



Order QR

SA No. 1203 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-09-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 1203 of 2014 and
C.M.P.No.22964 of 2026; Caveat No.5168 of 2014 and
M.P.No.1 of 2014**

1. Kannan
S/o Munusamy Udyar
2. Saravanan
S/o Viswanathan
3. Rajabai
W/o Late Viswanathan

..Appellant(s)

Vs

1. Rajeswari
W/o Dhandapani
2. Kannika Devi(died)
W/o Annamalai
3. Mr.P.Annamalai
S/o.P.Paradai
4. Mr.A.Anandan
S/o.P.Annamalai
5. Mr.A.Shivakumar
S/o.P.Annamalai
6. Mrs.Uma Maheswari
W/o.P.Arul
7. Mrs.Priya
W/o.Kumaravel

..Respondent(s)

Respondents 3 to 7 brought on record as legal heirs of the deceased R2 vide court order dated 28.04.2021 made in M.P.Nos.1 to 3 of 2015 in S.A.No.1203 of 2014 (PTAJ)



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Prayer : Second Appeal filed under Section 100 of Civil Procedure Code as against the Decree and Judgment dated 30.07.2014 passed in A.S.No.13 of 2012 on the file of the learned Principal District Judge, Villupuram modifying the Decree and Judgment dated 13.12.2011 passed in O.S.No.145 of 2008 on the file of learned Principal Subordinate Judge, Villupuram

For Appellant(s): Mr.R.Thiagarajan
Ms.Vasudha Thiyagarajan assisted by
Mr A.Raj Prince

For Respondent(s): Mr. A.P.Neelamegavannan

J U D G M E N T

This Second Appeal has been preferred as against the Decree and Judgment passed by the learned Principal District Judge, Villupuram in A.S.No.13 of 2012 dated 30.7.2014. The appellants are the defendants and the respondents have filed the suit in O.S.No.145 of 2008 on the file of the learned Principal Subordinate Judge, Villupuram for the relief of Partition and separate possession and the said suit was decreed, except Item 24 of the suit properties. Aggrieved by the said Decree and Judgment, the defendants have preferred an appeal in A.S.No.13 of 2012 on the file of learned Principal District Judge, Villupuram and the same was modified to the effect that the plaintiffs are entitled to ½ share



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in Items 6 to 23 and 25 and $\frac{1}{4}$ share in Items 1 to 5. In respect of Item Nos.24 and 26 to 41 and the rice mill situated in Item 13, the suit was dismissed. As against the said Decree and Judgment, the defendants have preferred this Second Appeal.

2. For the sake of convenience and brevity, the parties herein are referred as plaintiffs and defendants as referred before the trial court.

3. The case of the plaintiffs before the trial court is that the Items 1 to 5 of the suit properties originally belonged to Duraisamy Udayar under sale deeds dated 20.03.1923, 30.07.1925 and 19.10.1926. The said Duraisamy Udayar had one son, namely, Munusamy Udayar, the said Munusamy Udayar had wife, Unnamalaiammal and two daughters, two sons, namely, plaintiffs and 1st defendant and one Viswanathan. The 6th Item of the property was obtained through exchange deed dated 25.11.1948. The father of the plaintiffs, namely, Munusamy Udayar was employed in Railways and through his earnings, he purchased the Items 6,8 to 16 similarly items 17 to 19 were also purchased by Munusamy Udayar. The plaintiffs' mother, Unnamalai Ammal purchased the items



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20 to 22 through sale deed dated 25.10.1962, out of her own fund and

she was in enjoyment and possession of the properties, till her lifetime.

After the demise of father and mother of the plaintiffs and defendants,

they are in joint possession and enjoyment of the said properties. In 13th

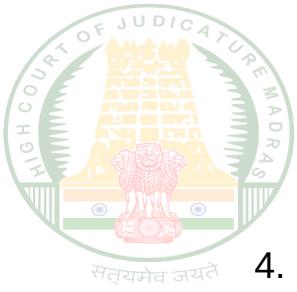
Item, rice Mill was constructed and it derives a sum of Rs.40,000/- per

month, through that income, Items 23 to 25 have been purchased. The

father of the plaintiffs, viz., Munusamy Udayar died 22.06.1997 and

Unnamalaiaimall died on 04.12.1997.

