*S.A.No.897 of 2002***IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED : 15/ 06 / 2026**

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CORAM:**THE HONOURABLE MR. JUSTICE R.SAKTHIVEL****S.A.No.897 OF 2002**

Murugammal
W/o. Murugesu Naicker
Therkupattu Village,
Thiruvandanthi Post,
Chenglepet District.

... Appellant /
Respondent /
Plaintiff

Vs.

1.Andi
S/o. Late Venkatesa Naicker
Therku Pattu Village,
Thiruvidanthai Post, Kovalam Via
Chenglepet District.

... Respondent – 1 /
Appellant /
Defendant – 2

Annammal (Deceased)

2.Kaliammal
W/o. Devaraj
Mailai Village, Karumbakkam Post,
Chengalpattu Taluk.

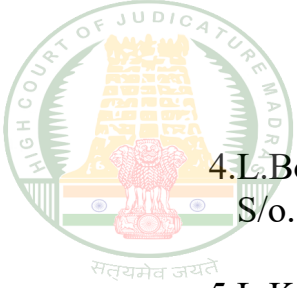
3.Chandrammal (Died)
W/o. Loganathan
Nanmangalam Village,
Kelambakkam Village,
Saidapet Taluk.

... Respondents 2&3 /
Respondents 3&4 /
Defendants 3&4

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4.L.Boobalan
S/o. Loganathan

5.L.Kannan
S/o. Loganathan

6.L.Ulaganathan
S/o. Loganathan

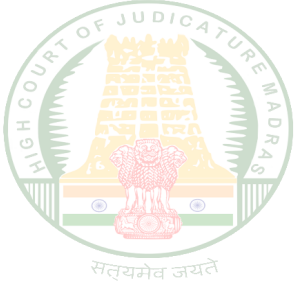
Respondents No.4 to 6 are residing at
Nanmangalam Village,
Balaramannaicker Street,
Tambaram Taluk,
Kancheepuram District.

7.L.Sankari
W/o. Chandrasekar
Therkkupattu Village,
Thiruvidanthai Post, Kovalam Via.,
Kancheepuram District.

... Respondents 4 to 7/
Legal Representatives
of deceased 3rd
respondent.

(Respondents No.4 to 7 brought on record as LR's of
the deceased 3rd respondent viz., Chandrammal and also
set *ex-parte* vide Order of Court dated
September 17, 2019 made in CMP Nos.
334 to 336 of 2012 in S.A.No.897 of 2002)

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated November 16, 2001 made in A.S.No.7 of 2001 on the file of the Principal District Judge, Chengalpattu, modifying the Judgment and Decree dated October 25, 2000 made in O.S.No.44 of 1994 on the file of the Additional Sub Judge, Chengalpattu.

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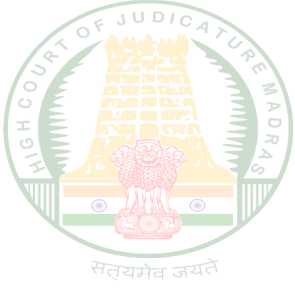
For Appellant : Mr.V.Kannan
For Respondent-1 : Mrs.S.Jothivani

For Respondent-3 : Died, steps taken.
For Respondents No.4 to 6: Unclaimed
For Respondent No.7 : served.

