IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.03.2026 :::: Pronounced on :30.04.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 496 of 2017

Saroja

..Appellant(s)

Vs

R.Paramasivam (died)

1. P.Shanmugam (died)
2. Marayee (died)
   R2 Died. R3 to R5 are LRS of deceased R2 vide Court order dated 8.8.2025 and memo dated 28.07.2025. Memo recorded (MJRJ)

3. Sathya, W/o.Late Shanmugham

4. Minor Surya, S/o.Late Shanmugham

5. Minor Mukesh, S/o.Late Shanmugham

   Minor Respondents 4 and 5 Are rep By their Mother And Guardian, 3rd Respondent

   R1 Died, RR3 to 5 Are brought on record as LRs Of Deceased 1st Respondent Viz, P.Shanmugam, Vide Order Of Court dated 05/06/2023 made in CMP. Nos. 22107 And 22112 of 2019 in AS. No. 496/2017 (TVTSJ)

..Respondent(s)

Prayer : This Appeal Suit has ben filed to set aside the judgement & decree dated 29/4/2017 made in OS No.161/2014 on the file of the I Additional District Court, Erode.

For Appellant(s): Mr.T.Murugamanickam (Senior Counsel)
Ms.Zeenath Begum

For Respondent(s): Mr. V.S.Kesavan (R3)
RR4 & 5 – Minors rep. By R3
R1 – died
R2 – died

J U D G M E N T

The present Appeal Suit has been filed seeking to set aside the judgment and decree dated 29.04.2017 made in O.S.No.161 of 2024 on the file of the Additional District Court-I, Erode.

2. The case of the Plaintiff is that she is the daughter of the 1st defendant and older sister of the 2nd defendant. The plaintiff along with the 1st and 2nd defendants are the Hindu Joint Family members and the suit schedule properties are the joint family properties, which were jointly enjoyed by the Plaintiff and the defendants. When plaintiff demanded her share in the suit schedule properties orally, defendants delayed to give her share and hence the plaintiff had instituted the suit for partition in the O.S. No. 161 of 2024. In the said suit, the Plaintiff sought for the partition of Suit schedule Properties into 9 equal shares and allotment of 4 such shares to herself.

3. On the other had during the pendency of the above suit the 1st defendant died on 04.10.2011 and his wife was thereafter impleaded as the 3rd defendant. The 2nd defendant in his written had averred the 1st defendant during his lifetime had sent a reply notice to the plaintiff stating that the suit property in the land in the Resurvey No.375/4 measuring about 0.38.0 hectare originally belonged to the 1st defendant's mother Mrs.Periyamarayal. It was contended that the said property was the separate property of Mrs. Periyamarayal, who had died about 15 years prior, leaving behind the 1st defendant as her sole legal heir, and therefore the plaintiff had no share whatsoever in the said property. The 2nd defendant further avers that he had married the daughter of the Plaintiff, taking care of the marriage expenses and had also helped the palintiff's younger daughter with her education expenses. It was further asserted that the Plaintiff had claimed before the defendants to have a share in the suit schedule properties and had expressed her willingness to execute a release deed in favour of the defendants upon payment of money, which was not agreed by the defendants.

4. But subsequently pursuant to the family arrangement arrived at before the Panchayatdars, the 2nd defendant had paid a sum of Rs.50,000/- in cash to the plaintiff, upon which the plaintiff had agreed not to demand partition in the

suit schedule property, thereby relinquishing her rights in the share of the family properties, however, the said arrangement was not reduced into writing. It was further contended that the 1st defendant, during his lifetime, while he was in a sound disposing state of mind and of his own volition had executed a Will dated 02.07.2011 in favour of the 2nd and 3rd defendants. By virtue of the said Will, the 1st defendant bequeathed the lands comprised in R.S. Nos.375/4, 407/1, 415/2 and 439/4 in favour of the 2nd defendant after his lifetime.

5. The 1st defendant also created a life interest in respect of the land comprised in R.S. No.412/9E, measuring 40 cents and 1,500 sq.ft of house sites, in favour of his wife, the 3rd defendant herein and after whose lifetime the same property shall devolve upon the 2nd defendant. It was further stated that the 1st defendant during his lifetime had also alienated 27½ cents of land in R.S. No.440/2. Subsequent to the death of the 1st defendant on 04.10.2011, the 2nd and 3rd defendants have been in enjoyment of the properties, as per the Will dated 02.07.2011. Whereas the plaintiff is not in the joint possession of the said properties along with the defendants. Therefore, it is contended that the plaintiff is not entitled to any share in the suit schedule property.

