partition at all. When the legal heirs of the seventh defendant were impleaded, the 13th defendant was a minor. She was represented by a guardian appointed by the court, namely, Mr.V.K.Balasubramaniam, an Advocate practicing in Chidambaram. The court guardian filed a written statement on behalf of the 13th defendant and pleaded that as no specific allegation has been made against the seventh defendant, the suit is untenable and therefore, sought the same relief of dismissal.

19. The daughter of Govindasamy Padayatchi, namely, Santha Sakkubai/the 2nd defendant and the son of Kanagasabapathy, the 10th defendant were served but did not enter appearance and were set exparte.

20. The trial Judge framed the following issues to be answered in the suit:

"1. வழக்குச் சொத்துக்கள் கூட்டுக் குடும்பச் சொத்துக்கள் இல்லையா?"



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2. வாதிக்கு வழக்குச் சொத்துக்கள் எதிலும் எவ்வித பாகப் பாத்தியமும் இல்லையா?

3. வழக்குச் சொத்துக்களில் இனம் 14 முதல் 18, 23 மற்றும் 24 5ம் எதிர்வாதிக்கும் 12வது இனம் வேறு முன்றாம் தரப்பினருக்கும் 20 மற்றும் 21 இனம் முதல் வாதிக்கும். முதல் வாதியின் மாமாவுக்கும். 22வது இனம் 7ம் வாதிக்கும் தனிப்பட்ட பாத்தியமான சொத்துக்களா?

4. வழக்கு காலவரம்பினால் பாதிக்கப்பட்டுள்ளதா?

5. நீதிமன்றக் கட்டணத்திற்காக வழக்கு சரியாக மதிப்பிடவில்லையா?

6. வழக்கு நிலைக்கத்தக்கதில்லையா?

7. வழக்குச் சொத்துக்கள் 2 முதல் 11 மீதான அடமானம் வாதியை கட்டுப்படுத்தக்கூடியதா?

8. வாதி கோரியுள்ளபடி பாகப்பிரிவினை தீர்ப்பாணை பெற அருகமற்றவரா.

9. வாதிக்கு கிடைக்கக் கூடிய பரிகாரம் என்ன?"

21. On the side of the plaintiff, he examined himself as PW1 and two other witnesses as PW2 and PW3. He marked Ex.A1 to Ex.A84. On the side of the defendants, the first defendant examined himself as DW1 and the ninth defendant examined herself as DW2 to prove their respective cases. On the side of the defendants, Ex.B1 to Ex.B102 were marked by DW1. No documentary evidences were produced by DW2.



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22. The learned Trial Judge, on the basis of the oral and documentary evidence, granted a decree for partition of 3/7th share to the plaintiff and for mesne profit from the date of plaint till the date of delivery of possession. It held that all the properties except suit item 25 belongs to the joint family of the plaintiff and the first defendant. In order to arrive at this conclusion, the court held that suit items 1 to 11 are not the absolute properties of the first defendant and the items 12 to 19, 23 and 24 are not the absolute properties of the defendants 5 and 6. Hence, they are not entitled to resist partition. Insofar as suit item 25 is concerned, the trial court held that the properties belonged to the grandmother of the plaintiff, and not to the joint family of Govindasamy Padayatchi and hence, incapable of being partitioned. It further held that item 22 does not belong to the seventh defendant or to the defendants 9 to 13. Insofar as the mortgage loan that was taken by the first defendant from the eighth defendant is concerned, the trial court held that the plaintiff was not answerable to the same and consequently, not binding on him.

23. Aggrieved by the said judgment and decree, the defendants 1, 5, 6 and the legal heirs of the seventh defendant, namely,



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defendants 9, 11, 12 & 13 preferred a regular appeal before the Additional District Judge at Cuddalore. The learned Judge, after re-appreciating the entire evidence, came to the conclusion as follows:

(i) that the suit items 1 to 11, 19 to 22 and 25 are the joint family properties of the plaintiff and the defendants 1 to 4;

(ii) that the suit items 12 to 18, 23 and 24 are the exclusive properties of the fifth defendant;

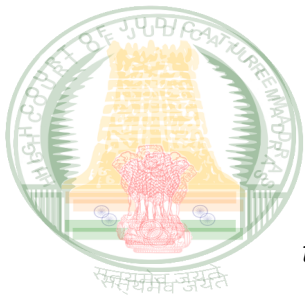
(iii) that the plaintiff is entitled to 6/15th share in the aforesaid properties; and

(iv) finally, the claim that suit item 22 belongs to the seventh defendant is untenable and therefore, partly allowed the appeal as aforesaid.