3.1. The father and mother of the plaintiffs died intestate and Viswanathan died on 07.01.2005 leaving behind the defendants 2 and 3 as his legal heirs, there was no partition between the plaintiffs and defendants and the suit properties are in joint possession and enjoyment, while so, the defendants during January, 2007 attempted to sell some of the suit properties, thereby convened panchayat and the defendants refused to partition the properties, the plaintiffs are entitled to $\frac{1}{2}$ share over the suit properties and therefore, filed the suit.



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4. The case of the 1st defendant before the trial court is that the relationship between the parties is admitted. The allegations that the suit properties are separate properties of Munusamy Udayar and he purchased the property out of his salary and own funds and mother, viz., Unnamalaiammal has also purchased Items 20 to 22 out of her funds and the rice mill has been constructed in 13th Item from the income derived from the properties and Items 23 and 25 were also purchased from those income, are all false. The suit properties are joint family properties of the 1st defendant and his brother, Viswanathan and father, Munusamy Udayar. The said Munusamy Udayar did not have sufficient independent income to buy any of the properties. The father of Munusamy Udayar, namely, Duraisamy Udayar had purchased properties and it was inherited by Munusamy Udayar and from and out of the income from the joint family properties and the joint efforts of the 1st defendant and his brother Viswanathan, all the properties including properties in the name of Unnamalaiammal had been purchased.

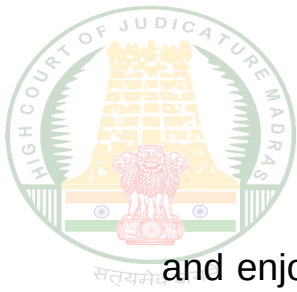
4.1. The father of the plaintiffs performed the marriage of the plaintiffs by presenting 40 sovereigns of gold jewels and motor cycle.



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The plaintiffs never demanded partition till the year 2008 and only in the year 2008, at the instigation of certain disgruntled elements in the village, the plaintiffs have started demanding partition. Items 1, 3, 4, 7 to 12 and other items not included in this suit were allotted to the 1st defendant, and Items 13 to 16 and other items not included in the suit were allotted to brother Viswanathan. Items 5 and 6 and other items not included in the suit were allotted to their father. The houses situated in Nehruji road, Door Nos.285 and 286, were given to the 1st plaintiff, House bearing Door no.3, situated at Balakrishna Naiken Street was given to the 2nd plaintiff. Therefore, the partition effected during the lifetime of father of the plaintiffs and they are in separate possession and enjoyment of the properties allotted to their respective shares. In fact, the memorandum of division was also reduced in writing subsequently on 19.09.1991 and it was signed by the 1st plaintiff. The plaintiffs, who are parties to the division have suppressed the earlier partition and filed the suit. There was no rice mill at all in Item No.13 of the property during the life time of their father, the 1st defendant out of his own efforts and from his funds with the consent of his brother, Viswanathan, constructed rice mill in the year 2002 and the same is under exclusive possession



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and enjoyment of the 1st defendant. There is no cause of action for the suit and the suit is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides, the trial court framed the following issues for trial:-

“ 1. Whether the plaintiffs are entitled to a preliminary decree for ½ share in the suit properties?

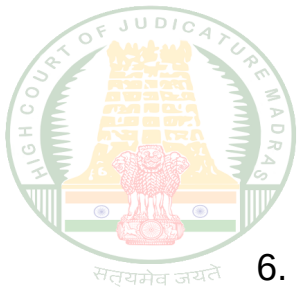
2. Whether it is correct that the suit properties are not the separate properties belonging to Munusamy Udayar?

