



S.A.No.856 of 2025  
and C.M.P No.32983 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2026

CORAM:

**THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI**

**S.A.No.856 of 2025**  
**and C.M.P. No.32983 of 2025**

K.P.Muthusamy

... Appellant

VS

1.K.M.Sureshkumar  
2.K.M.Poorani

... Respondents

**Prayer :** Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 26.08.2025 passed in A.S. No.34 of 2013, on the file of the IV Additional District Court, Udumalapettai, upholding the decree and judgment dated 27.07.2012 passed in O.S.No.40 of 2010, on the file of the Subordinate Court, Udumalapettai.

|                 |                                       |
|-----------------|---------------------------------------|
| For Appellant   | : Mr.N.Thiagarajan                    |
| For Respondents | : Mrs. Hema Sampath<br>Senior Counsel |



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### **JUDGMENT**

This Second Appeal is filed praying to set aside the judgment and decree passed in A.S.No.34 of 2013 on the file of the IV Additional District Court, Udumalapettai, dated 26.08.2025, by which the learned IV Additional District Judge, confirmed the judgment and decree dated 27.07.2012 passed in O.S.No.40 of 2010 on the file of the Subordinate Court, Udumalapettai.

2. For the sake of convenience, the parties are addressed as per their ranking before the trial court. Challenging the concurrent findings of the Courts below the defendant has preferred this appeal.

3. The respondents herein / the plaintiff filed the suit in O.S.No.40/2010 on the file of the Subordinate Court, Udumalapettai, claiming their lawful 1/3rd share each in the suit properties as described in the plaint schedule stating that it is joint family properties, in which the plaintiffs and their father each entitled to 1/3rd share but their father refused to give their share. Therefore, they come forward with the suit for



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partition. The said suit was contested by the appellant / defendant stating that due to difference of opinion with the plaintiffs, there was a panchayat held in the presence of the village elders namely, one Kumarasamy and Marudhamuthu, wherein orally an arrangement was made in respect of division of the properties in which 60 cents was allotted to the plaintiffs as they were living in other places and remaining extent of 9 acres 40 cents was allotted to this defendant since he was suffered with family needs and other liabilities. Accordingly, possession has also been taken by all the sharers and subsequently the said family arrangement was reduced into writing on 19.08.2007 in the presence of Notary Public at Pollachi, in which the plaintiffs were also signatories, but suppressing the said family arrangement they have come forward with the present suit, which is not maintainable and prayed to dismiss the Suit.

4. Before the trial court both the parties adduced evidence. The learned Trial Judge, on considering the oral and documentary evidence, finally held that the alleged family arrangement was not been proved by the defendant in all the signatures found in the document (Ex.B1) is that of the plaintiffs by comparing the signatures found in their marriage



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registration certificates (Ex.X1 to Ex.X4) and also held that the alleged oral partition in the presence of panchayatdhars also not been proved, thereby held that the family properties are joint family properties in which the plaintiffs each entitled  $1/3^{\text{rd}}$  share, accordingly the suit was decreed as prayed for.

5. Aggrieved over the said findings, the defendant has preferred an appeal in A.S.No.34 of 2013 before the IV Additional District Court, Udumalapettai. The first appellate judge has analysed the entire facts and evidence and framed separate point for consideration and finally held that the suit properties are joint family properties in nature. As per the compromise decree held in OS No.272 of 1994 in which the plaintiffs and the defendant each entitled to  $1/3^{\text{rd}}$  share and the alleged oral partition pleaded by the defendant not been proved, so also the family arrangement not been proved as required under law and also held that the signatures found in the said family arrangement (Ex.B1) also not belongs to the plaintiffs. Thereby the learned first appellate judge held that the burden cast upon the defendant in respect of proving oral partition as well as subsequent family arrangement not been proved. On the other hand, the

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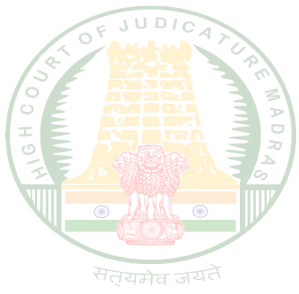
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plaintiffs established that the suit properties are joint family properties in nature and they are entitled to 1/3<sup>rd</sup> share. As on date no division was taken place. Accordingly, the findings of the Trial Court was confirmed and dismissed the appeal. Aggrieved over the concurrent findings of the Courts below, the defendant has preferred the present second appeal.