6. As the reply to the written statement filed by the defendants, the plaintiff had averred that the defendants' contentions that the land in R.S. No.375/4 measuring 0.38.0 hectare originally belonged to the mother of the 1st defendant, that the plaintiff had recovered a sum of Rs.50,000/- from the 2nd defendant pursuant to the Panchayat arrangement and that the 1st defendant had executed a Will dated 02.07.2011 in favour of the 2nd and 3rd defendants, are all false and denied the same.

7. Based on the pleadings made on both sides the following issues were framed by the Trial Court:

1. Whether the plaintiff is entitled for the preliminary of the partition in the Suit Schedule Properties?

2. Whether the defendants 2 and 3 are entitled to the Suit properties as per the Will dated 02.07.2011?

3. To What relief the Plaintiff is entitled for?

8. The Plaintiff herself was examined as PW1 and Ex.A1 to Ex.A11 were marked as the Plaintiff's side evidence and the 2nd defendant along with one Mr.Arunachalam was examined as DW1 and DW2 respectively and Ex.B1 to Ex.B3 were marked as the Defendant's side Witness.

9. The Learned Trial Judge after hearing both the sides and perusing the materials available on record had decided the aforesaid Issues vide his judgement dated 29.04.2017. Insofar as the Issues No.1is considered, the learned Trail Court held that, the Plaintiff had not clearly proved that the Suit Schedule Properties are Joint Family Properties of the Plaintiff and the Defendants. Further based upon the evidence of DW1, the reply notice of the 1st defendant marked as Ex.A11, it was held that the property in R.S.No.375/4 measuring 0.38.0 hectare was acquired from the mother of the 1st defendant and the plaintiff had accepted the same, that the property belonged to her grandmother, in her cross examination. The Trial court further held that the plaintiff had already received Rs.50,000/- from the 2nd defendant for relinquishing her share in the suit schedule properties. Therefore it was held that Plaintiff is entitled for the Preliminary Decree of Partition of the Suit Schedule Property.

10. As far as the Issue No.2 is considered it was decided that the suit schedule properties belonged to the 2nd and 3rd defendants as per the Will dated 02.07.2011, marked as Ex.B3. Both the Issue Nos. 1 and 2 was decided against the plaintiff, therefore insofar as the 3rd issue is considered, it was held that the Plaintiff was not entitled for Preliminary Decree of Partition and separate

Possession of the Suit Schedule Properties. Therefore the Issue Nos.1 to 3 were decided against the Plaintiff and accordingly the Present Suit was dismissed *vide* the judgment dated 29.04.2017. Aggrieved by the aforesaid judgement the Plaintiff had filed the present Appeal Suit and had impleaded the 2nd and 3rd defendants as the respondents 1 and 2 respectively. During the pendency of the present appeal suit the 1st and 2nd respondents died, thereafter, their legal heirs were impleaded as respondents 3 to 5.

11. Heard Mr.T.MurugaMaickam, learned Senior Counsel appearing for Ms.Zeenath Begum, learned counsel appearing on behalf of the appellant and Mr.V.S.Kesavan the learned counsel appearing on behalf of the 3rd respondent.

12. Mr.T.MurugaMaickam, learned Senior Counsel appearing for the appellant contends that the learned Trial Court ought to have decreed the suit as prayed for, especially in the absence of any proofs to establish that the suit properties were the separate properties of the 1st defendant. He vehemently contends that the Trial Court failed to appreciate the fact that the very plea of the respondents/defendants with regard to the alleged relinquishment by the appellant/plaintiff of her share in the suit properties itself substantiates the appellant's pre-existing right in the suit properties. He further contends that the

alleged relinquishment has not been proved by the respondents/defendants either by production of any documentary evidence or by examining any of the Panchayatdars whose names have been referred to in the written statement. The learned Senior Counsel further submitted that even assuming the suit properties are not established to be joint family properties, the appellant notwithstanding the same would be entitled to claim partition by virtue of Central Amendment Act 39 of 2005, since the 1st defendant, namely the father of the appellant, was alive both on the date on which the Amendment Act came into force and on the date of institution of the suit.