3. Whether the suit properties are joint family properties?

4. Whether it is true that an oral partition was effected among the parties on 01.01.1991?

5. To what other reliefs, the plaintiffs are entitled to?”

Before the trial court on the side of the plaintiffs, witness P.W.1 was examined and marked exhibits Ex.P.1 to P.12. On the side of the defendants, witnesses D.Ws.1 and 2 were examined and Exs.B.1 to B.3 and Ex.X.1 were marked. After considering the evidences adduced on both sides, the trial court decreed the suit except Item 24 by granting 2/4 share to the plaintiffs.



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6. Aggrieved by the said decree and judgment, the defendants have preferred an appeal in A.S.No.13 of 2012 on the file of learned Principal District Judge, Villupuram on various grounds. The First Appellate Court framed the following points for determination:-

“1. Whether the oral partition said to have taken place on 01.01.1991 as alleged by the defendants / appellants is true?

2. Whether Ex.B.1 Koor Chit dated 19.09.1991 is admissible under law?

3. Whether the plaintiffs / respondents are entitled for ½ share in the suit properties?

4. Whether the decree and judgment passed by the lower court is sustainable under law?

5. Whether I.A.No.178 of 2013 could be allowed?

6. Whether I.A.No.103 of 2014 could be allowed?

7. To what relief if any are the defendants / appellants entitled to?”

The First Appellate Court after considering the oral and documentary evidences adduced on both sides, partly allowed the appeal on 30.07.2014 and modified the decree of the trial court to the effect that

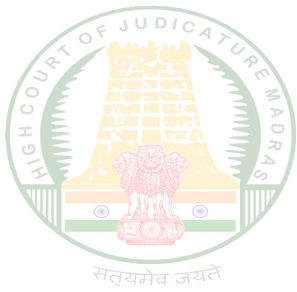


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the plaintiffs are entitled to $\frac{1}{2}$ share in Items 6 to 23 and 25 of the suit properties and in items 1 to 5 of the suit properties, they are entitled to $\frac{1}{4}$ share. In respect of Items 24 and 26 to 41 and rice mill situated in the Item 13, the suit properties, the appeal was dismissed.

7. As against the said Decree and Judgment, the defendants have preferred this Second Appeal. After receipt of notice in this Second Appeal, the respondents herein have preferred Cross Objection, during the pendency of the appeal. The Second Appeal was dismissed for non-prosecution on 20.07.2021. At that time, the Cross Objection was also closed, without passing orders on merits, thereafter, the appellants in this appeal have filed a petition to restore the appeal, but the respondents have not taken any steps in respect of cross objection. Further, the respondents have not taken any steps to restore the cross objection, even after the main appeal is restored. Later the respondents filed a memo to re-open the cross objection and the same is not sufficient to re-open the cross objection and the respondents ought to have filed a petition to re-open the cross objection. Therefore, now the present Second Appeal alone is taken up for consideration.



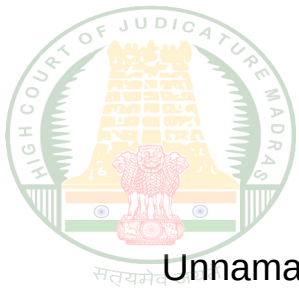
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8. During the pendency of the Second Appeal, the matter was referred to Mediation, after Mediation, the report was also submitted before this Court, unfortunately, the report was not recorded by this Court, as per the report, only the appellants 1 and 2 have entered into compromise with the respondents 1 and 2. In the meantime, the 2nd respondent died and thereby the said compromise has not been recorded. The respondents 3 to 7 were impleaded as legal heirs of the 2nd respondent.