6. Heard Mr.N.Thiagarajan, learned counsel for the appellant and Mrs. Hema Sampath, learned Senior Counsel for the respondents.

7. The learned counsel for the appellant argues that both the courts below failed to take note of the fact that the plaintiffs have not specifically denying their signatures found in Ex.B1 and even the second plaintiff not entered into the witness box to deny the signature in Ex.B1. In spite of that, the Courts below erroneously held that Ex.B1 is not a true and valid document and it is a fabricated one and also without any expert opinion the comparison of the signatures made by the courts below by comparing the signatures along with Ex.X1 to Ex.X4, as such is erroneous and liable to be set aside. The learned counsel for the appellant further pointed out that the Courts below failed to take note of the fact

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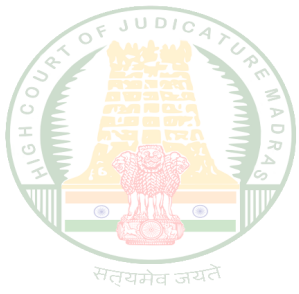
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that one of the witness Maruthamuthu was already died and another witness DW2 was not permitted to adduce evidence due to the threatening made by the plaintiffs. Therefore, the best efforts made on the side of the defendant to prove Ex.B1-family arrangement was failed to be take note of by the courts below and erroneously held that the burden of discharge cast upon the defendant was not satisfactorily acted upon, as such is an erroneous finding and liable to be set aside.

8. The learned counsel for the appellant would also argues that in respect of oral panchayath partition held among the sharers, one of the panchayatdhars Maruthamuthu was already died and another witness Kumarasamy was threatened by the plaintiffs so he was not able to examine the said witness to that effect. The Courts below erroneously failed to appreciate those circumstances for non examination of witnesses and erroneously concluded that Ex.B1 has not been proved and also invalid under law as such is illegal and liable to be set aside. The learned counsel also pointed out that the Notary Public was already died and there is a presumption attached to the validity of the signatures of the Notary Public, but the Courts below failed to take note of legal proposition and

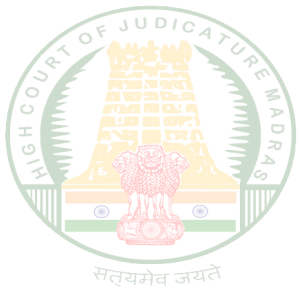
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erroneously concluded that Ex.B1 is not valid one and gave an erroneous finding, which is liable to be set aside. The learned counsel also submits that comparison of the signatures found in Ex.X1 to Ex.X4 which are all the marriage certificate of the plaintiffs by the courts below along with signatures found in Ex.B1 without referring to the expert opinion to that effect and also the applications filed by the plaintiffs was also dismissed as it was a belated one. Therefore, no scientific opinion was obtained with regard to the signatures found in Ex.B1, without which the findings rendered by the courts below that it is an invalid document under law, is an erroneous finding and the same is liable to be set aside. Further he argues that as per the oral arrangement, 60 cents given to the plaintiffs are the lands with minerals. Considering the said potentiality, 60 cents was allotted to the plaintiffs and the remaining barren land given to the appellant which was also not taken into consideration by the Courts below. Therefore, he prayed to admit the appeal by quoting the substantial question of law with regard to the validity of Ex.B1 family arrangement.