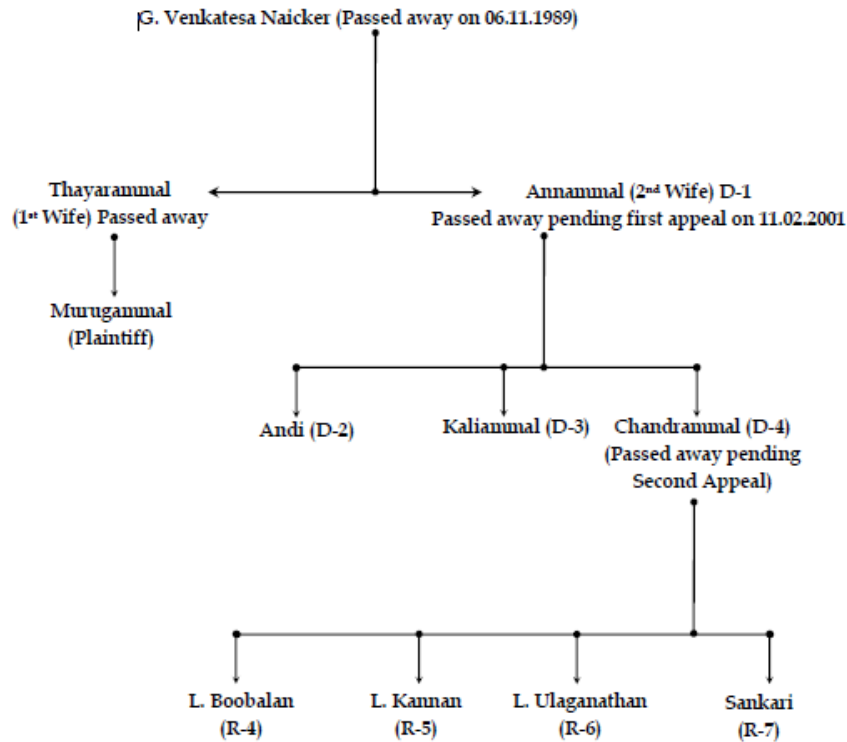
J U D G M E N T

This Second Appeal is directed by the unsuccessful plaintiff assailing the Judgment and Decree dated November 16, 2001 passed in A.S.No.7 of 2001 by the 'Principal District Court, Chengalpattu,' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated October 25, 2000 passed in O.S.No.44 of 1994 by the 'Additional Sub Judge, Chengalpattu' ['Trial Court' for brevity] was modified.

2.For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit. For better appreciation of facts, the relationship between the parties has been shown in the following genealogy:



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PLAINTIFF'S CASE

3.The plaintiff is the daughter of one Venkatesa Naicker born through his first wife viz., Thayar Ammal. The first defendant is the second wife of Venkatesa Naicker and defendants 2 to 4 are the children of Venkatesa Naicker, born through his second wife viz., Annammal(first defendant). Venkatesa Naicker passed away intestate on November 6, 1989, leaving behind the plaintiff, and the first defendant as his legal heirs. The Suit Properties are the self-acquired properties of Venkatesa Naicker. According to the plaintiff, the plaintiff and the defendants are entitled to equal share in the Suit Properties. They are in joint possession and

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enjoyment of the Suit Properties.

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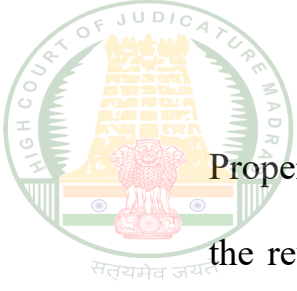
3.1. While so, after the demise of Venkatesa Naicker, the plaintiff demanded partition of the Suit Properties, which was postponed by the defendants. Therefore, the plaintiff caused a legal notice on March 2, 1993 calling upon the defendants for an amicable partition. All the defendants, except the fourth defendant, have received the notice. Since there was no reply from them, the plaintiff has filed the Suit seeking partition of her 1/5 share in the Suit Properties.

SECOND DEFENDANT'S CASE

4. The second defendant filed written statement denying the allegations made by the plaintiff in the plaint. The Defendant Nos.1, 3 and 4 were set *ex-parte* before the Trial Court.

4.1. The relationship between the parties is denied and the plaintiff is put to strict proof thereof. It is averred that Venkatesa Naicker passed away in the year 1989 leaving behind the defendants alone as his legal heirs. Venkatesa Naicker inherited about 2 Acres of ancestral land in an oral partition made about 50 years ago. The Suit Properties were purchased from and out of the income derived from the ancestral nucleus. Venkatesa Naicker has no other independent income to purchase the Suit

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Properties. Since Venkatesa Naicker was the eldest member in the family, the revenue records and other records stands in his name. Therefore, the Suit Properties are not the self-acquired properties of Venkatesa Naicker.