24. Aggrieved by the said judgment and decree, the present second appeal is before this court

25. This second appeal was admitted by this court on 19.04.2000 on the following substantial questions of law:

“1. Whether the existence of sufficient productive joint family nucleus coupled with proof of joint enjoyment in respect of the properties purchased in the name of a female joint family member did not afford proof of



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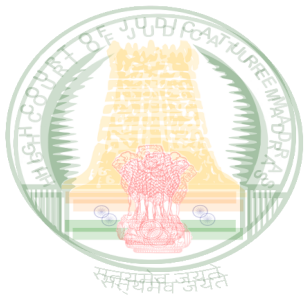
impressing the character of the property as belonging to the joint family and shift the onus of proof on the female member to establish that it was her own property?

2. Whether the purchase of item 25 by the plaintiff, a junior member of joint family in exchange of the separate property obtained without detriment to the joint family property was not a separate property of the plaintiff?

3. Whether the alternation of the share to which the plaintiff was entitled to by the Additional District Court without reference to the acquisition of interest of a deceased coparcener (plaintiff's brother) by the mother as an exclusive sharer and the subsequent bequest by her to the plaintiff, was not erroneous and opposed to law?"

26. I heard Mr.Anand for Mr.Elayaraja Kandhasamy for the appellants, and Mr.Srinath Sridevanl Senior Counsel for Mr.Girish for respondents 1, 3 to 7, Mr.Silambarasan for respondents 9 and 10, Mr.G.Srivenkatesh for the respondents 11 to 14 and Mrs.Avanthika Vasu for the respondents 15 to 19.

27. I have gone through the records and I have applied my mind to the facts of the case.

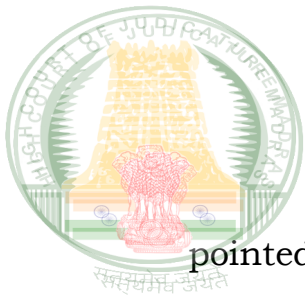


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28. Mr.Anand brought to my attention an application filed by him in CMP.No.1692 of 2008 invoking the provisions of Order XLI Rule 27 of the Code of Civil Procedure. According to him, the suit item 25 belongs to the appellant absolutely. He contended the same because item 25 is adjacent to his mother's house in Vallampadugai, and that was delivered to him by the Court in 1965. He pleaded that the lower appellate court had erroneously included item 25 in the list of items to be partitioned. He urged that pending the second appeal, a suit had been filed in O.S.No.358 of 2000 and in that suit, the first defendant as DW4 had admitted that this suit item belonged to him. He stated that the documents filed along with the petition had been kept in an attic in his house and he was able to retrieve the same only in July 2008, while cleaning it. He urged that if these documents are admitted as additional evidence, then it will point out to his title to the property. He pleaded that the documents to be received.

29. Per contra, Mr.Srinath Sridevan urged that none of these documents can be received in second appeal for the first time. He



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pointed out that the primary documents are dated 20.12.1965 and 14.04.1969, while the remaining documents 3 to 7, 9 and 10 are revenue receipts, which will not assist this court. Insofar as the evidence of the first defendant as DW4 in O.S.No.358 of 2000 on the file of the Principal District Munsif Court, Chidambaram is concerned, he contended that the same would not be helpful in this suit.

30. A casual glance at Order XLI Rule 27 makes it clear that a party to the proceedings can produce additional document even at the appellate stage. The provision itself incorporates certain limitations on evidence that can be brought on record. It is permissible only if a party convincingly demonstrates before the court that he could not produce the said documents at the stage of trial, despite due diligence. It must also be stated that a party, while producing a document, should convince the court that the document now produced was not within his knowledge and hence, should be received by the appellate forum. The provision gives a guidance to the court as to when a document can be received. Additional evidence cannot be produced by a party whenever he so pleases. The averment that the documents were in the attic and



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from 1989 to 2008, the plaintiff did not clean his attic at all and came to know about the documents only in 2008, is too fanciful story to be accepted by this court.