9. The learned counsel appearing for the appellants would submit that originally the 1 to 5 properties are joint family properties of the appellants. The father of the plaintiffs and the 1st defendant, Munusamy Udayar did not have sufficient independent income to buy any of the properties. The grand father of the 1st appellant and great grand father of the appellants 2 and 3 had substantial properties and it was inherited by Munusamy Udayar and from and out of the income derived from the joint family properties, joint efforts of the 1st appellant and father of 2 and 3 appellants all other properties including the properties in the name of



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Unnamalai Ammal had been purchased. The respondents 1 and 2 were given sufficient sreedhanas during their marriage. Already individual houses were allotted to the respondents 1 and 2 and thereafter, a memorandum of division was reduced in writing on 19.09.1991, wherein the 1st plaintiff was also a party and thereafter, all the properties were enjoyed by the respective parties. The rice mill was constructed by the 1st defendant in the 13th Item of the property through his own earnings, however, the plaintiffs after knowing very well about the partition and after obtaining the properties, filed the suit. Before the trial court, on the side of the defendants, they have examined witnesses D.Ws.1 and 2 and Exs.B.1 to B.3 and Ex.X.1 were marked. However, the trial court without considering the evidences in a proper perspective, decreed the suit by granting partition $\frac{1}{2}$ share over the suit properties to the plaintiffs except 24th item.

9.1. The trial court failed to consider that items 26 to 41 were purchased in the individual names and those properties are not available for partition and the same are separate properties of the appellants. However, the First Appellate Court in the appeal modified the decree



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and judgment passed by the trial court and granted partition of $\frac{1}{2}$ shares in items 6 to 23 and 25 and granted $\frac{1}{4}$ share in items 1 to 5 and dismissed the suit in respect of Items 24, 26 to 41 items and the rice mill situated in 13th Item of the property The First appellate court failed to consider that partition was effected on 19.09.1991. The properties in the name of Unnamalaiai Ammal were purchased through joint family income, but the same has not been considered by the trial court and the First Appellate Court. The courts below failed to consider that both the plaintiffs were allotted separate houses and they are in exclusive possession and enjoyment of the same. The First Appellate Court rendered perverse findings that the items 1 to 23 and 24 are available for partition and thereby the Judgment and Decree passed by the First appellate Court are liable to be set aside.

9.2. Further, the learned counsel appearing for the appellants would submit that during the pendency of the Second Appeal, the matter was referred for mediation and in the mediation, settlement was arrived at between the parties. Unfortunately, the settlement was not recorded by this Court due to Covid-19. In the meantime, the 2nd respondent died

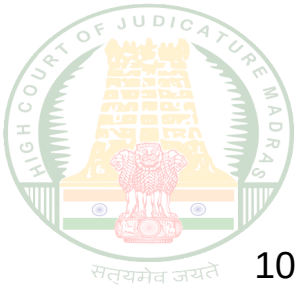


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and the legal heirs of the 2nd respondent have been impleaded and now, the parties are not agreeing for settlement. Therefore, once the mediation progress has been completed, the parties cannot deny the settlement arrived at between the parties and therefore, as per the mediation report, the appeal shall be disposed of.

10. The learned counsel appearing for the respondents would submit that the respondents are the plaintiffs, who filed the suit for partition in respect of their ½ share over the properties. In fact, the suit properties are separate properties of the plaintiffs' father and mother, namely, Munusamy udayar and Unnamalaiammal. The items 1 to 5, 6, 8 to 19 properties were purchased by Munusamy Udaiyar from his own earnings, items 20 to 22 were purchased by Unnamalaiammal through sale deed dated 25.10.1962. The said Munusamy Udayar and Unnamalai ammam were died in the year 1997. The brother of the plaintiffs, namely, Vishwanathan died on 07.01.2005 and the defendants 2 and 3 are legal heirs of Viswanathan, therefore, the properties are under joint possession and enjoyment of the plaintiffs and defendants. When the plaintiffs demanded for partition, the defendants denied the partition, thereby filed the suit.