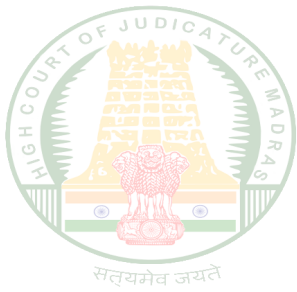


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9. The learned counsel for the respondents also appeared. Before admitting the appeal, the parties are directed to appear before this Court to settle the issue amicably, but the defendant is not inclined to settle the issue. Therefore, arguments were advanced on both sides with regard to the admissibility of the appeal. The learned counsel for the respondents also submits that the defendant / appellant, who claim that the property was already divided based on the oral panchayatdhars as well as family arrangement (Ex.B1) and the burden is cast upon him to prove the same, but he failed to prove the same before the Trial Court, which was rightly appreciated by the courts below, which requires no interference. The learned counsel for the respondents also pointed out that even a bare comparison of signatures found in Ex.B1 along with signatures found in Ex.X1 to Ex.X4, which are contemporaneous documents and the court is empowered to compare the signatures and such power was exercised by the courts below and rightly concluded that the signatures differs in Ex.B1 as well as in the marriage registration document (Ex.X1 to Ex.X4). Thereby the courts below rightly held that the signatures does not belongs to plaintiffs and the same was not disputed by the defendant to send those documents to the Forensic Lab for obtaining opinion. Therefore, the

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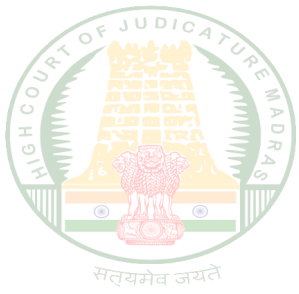
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findings with regard to Ex.B1 is sustainable one, which requires no interference.

10. It is admitted fact that the suit properties belongs to the ancestral joint family properties and as per the decree passed in OS No.272 of 1994, there was a compromise decree on 23.12.1994, based on which the plaintiffs and the defendant each entitled to 1/3rd share. So admittedly it follows from the ancestral properties and the defendant also not disputed the nature of the property. Therefore, the courts below rightly concluded that it is a joint family properties. Now the plaintiffs claiming 1/3<sup>rd</sup> share in the suit properties stating that their father has misused to give the share.

11. As discussed above the properties are joint family properties, primarily established by the plaintiffs. As per the defendant / appellant, the properties were already orally partitioned in the presence of panchayatdhars on 19.08.2007 in the presence of Kumarasamy and Maruthamuthu in which 60 cents was allotted to the plaintiffs share and remaining 9.40 cents were allotted to the defendant. Thereafter, in

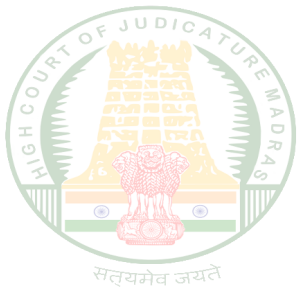


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furtherance of the sale, the said oral arrangement was reduced into family arrangement on 18.05.2008 (Ex.B1) in the presence of Notary Public. The plaintiffs also signed in that document, but suppressing that the suit was filed by the plaintiffs. Therefore, burden cast upon the defendant to prove the oral arrangement in the presence of panchayatdhars so also the family arrangement executed by the Notary Public. To prove the panchayat held in the family, the defendant has not adduced any evidence, stating that one of the panchayatdhars Maruthamuthu was died and another witness was threatened by the plaintiffs, but no contradictory evidence to that effect. However, it reveals that one of the witness was available but they were not brought to the court as per the manner known to law. Therefore, both the courts below rightly held that the panchayat held by the family not been proved by the defendant. In respect of Ex.B1-family arrangement, the defendant examined one Thangavelu as a scribe of the said document. Admittedly, the said Thangavelu PW2 is not a attesor of the said Ex.B1. He said to be a scribe. Since he is not a attesor, his evidence cannot be taken into consideration with regard to attestation as per his signature affixed by the plaintiffs. Here also the defendant contended that one attesor died and another attesor was

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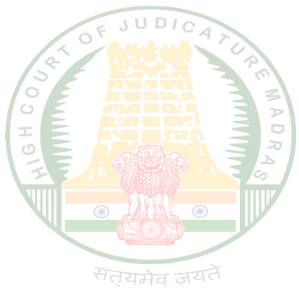
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threatened by the plaintiffs. In the absence of any contradict evidence, it cannot be acceptable one.