31. Furthermore, as rightly contended by Mr.Srinath Sridevan, most of the documents sought to be produced are revenue receipts. It is trite that revenue records do not confer or deny title to a property. The plaintiff could have produced these documents at least before the final court of facts, namely, the lower appellate court. Even then, he did not produce them. As the requirements of Order XLI Rule 27 was not complied with, this court has no other option than to dismiss the application. I am strengthened in this view by the judgments in ***State of Karnataka v. K.C. Subramanya, (2014) 1 LW 103 (SC)*** and ***Union of India v. Ibrahim Uddin, (2012) 4 LW 359 (SC)***.

32. Now turning to the appeal, Mr.Anand urged that the lower appellate court had not appreciated the evidences in a proper perspective. He stated that the plaintiff had made sufficient pleadings to the effect that, the properties purchased in the name of the fifth defendant were, from and out of the joint family property,

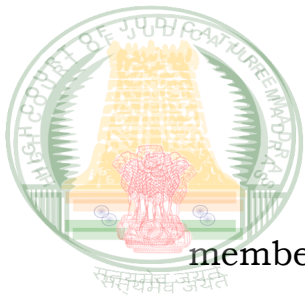


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not with the intention to benefit the fifth defendant alone, but for the enjoyment of all the members of the joint family. Expanding on this point, he stated that when the proof of surplus income had been adduced by him, the onus shifts to the fifth defendant to establish that she had sufficient and independent income, and was in possession of the property, without reference to the joint family.

33. Mr.Anand urged that, having held that there are joint family properties, the lower appellate court should have also held like the trial court, that the properties purchased in the name of the first defendant, with respect to items 12 to 18, 23 and 24, are also joint family properties. He pointed out the lower appellate court erred in holding that item 25 was the joint family property, without any proof. He stated that as there has been perverse findings by the lower appellate court, this appeal deserves to be allowed and the judgment and decree of the trial court has to be restored.

34. Mr.Srinath Sridevan urged that the mere existence of joint family properties, does not mean that the properties purchased in the name of the female member also carries the same presumption, as in the case of the properties standing in the name of a male

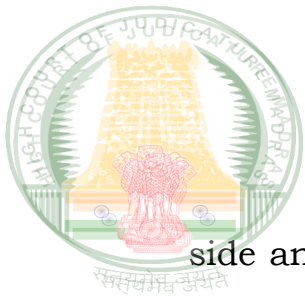


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member. He pointed out that suit item No.25 was purchased under Ex.B1 on 02.09.1959. On that date, the plaintiff had not produced any proof to show that he had any independent income and that, the plaintiff was a minor on that date. Hence, he torpedoed the argument of Mr.Anand, stating that a minor cannot claim to have purchased a property of more than 6 acres in 1959.

35. Mr.Srinath Sridevan invited my attention to his cross objection to urge that the suit item No.1 is the personal acquisition of the first defendant and hence, the same is incapable of partition. He pleaded that because the brick business, tobacco business and the plantain business are separate businesses of Govindasamy Padayatchi, which were created independent of the income arising out of the ancestral property.it cannot be treated as Joint Family income. He urged that all the items, excepting item 22, are the self-acquisitions of the defendants, and the lower appellate court ought not to have decreed the suit as it has done. Consequently, he seeks for modification.

36. I have carefully considered the submissions made on either

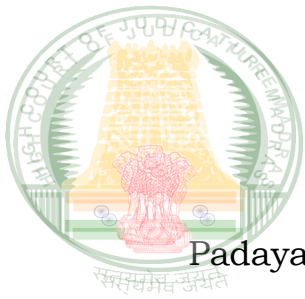


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side and have gone through the records. I have applied my mind to the facts of the case and the substantial questions of law that have been framed by this Court.

37. The undisputed facts are the plaintiff and the defendants 1 to 4 are siblings. The fifth defendant is the wife of the first defendant. The sixth defendant is the son born to the defendants 1 and 5. The seventh defendant claims to be the owner of the suit item 22. The eighth defendant is the mortgagee of the suit items 2 to 11 at the hands of the first defendant.

