

A.S.(MD)No.167 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.01.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

A.S.(MD)No.167 of 2017

1.B.Mahadevan (Died)

2.Kasthuri

3.Ranibai

4.Gangabai

5.M.Sankar

6.M.Saravanan

... Appellants

Vs.

Maruthi

... Respondent

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 27.04.2017 made in O.S.No.94 of 2015 on the file of the Additional District Court (Fast Track Court), Kumbakonam.

For Appellants : Mr.N.Rahamadullah

For Respondent : Mr.M.R.S.Prabhu



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JUDGMENT

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The defendant in O.S.No.94 of 2015 on the file of Additional District Court (Fast Track Court), Kumbakonam is the appellant in this appeal. It was a suit for partition. The plaintiff and the defendant are brothers. The suit items comprises four schedules. The first three schedules pertain to immovable properties. The fourth schedule pertains to movable properties. The brothers were running a printing business.

2.The plaintiff filed the said suit claiming half share in each of the items. The defendant filed written statement controverting the plaintiff's averments. Based on the rival pleadings, the Court below framed as many as five issues. The plaintiff examined himself as P.W.1. Exs.A1 to A5 were marked. The defendant examined himself as D.W.1 and no documentary evidence was adduced. After considering the evidence on record, the trial Court granted preliminary decree on 27.04.2017 granting half share in respect of suit schedule 1 to 3 and for items 1 to 10 in 4th suit schedule in favour of the plaintiff. Aggrieved by the same, this appeal has been filed.



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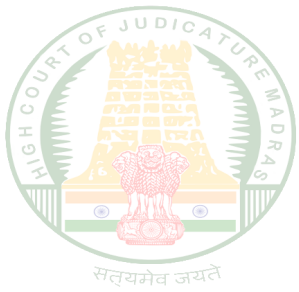
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3.The learned counsel for the appellants reiterated all the contentions set out in the grounds of appeal. He pointed out that when the first suit schedule was purchased under Ex.A1, the plaintiff was not earning any income and that it was the appellant / defendant who contributed the entire sale consideration.

4.Per contra, the learned counsel for the respondent / plaintiff submitted that the plaintiff had also contributed towards sale consideration and that in terms of Section 45 of the Transfer of Property Act, 1882, he is entitled to half share. He relied on the decision reported in **1988 L.W. 738 (Tehmina Dinshaw Tehrani v. Dinshaw K.Tehrani)**. He pressed for dismissal of the appeal.

5.We carefully considered the rival contentions and went through the evidence on record.

6.The point that arises for consideration is whether the plaintiff is entitled to half share in all the three suit schedules.

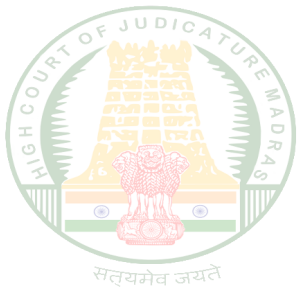


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7.As regards suit schedules 2 and 3, there cannot be any difficulty and there does not appear to be a serious contest regarding the plaintiff's share. The submission of the learned counsel for the appellants revolved primarily around suit first schedule.

8.The suit first schedule was purchased under Ex.A1 dated 24.11.1980. We carefully went through the averments set out in the said sale deed. Admittedly, the sale deed stands in the joint names of the plaintiff and the defendant. The contribution made by the respective parties has not been set out. Therefore, Section 45 of the Transfer of Property Act, 1882 would come into play. It reads as follows:-

“45. Joint transfer for consideration.—*Where immoveable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.*



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In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.”

9.We, therefore, have no hesitation in coming to the conclusion that the plaintiff had clearly made out a case for grant of half share in suit first schedule also. It is seen that the brothers were running a printing business. While half share was granted in respect of the printing machinery, the suit was dismissed in respect of the household items. In respect of the disallowed portion, the plaintiff has not chosen to file any cross appeal. The Court below rightly approached the issue and interference with the said judgment is not warranted. The judgment of the trial Court is confirmed and the appeal suit stands dismissed. No costs.

(G.R.S. J.) & (R.K.M. J.)
21.01.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

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Fast Track Court,
Kumbakonam.

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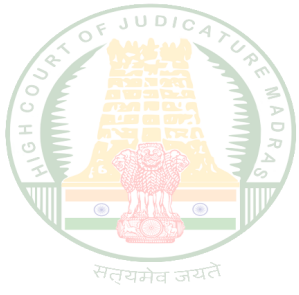
The Section Officer,
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