4.2.It is further averred that Patta No.49 is still standing in the name of Sengazhani Naicker – father of Venkatesa Naicker. The nanja lands bearing S.No.240/1 and 240/4 are subject matter of Suit in O.S.No.463 of 1984 pending before the District Munsif, Chengalpattu. Further, the defendants 1, 3 and 4 have disclaimed interest over the Suit Properties and have executed a Release letter in favour of the second defendant. The averment that the plaintiff is in joint possession and enjoyment of the Suit Properties is denied and the plaintiff is not entitled to any share in the Suit Property. Stating so, the second defendant sought to dismiss the Suit.

TRIAL COURT

5. At trial, on the side of the plaintiff, the plaintiff – Murugammal was examined as P.W.1 and one Narayanan was examined as P.W.2 and Ex-A.1 to Ex-A.8 were marked. On the side of the defendants, second defendant – Andi was examined as D.W.1 and fourth defendant – Chandra (Chandrammal) was examined as D.W.2 and Ex-B.1

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to Ex-B.15 were marked.

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6.The Trial Court, after analyzing the oral and documentary evidence, concluded that the suit properties are not joint family properties, but are self acquired properties of G.Venkatesa Naicker. Accordingly the plaintiff is entitled to 1/5 share in the Suit Properties and passed a preliminary decree in favour of the plaintiff for partition of the Suit Properties into five equal shares by metes and bounds. Accordingly, the Trial Court has decreed the Suit.

FIRST APPELLATE COURT

7.Feeing aggrieved, the second defendant preferred an appeal before the First Appellate Court. The First Appellate Court after hearing both sides, concluded that the suit properties are ancestral and joint family properties, purchased in and out of the income derived from the ancestral properties which were allotted to G.Venkatesa Naicker, in an oral partition. Accordingly held that the plaintiff is entitled to 1/10 share in the Suit Properties. To that extent, the First Appellate Court allowed the appeal in part and modified the Trial Court's Judgment and Decree .

**SECOND APPEAL***S.A.No.897 of 2002*

8. Feeling aggrieved, the plaintiff has preferred this Second Appeal, which was admitted on July 5, 2002, on the following substantial questions of law:

“1. Whether the lower appellate court is correct in holding that this appellant is entitled to 1/10 share of his father?

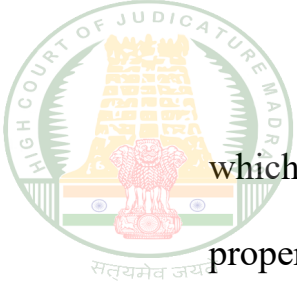
2. Whether the lower appellate court has not appreciating the evidence properly which resulted in decreeing the suit?

3. Whether the suit as laid down by the defendant / appellant is maintainable without representing other defendant?’

ARGUMENTS

9. Mr. V.Kannan, learned Counsel appearing for the Appellant/plaintiff, submits that the First Appellate Court, without appreciating the facts and circumstances, erred in concluding that the suit properties are ancestral and joint family properties. He further submits that the burden is upon the Defendant to prove the existence of a joint family nucleus and surplus income therefrom. He further submits that an extent of 53 Cents along was the subject matter in O.S.No.463 of 1984. And it is not possible to derive surplus income therefrom. He further submits that the First Appellate Court failed to consider Ex.A.6 and Ex.A.7 sale deeds,

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which established the fact that the suit properties are the self-acquired properties of G.Venkatesa Naicker. He further submits that, during the lifetime of G.Venkatesa Naicker, he alienated some of the properties referring to them as his absolute properties. Furthermore, at that time, the 2nd defendant did not raise any objection to the aforesaid alienation made by G.Venkatesa Naicker. He further submits that the Trial Court, after considering the entire evidence and documents, rightly concluded that the Plaintiff is entitled to a 1/5 share. However, the First Appellate Court, without assigning any valid reason, wrongly concluded that the suit properties are ancestral properties. Accordingly, he prays to allow the Second Appeal set aside the Judgment and Decree of the First Appellate court and sustain the Judgment and Decree of the Trial Court.