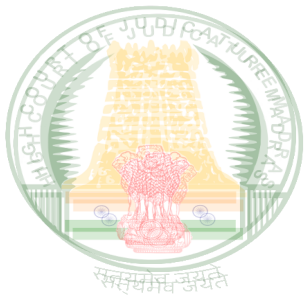
38. If I were to trace the existence of the joint family, it is evidenced under Ex.A2. This is a partition deed dated 29.05.1935, that had been entered into between the father of Govindasamy Padayatchi and himself. Under this document, Govindasamy Padayatchi's father was allotted 'A' schedule mentioned property to that document. This comprises of 10 cents of land in R.S.No.170/14 of Vallampadugai Village. Subsequently, Ex.A1 release deed was entered into between the members of the family. This release deed is dated 21.01.1943. Under this document, Thangavel Padayatchi, the other brother of Govindasamy Padayatchi, and the sons of Ramu



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Padayatchi, the paternal uncle of Govindasamy Padayatchi, had released their rights in the house property. Similarly, Ex.A8 shows that as many as six items of properties in Perumbattu Village belonged to Govindasamy Padayatchi. The trial court, as well as the lower appellate court, on the basis of these documents, have come to a conclusion that Govindasamy Padayatchi and his family, consisting of himself and his children, had sufficient properties for the purpose of generating income.

39. The other documents point out that Govindasamy Padayatchi was not a content being a farmer, but also indulged in other businesses. Ex.A25 and Ex.A26 confirms that Govindasamy Padayatchi was having chamber brick business. Similarly, Ex.A27 shows that he also had business interest in tobacco. The sales tax document of the year 1953 in Ex.A28 and Ex.A31 point out that Govindasamy Padayatchi had been generating income above Rs.750/- from the sale of bricks. The sales tax documents read with Ex.A40, namely, the contract entered into between Govindasamy Padayatchi and Neyveli Lignite Corporation (hereinafter referred to as 'NLC') points out that his business with NLC generated a sum of Rs.44,000/-. The supply was to the tune of 10,00,000 bricks.



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40. Apart from these documents, from the various promissory notes marked under Ex.A14 to Ex.A18 and Ex.A22 to Ex.A24, it is clear that Govindasamy Padayatchi had borrowed several amounts on the foot of these promissory notes for his family as well as the brick klin business expenses. In addition to the supply 10,00,000 bricks to NLC, Ex.A45 to Ex.A47 would show that Govindasamy Padayatchi was supplying bricks for the construction of a Polytechnic at Puthur. A cumulative effect of these documents points out that Govindsamy Padayatchi not only had joint family nucleus but had also been indulging himself in several other business activities, which was generating income for himself and his family.

41. Now let us turn to the argument of Mr.Srinath Sridevan that the suit items 2 to 11 were purchased by the first defendant from and out of the amounts given by Arumuga Thondanar, his paternal uncle. It is not in dispute that the first defendant was born in and around 1941. The suit items 2 to 11 have been purchased under two documents, namely, Ex.A83 and Ex.A84. The vendor of these documents was one, Subramaniya Thambiran and the

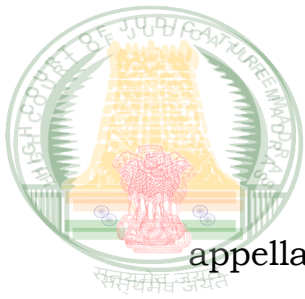


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purchaser was the first defendant. On the date of purchase, the first defendant was a mere child aged three years old. Therefore, by no stretch of imagination could it be pleaded that the first defendant had purchased the property from and out of his income. Therefore, Mr.Srinath Sridevan's client had taken a stand that the property was purchased by the funds given by Arumuga Thondanar, his uncle. In order to substantiate this plea, no person had been examined by the first defendant. The first defendant being aged only three years on the date of purchase, he is not competent to speak about source of the monies for the purchase. Apart from this, there is no evidence to show that the first defendant was living with Arumuga Thondanar.

