



SA(MD). No.731 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 22.04.2026

Delivered on : 30.04.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

**SA(MD). No.731 of 2024
and
CMP(MD)No.17730 of 2024**

Subashini, ... Appellant / Appellant / Plaintiff
Vs.

1. P.Selvaraj
2. S.Padmavathi
3. Pushpavalli
4. Sujatha ... Respondents / Respondents / Defendants

PRAYER :- Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No.7 of 2021 on the file of the First Additional District and Sessions Court (PCR), Tiruchirappalli, dated 06.09.2022 confirming the judgment and decree passed in O.S. No.97 of 2016 on the file of the Sub Court, Thuraiyur dated 04.10.2019 in so far as Item Nos.3 to 6 of the suit properties are concerned and to allow this appeal.



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For Appellant : Mr.C.Jeyaprakash,

For Respondents : Mr.D.Shanmugaraja Sethupathy for R1

: No appearance for R3 and R4

: R2- Unserved

JUDGMENT

The plaintiff in a suit for partition is the appellant herein. The plaintiff filed a suit for partition claiming right in six items of properties being agricultural lands and a residential house. The plaintiffs were originally two in number, viz., the appellant herein and the fourth respondent herein, her sister. Pending the suit, the fourth respondent /sister was transposed as the fourth defendant as according to the appellant, she colluded with the father of the first respondent. However, neither the fourth respondent nor the respondents 2 and 3, contested the suit, it was only the father of the plaintiff / appellant, the first respondent, who contested the suit by filing a written statement.



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2. I have heard Mr.C.Jeyaprakash, learned counsel for the appellant and Mr.D.Shanmugaraja Sethupathy, learned counsel for the first respondent. The second appeal is yet to be admitted.

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4. The learned counsel for the appellant would firstly contend that the father of the appellant had admitted to the fact that the item Nos. 1 and 2 are ancestral properties. However, without noticing the said admission of the first defendant, the trial Court dismissed the suit in toto. As against the same, the plaintiff, preferred an appeal in A.S.No.7 of 2021. The first appellate Court partly allowed the appeal, by granting partition in respect of item Nos.1 and 2 alone, while rejecting the appeal insofar as the remaining items of lands as well as the house properties.

5. The learned counsel for the appellant would specifically invite my attention to the evidence of D.W.1 and D.W.2, where the witnesses



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have admitted that they did not have any independent source of income, excepting the income from the agricultural lands. The learned counsel would therefore state that in the teeth of such admission, it is clear that all the items of properties had been purchased by the father only from and out of the property income acquired from item No.2 and in such circumstances, the first appellate Court ought to have granted a decree for partition in respect of all items. The learned counsel would further state that D.W.2-paternal uncle of the father of the appellant for the first time during trial, put forth a contention that the paternal aunt had executed the Will in 1948, in favour of the father of the first defendant and the first defendant has inherited the said property and therefore it is his self acquired property.

6. It is the contention of the learned counsel for the appellant that there was no such pleadings in the written statement filed by the first defendant and in any event, the Will had not been proved, by examining the witnesses in the said Will. In that regard, the learned counsel also took me through the evidence of D.W.1, who admitted that he does not know about the witnesses, who attested the Will. The learned counsel



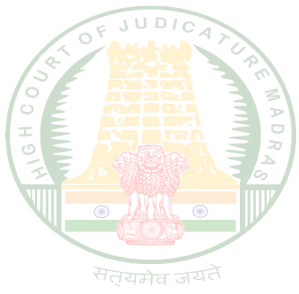
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for the appellant would therefore state that the defendants had not established that the item Nos.3 to 6 properties were self acquired properties of the first defendant and consequently, the plaintiff / appellant was entitled to a share in these items as well.

7. Insofar as the house property, it is the contention of the learned counsel for the appellant that the patta was mutated in the name of grandfather and in a portion of the said property, a residential house was constructed from and out of the income accruing through from and therefore, this item of the property is also available for partition. The learned counsel would therefore pray for the suit being decreed in respect of the disallowed items.

8. The learned counsel for the appellant has relied on the following judgments:

1. Judgment of the Hon'ble Supreme Court in ***D.S.Lakshmaiah v. L.Balasubramanyam*** reported in ***2003-10-SCC-310***; and
2. Judgment of this Court in ***Packiyam Ammal v. Pattu Ammal*** reported in ***AIR-1999-Madras-383***.



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9. Per contra, Mr.D.Shanmugaraja Sethupathy, learned counsel for the first respondent would state that insofar as the house property, it is constructed on grama natham land and grama natham patta had been issued to the grand mother and he would further state that the appellant is only a daughter, who was married and she does not reside in the locality, whereas, the first respondent is residing in the said house constructed by him in a portion of the grama natham lands in respect of which, patta has been mutated only in the name of the grandmother of the appellant, that is the mother of the first respondent.

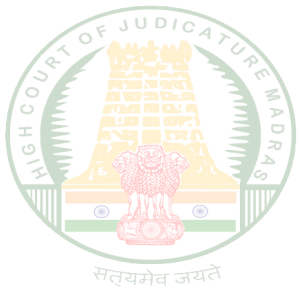
10. Taking me through the evidence of D.W.1 and D.W.2, Mr.D.Shanmugaraja Sethupathy, learned counsel for the first respondent would state that there is no admission with regard to the purchase of item Nos.3 to 6 or construction of the house in item No.7 from and out of income from item Nos.1 and 2. Drawing my attention to the relevant portions of the deposition, the learned counsel would contend that the admission is only with regard to the fact that the properties were acquired and the construction was made from the income accrued from the



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agricultural lands / suit properties. It is their contention that an interpretation is sought to be given by the learned counsel for the appellant that it should be taken as an admission that the income was accruing from item Nos.1 and 2 alone, cannot be correct.