13. It is further submitted that the learned Trial Court ought to have noted the fact that 1st defendant had no right to execute a Will in respect of the joint family properties. The learned Senior Counsel further contends that the Trial Court failed to render any finding with regard to the Will marked as Ex.B3, particularly as to whether the same was executed in the manner stipulated under Section 64 of the Indian Succession Act, 1925 and is proved in accordance with law under Section 69 of the Indian Evidence Act, 1872. He further submits that, in the absence of such a finding, Ex.B3 ought to be held as not proved in the manner known to law. It was contended that since the learned Trial Judge had not rendered any finding with regard to genuineness and due execution of the Will, the 1st defendant must be deemed to have died intestate. He further

contends that the entire judgment of the Trial Court stands vitiated by undue reliance placed upon the averments in the written statement filed by the defendants and that the Court had erroneously arrived at the conclusion that the suit properties were not joint family properties and further held that the 1st defendant had executed Ex.B3 in favour of the 2nd and 3rd defendants, without assigning any valid reasons for arriving at such conclusion. In view of the above, the learned Senior Counsel submits that the dismissal of the suit by the Trial Court is unsustainable in law and hence seeks this Court to set aside the impugned judgment.

14. *Per contra*, Mr. V.S. Kesavan, learned counsel appearing for the third respondent, submitted that the claim of the appellant/plaintiff, that she had 1/3rd share in the suit schedule properties is untrue and that the learned Trial Court had rightly held that the appellant was not entitled to a preliminary decree for partition. He submits that the 1st defendant in his reply notice marked as Ex.A11, had categorically stated that the land comprised in R.S. No.375/4 measuring 0.38.0 hectare was the self-acquired property of his deceased mother, Late Mrs. Periyamarayal, which devolved upon the 1st defendant after her lifetime as her sole legal heir. It is further submitted that the appellant herself had admitted that the said property in R.S. No.375/4 belonged to her grandmother and therefore, she is not entitled to any share therein. He further

submits that the 1st defendant, in the very same reply notice (Ex.A11), had clarified that in respect of the ancestral properties, no partition had taken place between himself and the other legal heirs of Mr. Chenniappa Gounder and therefore the suit schedule properties cannot be treated as joint family properties available for partition. He vehemently contends that the appellant had received a sum of Rs.50,000/- from the defendants pursuant to a family arrangement arrived at before the Panchayatdars, according to which she had relinquished the right to her share in the family properties. Therefore according to aforesaid family arrangement the appellant/plaintiff is not entitled to any share in the suit schedule properties.

15. It is further submitted that the 1st defendant, during his lifetime, while in a sound disposing state of mind and of his own volition had executed a Will dated 02.07.2011, marked as Ex.B3, whereby he bequeathed the suit schedule properties in favour of his son and wife, namely the 2nd and 3rd defendants in the original suit. The learned counsel contends that the said Will dated 02.07.2011 was duly executed in accordance with law, which can be substantiated by the deposition of one of the attesting witnesses to the Will, Mr. Arunachalam, who was examined as DW2. The learned counsel further submits that the 1st defendant, in his Will (Ex.B3), had explicitly stated that neither the appellant/plaintiff nor her legal heirs would be entitled to any share in the suit

schedule properties and that upon the demise of both himself and his wife, namely the 3rd defendant therein, the suit schedule properties shall devolve absolutely upon his son, the 2nd defendant/1st respondent and hence it is submitted that the appellant/plaintiff is not entitled to any share in the suit schedule properties. The learned counsel finally contends that the impugned judgment dated 29.04.2017 passed in O.S. No.161 of 2024 is lawful and does not warrant any interference by this Court. In view of the above, he seeks this court to dismiss the present Appeal.