42. Apart from Ex.A83 and Ex.A84, I will turn my attention to Ex.A80. This is a receipt issued by the trustee of the Sivapuri Madam, Chidambaram (the father of Subramaniya Thambiran) to Govindasamy Padayatchi, dated 17.09.1944. The sale deeds under Ex.A83 and Ex.A84 are dated 29.08.1944 i.e., to say within a month of transaction, the receipts had been issued.

43. I am of the view that the trial court as well as the lower



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appellate court have correctly appreciated all these documents and have come to a conclusion that the suit items 2 to 11 had been purchased in the name of the first defendant by the father, Govindasamy Padayatchi. It is not unusual in this country, for a father to purchase properties in the name of his son. The Padayatchi family in this case is not an exception to the same.

44. When the plaintiff has produced substantial evidence to show the agricultural income and the business income at the hands of the Govindasamy Padayatchi to the tune of Rs.44,000/- and above, which is a substantial value, then the burden shifts to the first defendant to prove with respect to the allegations taken by him, that the suit items in question were not purchased out of the income generated by the joint family property. I have already pointed out, apart from the *ipse dixit* of DW1, no other evidence has been put forth by the first defendant to substantiate the plea of gift by Arumugha Thondanar. Therefore, I am of the view that the factual conclusions have been arrived after perusing the evidence in a correct perspective and do not require interference.

45. Insofar as item 21 is concerned, it is not in dispute that it

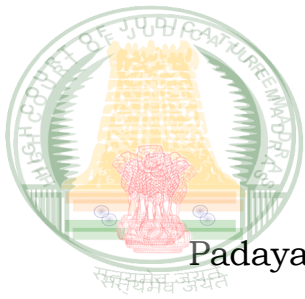


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was purchased by the father of Govindasamy Padayatchi. The defendants took an interesting plea that it was in possession of Thangavel Padayatchi under an oral gift. By the time the property could have been so treated, the Transfer of Property Act had come into force. Under section 123 of the Transfer of Property Act, there cannot be an oral transfer of a property by a Hindu. A gift deed requires a registered document.

46. With respect to item No.1, the same had been purchased under Ex.B12 to Ex.B15. The period of purchase is between 1980 and 1981 across four sale deeds. It is not disputed that Govindasamy Padayatchi died in the year 1974. After his death, the first defendant succeeded him as the Karta of the family. The evidence on record shows that the dispute between the parties arose sometime in 1986 or thereabouts. Therefore, the purchase of suit item 1, when Rathina Sabapathy was the Karta of the family, should be treated only as the property belonging to the joint family, and not for the purpose of exclusive enjoyment by the first defendant.

47. Insofar as item 20 is concerned, the property had been purchased under Ex.A71. The purchaser being Govindasamy



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Padayatchi. Ex.A3 is a sale deed for suit item 21. The purchaser of this property is the grandfather of the plaintiff and the father of Govindasamy Padayatchi. Ex.A33 also points out that Govindasamy Padayatchi was showing proof of sufficient income to the income tax department, with regards to a notice calling upon him to comply with the requirements of Income Tax Act. The other essential documents which point out to the financial status of Govindasamy Padayatchi are Ex.A19, Ex.A72, Ex.A73 and Ex.A74.

48. Ex.A12 and Ex.A13 are registered lease documents, which show that Govindasamy Padayatchi was also securing income by leasing out properties. He was also involved in a proceeding in O.P.No.22 of 1948 as is clear from Ex.A82 for the redemption of mortgaged properties. Ex.A48 shows that Govindasamy Padayatchi was doing plantain business. Ex.A22 to Ex.A24 and Ex.A45 to Ex.A47 are the receipts for sale of bricks to the business "Ashoka brick Works". The purchase of raw materials for making bricks is evidenced under Ex.A49. Hence, I do not find any reason to interfere with the findings of the fact recorded by the trial court as well as the lower appellate court, as regards the existence of a joint family properties, and the substantial income being generated from such



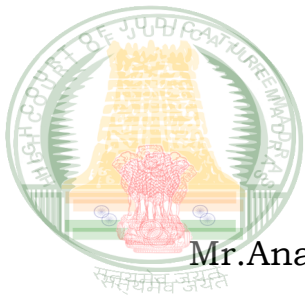
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properties and businesses.