12. The defendant has relied on Ex.B2- copy of the FIR dated 24.12.2011 but that alone is not sufficient to conclude that the witnesses were threatened by the plaintiffs, which requires further evidence. Admittedly, the alleged Notary Public also died. Even as the evidence of DW2- scribe, he was unable to identify the plaintiffs. Therefore, his evidence also not supported by the defendant. But the plaintiffs were present on the date of the alleged execution of Ex.B1. In all aspects, Ex.B1 has not been proved to establish the family arrangement as claimed by the defendant. Furthermore the signatures in Ex.B1 also disputed by the plaintiffs stating that it does not belongs to them. At the time of the alleged circumstances they were got married and settled some where else in Bangalore and Chennai. However, the marriage registration certificate of both the plaintiffs were produced before the court with the help of Registrars and the signatures found in Ex.X1 to Ex.X4 was compared along with the signature found in Ex.B1 wherein the trial judge had elaborately discussed and stated that the signatures found in Ex.B1 totally

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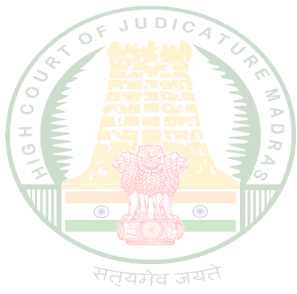
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differs from the signatures found in Ex.X1 to Ex.X4. The signatures found in Ex.B1 is a very artificial one, comparing to the alignment of the said signatures with admitted signatures of Ex.X1 to Ex.X4. Therefore the findings rendered by the learned Trial judge requires no interference. In fact, burden is heavily upon the defendant to prove that the signatures found in Ex.B1 belongs to plaintiffs, but he has not taken any steps to send the document for comparison. Therefore, Ex.B1 has not been proved. The Court below has rightly rendered findings which requires no interference.

13. Admittedly, the suit properties are joint family properties in which the plaintiffs and the defendant equally entitled to 1/3<sup>rd</sup> share. The alleged oral partition claimed by the defendant as in-equal in nature is not permissible under law. The averment of the plaintiffs proved that in the joint family properties, each entitled to 1/3<sup>rd</sup> share total extent of 10 acres. The findings rendered by the courts below is well reasoned and requires no interference. There is no substantial question of law involved in the present second appeal. There is no merit in this appeal and the second appeal is liable to be dismissed.

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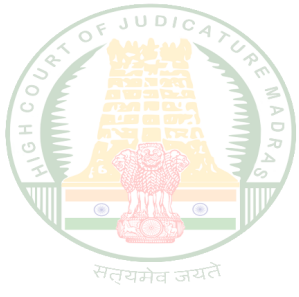
14. Accordingly, this Second Appeal stands dismissed, confirming the decree and judgment dated 26.08.2025 passed in A.S. No.34 of 2013, on the file of the IV Additional District Court, Udumalapettai, upholding the decree and judgment dated 27.07.2012 passed in O.S.No.40 of 2010, on the file of the Subordinate Court, Udumalapettai. Considering the relationship between the parties, there is no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

**21.01.2026**

Index: Yes/No  
Internet: Yes/No  
Speaking/Non-Speaking order  
mtl

To

1. The IV Additional District Court, Udumalapettai.
2. The Subordinate Court, Udumalapettai.
3. The Section Officer, VR Section, High Court, Madras.



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**T.V.THAMILSELVI, J.**

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