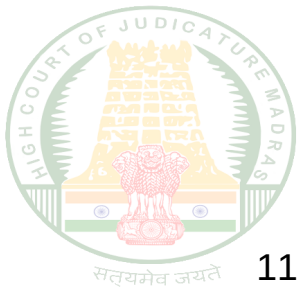
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10.1. In order to prove the case of the plaintiffs, witness P.W.1 was examined and marked exhibits Ex.P.1 to P.12. The trial court after considering the evidences adduced on both sides decreed the suit except Item 24 by granting $\frac{1}{2}$ share over the properties, further, the First Appellate Court without considering the evidence in a proper perspective and settled legal principles of law, granted partition of $\frac{1}{2}$ share in respect of the properties in items 6 to 23 and 25 and granted partition of $\frac{1}{4}$ share in respect of 1 to 5 suit properties and dismissed the suit in respect of items 24, 26 to 41 and 13th item of the suit properties.

10.2. After receipt of notice in this appeal, the respondents also preferred cross objection and the same was pending. Since this Second Appeal was dismissed for non-prosecution, at that time, the cross objection also closed by this Court. Thereafter, this Second appeal alone was restored and once the appeal is restored, the cross objection also able to be restored, thereby the respondents have not taken any steps to re-open the cross objections, therefore, prayed to dismiss the Second Appeal and restore the trial court judgment.

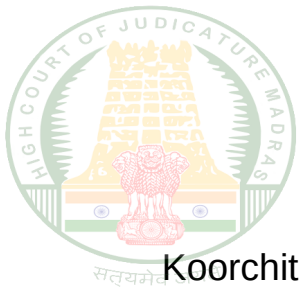


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11. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused the documents placed on record.

12. In this case there is no dispute in respect of the relationship between the parties. According to the plaintiffs, Items 1 to 19 belonged to Munusamy Udayar, father of the plaintiffs and 1st defendant and grand father of 2 and 3 defendants. Items 20 to 22 properties were purchased in the name of Unnamalai ammal through her own funds. The said Munusamy Udayar and Unnamalai ammal died intestate leaving behind the plaintiffs and defendants 1 to 3 as their legal heirs to succeed their estate thereby the plaintiffs are entitled to $\frac{1}{2}$ share in all the properties. According to the defendants, 1 to 5 items of the properties are ancestral properties, thereafter, other properties are purchased from the earnings of the 1st defendant and his brother, Viswanathan, who is father of the 2 and 3 defendants including property purchased in the name of Unnamalaiammal, therefore, the properties are ancestral joint family properties and thereby the plaintiffs are not entitled to any share. The properties are joint family properties of the 1st defendant and his brother, Viswanathan, thereafter, the properties were partitioned through Ex.B.1,



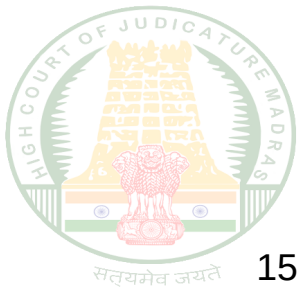
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Koorchit. Already house properties were allotted to the plaintiffs and their marriage was also performed by the father of the plaintiffs, thereby they already received share, once again they are claiming share over the properties.

13. It is an admitted fact that items 1 to 5 were purchased by Duraisamy Udaiyar. After the demise of said Duraisamy Udaiyar, the said Munusamy udayar father of the plaintiffs is entitled to the properties as a first class legal heir. The said Duraisamy Udayar died intestate and after Duraisamy Udayar, his son, viz., Munusamy Udayar is entitled to the properties, thereby the said properties are separate properties of Munusamy Udaiyar and all the legal heirs of Munusamy Udayar are equally entitled to share.

14. As far as other properties are concerned, the Items 6 to 19 properties were purchased by Munusamy Udayar and the same has not been denied by the defendants, therefore, in Items 1 to 19 each plaintiffs and 1st defendant are entitled to $\frac{1}{4}$ share and the defendants 2 and 3 are jointly entitled to $\frac{1}{4}$ share.