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49. It is here, I will take note of the submissions of Mr.Srinath Sridevan, that the first defendant was doing business. It is claimed, from and out of the income generated from that business, he purchased suit item No.1. This argument though sounds very plausible, I am not in a position to accept the same, because the business carried out by the first defendant is under the name and style of "Ashoka Brick Works", which was the business carried on by Govindasamy Padayatchi. From the records, it is evidenced that the first defendant carried on the business, which had been carried on by Govindasamy Padayatchi. He assumed the business by virtue of the death of his father. He carried on the business that had been established by Govindasamy Padayatchi for the family. For the mere fact that, Govindasamy Padayatchi had passed away, does not mean that Ashoka Brick Works became a private enterprise, exclusively belonging to the first defendant. Hence, the plea of Mr.Srinath Sridevan deserves rejection and accordingly, it is rejected.

50. Before I turn my attention to the suit item 12 to 19, I have to consider the plea of Mr.Anand with respect to suit item 25.



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Mr.Anand pleads that under Ex.A70, a claim petition had been filed

by the plaintiff seeking to establish his title over the property. A perusal of Ex.A70 shows that it is only a claim petition that had been filed by him, but no orders had been passed in that proceedings holding that the property exclusively belonged to the plaintiff. Ex.A53 to Ex.A68 are house tax receipts. I have already pointed out that mere mutation of revenue records or payment of revenue receipts will not confer title on a person. On the date of purchase of suit item 25, the plaintiff was a minor. Hence, the principle that I applied for suit item 2 to 11 would also be applicable to suit item 25.

51. Insofar as suit item 22 is concerned, it need not detain us for long. The property had been leased out to the seventh defendant by Govindasamy Padayatchi, as is clear from Ex.A13. This is a document dated 07.06.1954. Though the plea had been taken by the ninth defendant that the property is the exclusive property of Kanakasabapathy, no evidence to that effect has been let in before this court. The defendants 9 to 13, who represent the estate of Kanakasabapathy, were the appellants in A.S.No.109 of 1998. A decree for partition was passed against the said defendant. The said

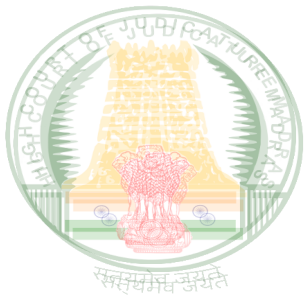


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defendant had not preferred an appeal against the decree. In the light of Ex.A13 and for the reasons given by the lower appellate court in paragraph 19 of the said judgment, I am of the view that suit item 22 is also available for partition.

52. Finally, I turn my attention to suit item 19. Suit item 19 was purchased in quick succession to suit item No.1. The purchase was on 20.03.1982. The purchaser is the sixth defendant, Rajendiran, the son of the defendants 1 and 5. He is also a part of the joint family consisting of Govindasamy Padayatchi and his sons. Hence, this property too, should be available for partition.

53. Though this court need not undertake the exercise of going through the records for satisfying itself on the source, since it was vehemently contended across the bar that suit item 1 and 25 are the exclusive properties of the first defendant and the plaintiff, this court undertook the exercise of verifying the documents, in order to come to a conclusion. I am of the view that the exercise conducted by the trial court, as well as the lower appellate court *vis-a-vis* the suit item 1 to 11, 19 and 25 are perfectly justifiable conclusions and do not require interference at the hands of this court.



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54. Insofar as the suit items 12 to 18 and 23 and 24 are concerned, they all stand in the name of the fifth defendant. It is the plea of the plaintiff that the presumption which is drawn in favour of existence of the joint family, with respect to the property standing in the name of male members, should be extended to female members also. I am not in a position to accept the submission of the learned counsel. This is because of the position of law settled for more than 150 years.

55. The earliest of the judgment that I was able to come across is the judgment in ***Sreemutty Chundermonee Dossee v. Joykissen Sircar, 1 WR 107***. The Calcutta High Court held as follows:

“There is not, so far as we are aware, any case in which it has been held, that, where property stands in the name of a female member of a Hindu family, it is to be presumed that it is the common property of the family, and that it is incumbent on a person who asserts that it is the property of the lady in whose name it stands to prove it. Nor is there any ground on which such a presumption can be founded.”