11. The learned counsel would further state that even in the plaint, there is no specific averments that item Nos.3 to 6 were purchased from and out of the excess income available and accruing from the ancestral properties in item Nos.1 and 2 and without there being any pleadings, no issue also framed, he would contend that it is not open to the appellant to now advance his submissions in this regard. With regard to the evidence of D.W.2, the learned counsel would state that when the plaintiff has approached the Court claiming that the properties are ancestral properties, it is for the plaintiff to establish the said factum and she cannot take advantage of the weakness in the defendant's case and rely on the evidence of D.W.2 with regard to the Will executed by the paternal aunt under which title came to be vested to the first respondent.

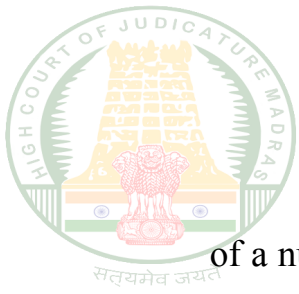


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12. I have carefully considered the submissions advanced by the learned counsel for the parties.

13. The relationship between the parties is not in dispute. Though the suit was originally filed by the daughters of the first respondent. Pending the suit, one of the daughters was transposed as the fourth defendant and thereafter, the parties went for trial. The trial Court found that the plaintiff was not entitled to any share and dismissed the suit in *toto*. However, the first appellate Court found that there was an admission that item Nos.1 and 2 were ancestral properties and therefore, the appellant could not have been denied the share atleast in these two items. In respect of other items, the first appellate Court found that the plaintiff had not adduced any evidence and the said properties were also joint family properties. Hence, available for partition.

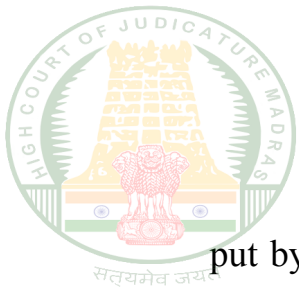
14. According to the learned counsel for the appellant, relying on the decision of the Hon'ble Supreme Court in ***D.S.Lakshmaiah***'s case as well as the decision of this Court in ***Packiyam Ammal***'s case the plaintiff has discharged the initial burden by establishing the existence



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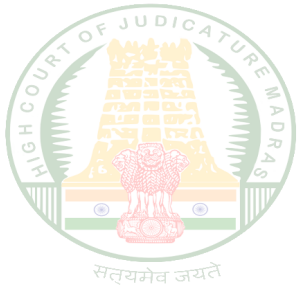
of a nucleus and raising a presumption that the acquisition was from and out of the said nucleus available to the joint family and the onus thereafter shifted to the first respondent to establish that the properties were acquired by him without aid of the said nucleus. However, I am unable to apply the said decisions of the facts of the present case for the simple reason that the plaintiff has not discharged the initial onus on her. In order to establish that item Nos.3 to 6 properties were purchased from and out of joint family nucleus, strong reliance is only placed on the alleged admission made by the first respondent, with regard to the existence of the nucleus and that father did not have any other independent source of income.

15. On going through the pleadings and evidence, I find that the categorical case of the father is that item Nos.3 to 6 are his self acquired properties, which are also incidentally agricultural lands and in general terms, he had stated that he does not have any other source of income, excepting income from agricultural properties. He has stated that the income from and out of agricultural properties, the house was constructed in the 7th item of the property. There is not even a suggestion



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put by the plaintiff that the only income accruing to the first respondent is from item Nos.1 and 2 alone. When the first respondent's father had specifically asserted an independent right to the other independent lands comprised in item Nos.3 to 6, the income that accrued from item Nos.3 to 6, would certainly be his separate income and therefore, I do not see any evidence adduced by the first defendant/ first respondent to be an unequivocal admission that the properties in item Nos.3 to 6 were also purchased from and out of the income accrued from item Nos.1 and 2 alone. The first appellate Court has rightly assessed and appreciated the evidence on record and come to the right conclusion that the trial Court was an error in declining relief insofar as item Nos.1 and 2, which were admittedly ancestral properties. However, at the same time, the first appellate Court dismissed the suit in respect of the other items, clearly finding that the plaintiff had miserably failed to establish that the properties which had been acquired from and out of the excess income accruing from ancestral properties in item Nos.1 and 2. I do not see any illegality or perversity in the decision of the first appellate Court, warranting interference. No substantial questions of law arise for consideration.



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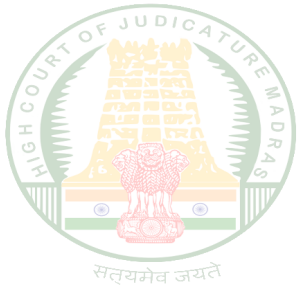
16. In fine, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

30.04.2026

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
LS

TO

1. The First Additional District and Sessions Court (PCR),
Tiruchirappalli.
2. The Sub Court,
Thuraiyur
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

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**Pre-delivery Judgment made in
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