10.*Per contra*, Mrs. S.Jothivani, learned Counsel appearing for the respondent, would submit that the Plaintiff filed Exhibits Ex.A.6 and Ex.A.7. Under Ex.A.6-sale deed, an extent of 50 cents in Survey No.2/1A was purchased by G.Venkatesa Naicker. Under Ex.A.7-sale deed, a total extent of 99 cents alone was purchased by G.Venkatesa Naicker. Admittedly, G.Venkatesa Naicker was allotted some property in an oral partition among the brothers. She further brings the attention of this Court to the plaint schedule properties which is nearly 7 Acres 60 Cents.

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Admittedly, G.Venkatesa Naicker was engaged in agriculture alone. In these circumstances, the burden is upon the Plaintiff to show that the entire suit properties are the separate and self-acquired properties of G.Venkatesa Naicker. Except Ex.A.6 and Ex.A.7, the Plaintiff did not file any sale deed or document to show that the properties are the self-acquired properties of G.Venkatesa Naicker. The Trial Court without properly appreciating the facts and the supporting circumstances decreed the suit by holding the properties are the self acquired properties. However, the First Appellate Court, after evaluating the entire evidence and documents, rightly concluded that the suit properties are ancestral properties in which the Plaintiff is entitled to 1/10 share alone. There is no need to interfere with the same. Accordingly, the learned Counsel prays to dismiss the Second Appeal and sustain the decree and judgment of the First Appellate Court.

DISCUSSION AND DECISION

11. This Court has heard the submissions made on either side and perused the materials available on record.

12. As regards the character of the properties, the Plaintiff filed Ex.A.6 and Ex.A.7- sale deeds alone. Under Ex.A.6-sale deed, an

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extent of 50 cents in Survey No.2/1A was purchased by G.Venkatesa Naicker and the same was subsequently sold. Under Ex.A.7-sale deed, a total extent of 99 cents alone was purchased by G.Venkatesa Naicker. On the other hand, the total extent of the suit properties is 7 acres and 60 cents. There is sufficient evidence available on record to conclude that G.Venkatesa Naicker was engaged in agriculture alone. Though the Plaintiff contended that G.Venkatesa Naicker was running a provision store, the Plaintiff has miserably failed to establish the said fact. In these circumstances, this Court is of the view that a large extent of agricultural land was in the hands of G.Venkatesa Naicker even prior to Exs.A.6 and A.7- sale deeds as ancestral property / joint family property. In the absence of evidence to show that G.Venkatesa Naicker had any other separate or personal income, law presumes that the properties covered under Ex.A.6 and Ex.A.7 were purchased in and out of the joint family income derived from the ancestral properties. The First Appellate Court, after considering the entire evidence available on record, rightly concluded that the suit properties are all ancestral and joint family properties.

13. It is the further case of the Plaintiff that she was born through Thayarammal, who was the first wife of G.Venkatesa Naicker. The first defendant, Annammal, is the second wife of G.Venkatesa Naicker

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and defendants 2 to 4 were born through Annammal. Defendants 1, 3 and 4 did not contest the case and they were set *ex-parte* before the Trial Court. The 2nd defendant, Andi, filed a written statement stating that the Plaintiff is not a legal heir of G.Venkatesa Naicker. To disprove the said fact, the Plaintiff filed Ex.A.1 and Ex.A.2. Ex.A.1 is the death certificate of G.Venkatesa Naicker, which shows that he passed away on November 6, 1989. Ex.A.2 is the legal heir certificate, wherein the Plaintiff and defendants 1 to 4 are shown as the legal heirs of late G.Venkatesa Naicker.

14. Though the defendants denied the relationship of the Plaintiff with G.Venkatesa Naicker in the written statement, during evidence, D.W.1 has categorically admitted that the Plaintiff is the daughter of G.Venkatesa Naicker born through the first wife, Thayarammal. In Ex.A.2, the age of the first defendant has been shown as 70 years, the age of the 2nd defendant as 39 years, the age of the 3rd defendant as 48 years, and the age of the 4th defendant as 40 years. Ex.A.2 was issued on August 31, 1993. If it is so, Kaliasammal, the 3rd defendant, would have been born in the year 1935 and the 4th defendant would have been born in the year 1943. Thus, the defendants would have been born in the years 1935 to 1943. However, there is no evidence available on record as to when the Plaintiff's mother died. In these circumstances, even though the first