56. The view taken by the Calcutta High Court had been



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approved by the Division bench of this Court consisting of Sir

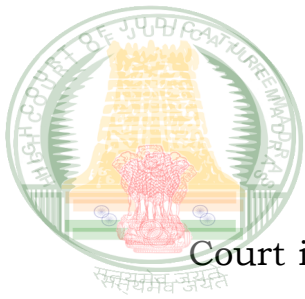
Charles Turner, C.J., and Mr. Justice Muthusami Ayyar in **Narayan**

v. Krishnan and another, (1884) ILR 8 Mad 215. Turner, C.J.,

while approving the aforesaid judgment, held as follows:

"Where a family lives in co-parcenary, the presumption which exists in the case of male members arises from the circumstance that they are co-parceners. On the other hand, the ladies are not in an undivided family co-parceners; whatever property they acquire by inheritance or gift is their separate estate, and although it is not unusual for property to be transferred to the name of a female member to protect it from the creditors of the male members, or to place it beyond the risk of extravagance on the part of the male members, such dealings are exceptional and can afford no ground for a general presumption."

57. The view that had been taken by Turner, C.J. was accepted by the Division Bench of Calcutta High court in **Protap Chandra Gope and Others vs. Sarat Chandra Gangopadhyaya, AIR 1921 Cal 101 : 62 Indian Cases 648**. When the very same position was sought to be reagitated in **Gorantala Parvatamma vs. Veeragandam Subbayya, (1931) 34 LW 704 : AIR 1932 Mad 144**, a Division Bench consisting of Sir V.Ramesam, Kt. and Cornish, JJ. approved the view that was taken by the Calcutta High



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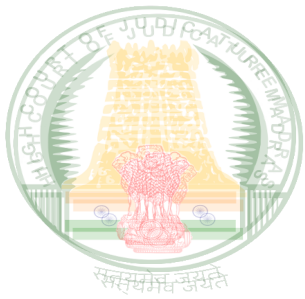
Court in **Protap Chandra Gope**'s case, and held that in a suit by a

member of joint family for partition of family property, the burden is on the plaintiff to prove that a land standing in the name of a female member of the family was really purchased as a benami in her name for some ulterior motive, such as depriving him of his rights. They further pointed out that if this burden is not discharged, it is unnecessary to examine the case further.

58. Applying these principles to the facts of the present case, all I have to do is refer to what the plaintiff has pleaded in paragraph 2 of the plaint is as follows:

"... The 1st defendant also realized good income from the joint family properties and from the Chamber (brick) business and with those amount he began to purchase properties in the name of his wife and sons. Items in 'A' schedule are the properties purchased in the name of the wife and sons of the 1st defendant."

59. When there is a lack of plea as pointed out by the Division Bench, I necessarily have to apply the view, which had been consistently held from 1872 onwards, and hold that the suit items 12 to 18, 23 and 24, which stand in the name of the fifth defendant are her exclusive properties and are not open for partition.



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60. At this juncture, I have to take note of the Parliamentary amendment to Section 6 of the Hindu Succession Act, 1956. This provision was the subject matter of interpretation in ***Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1***. The Supreme Court held that if a daughter is alive on the date of commencement of Amendment Act of 2005 i.e., on 09.09.2005, she becomes a coparcener from the date of amendment, irrespective of whether she was born before or after the amendment. Since her right as a coparcener is by birth, the court also held that it is not necessary for the father to be alive on the date of coming into force of the amendment. I have found that there existed a coparcenery with Govindasamy Padayatchi as the Karta, and after his death, the first defendant became the Karta. If that be the position, the defendants 2 to 4 will be entitled for the same share as that of the plaintiff and the first defendant.

61. When the appeal was preferred before the first appellate court, the defendants 2 to 4 were not made parties in the appeal. However, while this court is dealing with the suit for partition, it necessarily has to take into consideration the rights of the parties as



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they stood in the suit. If the daughters had not been arrayed as parties, then it would have been an issue. Yet a perusal shows that the daughters were, in fact, parties to the suit, when it was presented. The only bar in granting the relief to them would arise, if Section 6(5) of Hindu Succession Act is applicable. Admittedly, there has been no deed of partition registered between the family members, nor has the final decree been passed in the suit.