16. I have heard the submissions made from both the sides and have perused the materials available on record.

17. Based on the above contentions made by both sides, the following questions are present before this Court to be determined

Issues:-

(1) Whether the Court below was correct in disentitling the appellant for grant of preliminary decree for partition of the suit schedule property;

(2) Whether the respondents have established the Will;

18. Issue No.1:-

It is the claim of the appellant that the suit schedule property is the joint family properties, which was contested by the respondents that the suit properties were not joint family properties and that one of the suit schedule items was inherited by the deceased first defendant as being the sole legal heir of the property, which belonged to his mother and that the remaining properties are the self-acquired properties of the deceased first defendant, the father of the appellant /plaintiff and the deceased second defendant. The Court below had given a categorical finding that the suit schedule properties are not joint family properties and the appellants /plaintiff had failed to prove that the suit schedule properties are joint family properties.

19. It has also recorded a finding of fact that the appellant /plaintiff in her cross-examination had also admitted to the fact that the land in re-survey No.375/4 belonged to the paternal grand-mother. The Court below had also noticed Ex.A11, a reply notice sent by the deceased first defendant to the notice sent by the appellant /plaintiff with regard to payment of Rs.50,000/- for relinquishing her right in the suit properties. The Court below had further noted that the said reply notice was not responded to nor was also controverted in the plaint pleadings but only after the written statement was filed, an attempt has been made by the appellant /plaintiff to controvert the said fact.

20. A reading of the plaint also do not disclose the manner in which as to how the suit schedule properties are to be treated as joint family properties and also the reason as to why the reply notice sent by the deceased first defendant is contrary to the facts.

21. Further, the appellant had failed to discredit the chief-examination of DW1 with regard to the payment of Rs.50,000/- to the appellant for relinquishing her right. When the appellant /plaintiff has not substantiated as to how the property was to be treated as joint family property and particularly, the property that had been inherited from the mother and the application of Section 15, the said property would only devolve upon the sons and daughters including the children of the predeceased son or daughter. Hence, the first defendant being the son of the grand mother of the appellant was alive at that point of time, the property would only be vested upon him in his independent right and becomes him absolute property.

22. Even accepting to case of the Appellant that remaining properties are joint family properties, the appellant/plaintiff had not placed on record as to how and when the property came to be inherited by the first defendant and hence, by the application of Section 8 of the General Rules of Succession Act,

the first defendant is deemed to have inherited the property in his own rights and the appellant had failed to establish the devolution of interest in the property under Section 6 of the Hindu Succession Act. Hence, the issue No.1 is answered holding that the Court below had rightly examined the *lis*.

23. Issue No.2:-

The Court below in dealing with the issue that had been framed in respect of the Will having found that the Will remain unchallenged and not questioned by the appellant had proceeded to reject the claim of the appellant /plaintiff. It is to be noted that the respondents had examined DW2, one Arunachalam, who was the first attesting witness. He had in his Chief categorically deposed that a Will had been executed by the first defendant of his own will and volition and that the contends of the Will have also been understood by its Testator. He had also been extensively cross-examined by the appellant/plaintiff.

24. A perusal of the cross-examination would also indicate that there has been no contravention of provisions of Section 63 Indian Succession Act in the execution of the Will. As contended by the learned Senior Counsel for the appellant, non-examination of the Notary Public, who had attested the Will, cannot be held to be fallacy in disbelieving the Will. That apart, the appellant had not also brought in any suspicious circumstances in the execution of the

Will. The cross-examination of the appellant, who had examined herself as PW1, would also indicate that she has accepted that the property belonged to the maternal grand-mother, but also had claimed that it is also belonged to her grand father. She had also been extensively cross-examined with regard to her denial of the Will and a reading of the said deposition would indicate that she had refuted the execution of the Will by the first defendant /her father, but had only claimed that he could not have executed the Will as he was suffering from ill-health. In that context, no evidence had been let in by the appellant to drive home her deposition that father /testator from suffering from ill health nor she has not pleaded any suspicious circumstances challenging the said Will. Even in the reply statement filed by her, there is only a blanket denial of the Will, without any specific reasoning as to how the said Will ought not be relied upon.

25. Considering the fact that DW2 who has been the attesting witness of the Will, which has been marked as Ex.B3, remain uncontroverted. This Court is the view that the Will had been validly proved further disentitling the appellant to seek partition of the suit schedule property.

26. For the aforesaid reason, this Court do not find any reason in the Appeal and the Appeal Suit stands dismissed. No order as to costs.

30.04.2026

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

Maya

To

The Judge, I Additional District Court, Erode.

K.KUMARESH BABU, J.

Maya

AS No. 496 of 2017

Dated : 30.04.2026