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defendant is the second wife, her marriage took place before the commencement of Madras Hindu (Bigamy Prohibition and Divorce) Act, 1949 [Madras Act No.VI of 1949]. Hence, even while assuming that the first defendant is the second wife of G.Venkatesa Naicker, the marriage was valid and she along with her children to G.Venkatesa Naicker, is also his legal heir. Admittedly, G.Venkatesa Naicker died on November 6,1989 as a Hindu. The parties are Hindus and, therefore, the applicable Succession Law is Hindu Succession Act, 1956. Admittedly, the Plaintiff's marriage took place before the Tamil Nadu Act 1 of 1990. Hence, the Plaintiff is not entitled to the benefit of Tamil Nadu Act 1 of 1990. During the pendency of this Second Appeal, Hindu Succession Act, 1956 was amended and old Section 6 was substituted with new Section 6 vide the Hindu Succession Amendment Act, 2005 [Act 39 of 2005] with effect from September 09, 2005. As per the Act, the Plaintiff is a co-parcener entitled to equal share to that of the male heirs of G.Venkatesa Naicker, i.e., the second defendant.

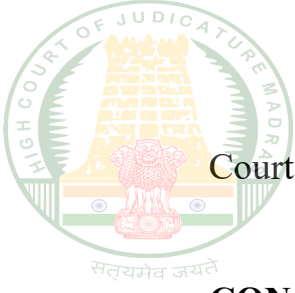
15. The contention of the 2nd defendant is that the Plaintiff and the other Defendants released their right in the suit properties vide Ex-B.15 – Release Deed. This Court is of the considered view that Ex-B.15 is an inadmissible document and cannot be proved for the following reasons:

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(i) Ex.B.15 is an unregistered document, hence it is inadmissible as per Section 17 of the Registration Act, 1908 and (ii) the Plaintiff issued a notice on March 02, 1993 and the defendant sent a reply notice on March 16, 1993, whereas Ex.B.15 was allegedly executed on March 29, 1993, i.e., after the issuance of the notice and reply notice, which fact casts doubt over its genuinity. Hence, both the Courts below rightly disbelieved Ex-B.15 - Release Deed and there is no warrant to interfere with the same.

16. As stated *supra*, there is no registered partition deed and no actual partition took place between the parties before December 20, 2004. Hence, as per the dictum laid down by the Hon'ble Supreme Court in the ***Vineeta Sharma Vs. Rakesh Sharma***, reported in (2020) 9 SCC 1, the father need not be alive as on September 09, 2005 (Date of commencement of Act 39 of 2005) to enable the daughter to claim equal rights by birth. Hence, the Plaintiff, being the daughter of G.Venkatesa Naicker, is entitled to an equal share as that of his son – second defendant. Therefore, the Plaintiff is entitled to 1/5 share under Section 6 of the Hindu Succession Act, 1956. After the demise of G.Venkatesa Naicker, his 1/5 share shall devolve upon his legal heirs under Section 8 of the Hindu Succession Act, 1956. Thus, the Plaintiff will be entitled to $1/5 + 1/25 = 6/25$ share. To that extent, the decree and judgment of the First Appellate

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Court and the Trial Court require modification.

CONCLUSION:-

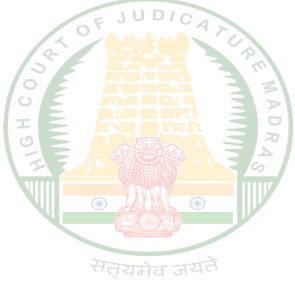
17. In the result, the Second Appeal is **allowed in part**. The Plaintiff is entitled to 6/25 share in the suit properties. To that extent, the decree and judgment of the Trial Court as well as the First Appellate Court are modified. Considering the relationship between the parties, there shall be no order as to costs.

15 / 06 / 2026

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK/jrs

To

- 1.The Principal District Judge
Chengalpattu.
- 2.The Additional Sub Judge
Chengalpattu.



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R. SAKTHIVEL, J.

jrs

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