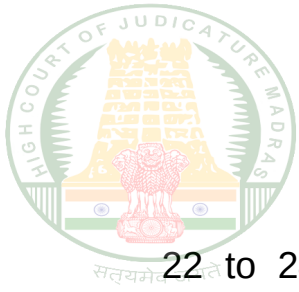


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15. As far as properties, which are in the name of mother of the plaintiffs and 1st defendant are concerned, according to the plaintiffs, those properties were purchased by their mother through her own earnings and to that effect, sale deeds were also produced Ex.A.8 dated 25.10.1962. Though the defendants stated that the properties were purchased in the name of Unnamalaiammal through earning of the defendants 1 and 2, there is no evidence to substantiate their claim. Once the properties are purchased in the name of female, those properties are her absolute properties, as per Section 14(1) of Hindu Succession Act. Therefore, the properties stands in the name of Unnamalaiammal, i.e., Items 20 to 22 are separate properties of Unnamalaiammal and thereby the plaintiffs and defendants are entitled to the properties, plaintiffs each are entitled to $\frac{1}{4}$ share, the 1st defendant is entitled to $\frac{1}{4}$ share and the defendants 2 and 3 are jointly entitled to $\frac{1}{4}$ share.

16. As far as Items 23 to 25 are concerned, according to the plaintiff, the 13th item is a common property, in which the joint family only constructed a rice mill and only out of income through joint family items



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22 to 24 were purchased, but no proper evidence adduced by the plaintiffs, whereas the defendants proved that the rice mill in the 13th Item was constructed by the 1st defendant. Moreover, P.W.1, admitted that rice mill was constructed by the 1st defendant. Items 22 to 24 are movables and the trial court dismissed the suit as against the 24th Item five motor cycles as they are not available. There is no appeal as against the dismissal in respect of 24th Item.

17. Though the defendants pleaded about partition deed dated 01.01.1991, there is no evidence to substantiate their contention and the Ex.B.1 is not sufficient to prove the partition between the parties.

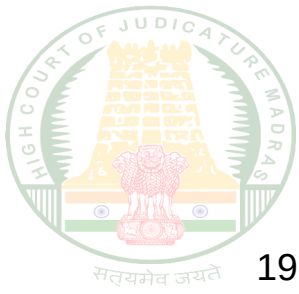
18. As far as items 26 to 41 are concerned, the plaintiffs have not filed the suit as against the Items 26 to 41, however, after the plea taken by the defendants for partial partition, those properties were impleaded and there are no records to show that those properties are joint family properties, but the same were purchased by the 1st defendant and his brother, thereby those properties are not available for partition and there



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are no pleadings in the plaint with respect to those properties, therefore, those properties cannot be subjected for partition, however, the trial court without considering that the properties, viz., items 26 to 41 are not available for partition and no records to show that those properties were joint family properties available for partition, granted decree including those properties, however, the First Appellate Court correctly held that the properties in items 26 to 41 are not available for partition and only based on the plea taken by the defendants, those properties have been included and no records to show that those properties are joint family properties available for partition. The said finding of the First appellate court are in accordance with law and the same warrants no interference. However, the First Appellate Court also considered that the properties of Duraisamy Udayar are ancestral properties and thereby the plaintiffs are entitled to shares. The First Appellate Court correctly appreciated the facts and law and rendered correct findings, thereby the Judgment and decree passed by by the First Appellate court are in accordance with law and warrants no interference.

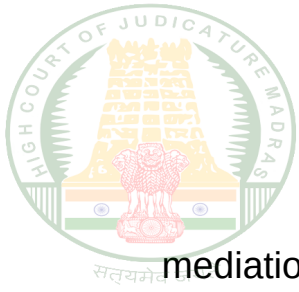


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19. Though this Court in the previous paragraphs came to a conclusion that the plaintiffs each are entitled to $\frac{1}{4}$ share in Items 1 to 25, except Item 24, the First Appellate Court treated the 1 to 5 items properties as ancestral properties of the plaintiffs and defendants as against the same, though cross objection has been filed by the respondent / plaintiffs that was already closed and thereafter not restored, thereby they have no grievance about the shares allotted by the First Appellate Court, hence findings of the First Appellate Court need not be interfered with, as the parties themselves admitted.