62. In view of the findings rendered hereinabove, and applying the ratio laid down in *Vineeta Sharma v. Rakesh Sharma*, cited Supra, it stands affirmed that all coparceners, irrespective of gender, are entitled to equal rights and share by birth in the joint family properties. In the present case, Suit Items 1 to 11, 19 to 22 and 25 having been declared as joint family properties, the same are now open to partition. Upon the death of Govindasamy Padayatchi in 1974, there existed seven sharers, namely, his six surviving children - Chakrapani, Rathinasabapathy, Santha Sakkubai, Allirani, Anandhavalli and Panneerselvam, together with his widow, Dhanalakshmi Ammal. One daughter, Kasthuri Bai, having



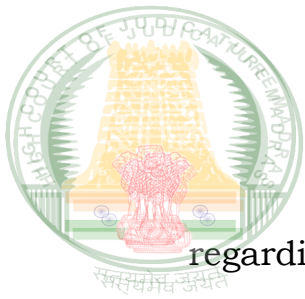
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predeceased the father and being unmarried and issueless, automatically stands excluded.

63. Accordingly, a division results in each surviving heir receiving $1/7$ th share. Thereafter, the $1/7$ th share belonging to Govindasamy Padayatchi devolves equally among the seven heirs, namely his six surviving children and his widow, resulting in each surviving child being entitled to an additional $1/49$ th share. In effect, each of the five surviving children is entitled to a final share of $1/7 + 1/49 = 8/49$ in the items declared as joint family properties.

64. Panneerselvam, having been alive at the time of the father's death, was also entitled to one such share. Since Panneerselvam died unmarried and issueless on 02.04.1981, during the lifetime of his mother, his $1/7$ th share, and additionally the $1/49$ th devolved from the father's notional share, shall devolve upon Dhanalakshmi Ammal. This is in addition to the share she receives under the Hindu Succession Act, 1956.

65. Insofar as the entitlement of Dhanalakshmi Ammal's share the parties are at liberty to work out such rights, in a separate suit



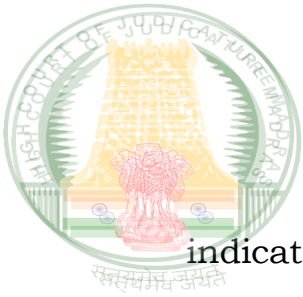
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regarding her share.

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66. With respect to the mortgage executed by the first defendant in favour of the eighth defendant-Bank in O.S. No. 59 of 1989, this Court concurs with the finding of the lower appellate Court. The liability shall bind only the allotment made to the first defendant corresponding to his entitlement of 8/49 share, and shall not, under any circumstance, burden or operate against the legitimate shares of the remaining coparceners.

67. While effecting the physical division of the aforesaid suit items, the property situated in Survey No. R.S. 94/3 (Suit Item No. 25), extent Ac. 6.70 cents in Vallampadugai Village, which contains a brick-built house and the tomb of late Govindasamy Padayatchi, and endeavour shall be made to allot the same to the plaintiff's share during the final decree proceedings. The plaintiff has specifically pleaded the existence of the said structures, and the final decree Court endeavour that the house and tomb are allotted to the plaintiff, as part of his 8/49 share, and the remaining properties shall be divided in accordance with the share proportions determined hereinabove. The Second Appeal is partly allowed as



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indicated above. Consequently, the Cross Objection stands dismissed and the connected miscellaneous petitions are closed.

Considering the close relationship between the parties, they shall bear their respective costs.

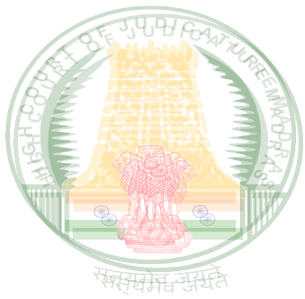
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Index : Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes/No

To

- 1.The Sub Court, Chidambaram
- 2.The Additional District Judge cum CJM Court, Cuddalore,



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V.LAKSHMINARAYANAN, J.

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