20. As far as arguments of the appellants' counsel in respect of the mediation report, viz., that mediation was recorded on 02.12.2014 and the same was forwarded to this Court on 02.02.2015 and thereafter, it was not recorded by this Court are concerned, it is seen that one of the party to the mediation report died, both the parties have not taken any steps to record the said mediation report and the mediation report is only interim report. Even according to the mediation report, the 3rd appellant, has not participated in the mediation proceedings and only the appellants 1 and 2 and the respondents 1 and 2 alone signed in the

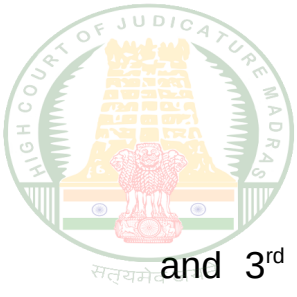


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mediation agreement. Even according to the mediation report, the appellants and respondents agreed that they will measure the land and with the sketch of the same, execute the final agreement for settlement of properties between them and further, parties to the agreement agree that they will complete division of properties by metes and bounds within three weeks from that date, therefore, mediation report is not complete compromise between the parties and they agreed to some settlement and to that effect they have to execute final agreement and they have to complete the division of properties by metes and bounds and that exercise has not been completed between the parties, therefore, mediation report cannot be taken as a complete report and that is only an interim report. Therefore, the arguments of the counsel for the appellant have no merits in respect of mediation agreement.

22. Moreover, during the pendency of the present Second Appeal, the appellants have filed a petition to receive additional documents in C.M.P.No.22964 of 2026 by stating that those documents are very essential to decide the case and the 1st document is Will dated 01.02.1997, 2nd document is the family arrangement dated 02.07.2019



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and 3rd document is the suit and certified copies of the decree in O.S.No.8 of 2020 on the file of the First Additional Subordinate Judge, Villupuram. The respondents opposed to allow this petition by stating that the First Document is unregistered Will and the same is of the year 1997, but the same has not been produced before the trial court and there are no pleadings to that effect and the 2nd document, viz., family arrangement is subsequent to the suit based on the mediation report and mediation itself has not been recorded and as far as 3rd document is concerned, it is collusive suit between the parties and these respondents are not party to the suit and the suit is subsequent to the appeal and the same is not binding upon the respondents, therefore, those documents are not relevant to this case.

22.1. This Court perused entire records and they reveal that there are no grounds raised to receive the said documents as additional evidence as per Order 41 Rule 27 of C.P.C., and those documents are not essential and the available documents are sufficient to decide the case. The said documents filed by the appellants are no way helpful to decide the case, therefore, the said documents cannot be received and



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this petition, viz., **C.M.P.No.22964 of 2026** has no merits and deserves to be dismissed.

22. It is pertinent to point out that the respondents have not proceeded the cross objection after it was closed and even after the restoration of this Second Appeal, therefore, the respondents / plaintiffs admitted the Judgment and decree passed by the First Appellate Court and the plaintiffs themselves satisfied with the findings of the First Appellate Court. Further, the respondents have filed a memo dated 21.07.2025 to reopen the cross objection no.4 of 2015 and the same is not sufficient to reopen the case and the respondents have to file appropriate petition to reopen the case by stating adequate reasons. Further, no order has been passed by this Court in the said Memo and thereby the respondents have not taken any legal steps to restore the cross objections. Further, on perusal of the entire materials and grounds of appeal, it is seen that there are no substantial questions of law involved in this case, thereby the Second Appeal has no merits and deserves to be dismissed.



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In the result, the Second Appeal is dismissed and the C.M.P. No.22964 of 2026 is also dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

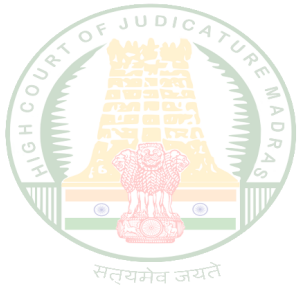
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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

ssd

To

1. The Principal Subordinate Judge, Villupuram
2. The Principal District Judge, Villupuram



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