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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04-11-2026

PRONOUNCED ON : 13-11-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

OSA No. 304 of 2018

CNR:{HCMA010791682018}

AND

OSA NO. 370 OF 2018,CMP NO. 14052 OF 2021,OSA NO. 390 OF 2018,CMP NO. 17688 OF 2018

Case QR

OSA No.304 of 2018 :

1. Mahaveer Chand Ranka
   S/o Bhimraj, Res At No. 49 Nattu Pillaiar Koil Street, Chennai- 600079
2. Mrs Gulabi Devi
   W/o Mahaveer Chand,
   Res At No. 49 Nattu Pillaiar Koil Street,
   Chennai- 600079

3. Mahaveer Chand
   S/o Bhimraj, Res At No. 49 Nattu Pillaiar Koil Street, Chennai- 600079

..Appellant(s)

Vs

1. Tmt.A.Kanagalakshmi
   W/o S.Aditya, D/o T.G.Vellaya Nadar,
   Flat No. F-1/6 Mullai Apartments,
   6th Main Road, Eri Scheme, Mogappair,
   Chennai-600 037
2. Tmt.Sudamani
   W/o B.Udhayakumar,
   D/o .T.G.Vellaya Nadar,
   No. 2 Kothangudi Street, Chidhambaram,
   Cuddalore Dist.

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3. Tmt.J.Raja Rajehwari
   W/o Jayalingam, D/o. .T.G.Vellaya Nadar,
   1108 Poombukar Nagar 2nd Main Road,
   Chennai- 600 099

4. V.Gururaj
   S/o T.G.Vellaya Nadar,
   Res At No.21, Madam First Lane, Ground Floor, Purasawalkam, Chennai-84

5. V.Thangamani
   S/o T.G.Vellaya Nadar,
   Res At No.21, Madam First Lane, Ground Floor, Purasawalkam, Chennai-84

6. V.Krishnamurthy
   S/o T.G.Vellaya Nadar,
   Res At No.21, Madam First Lane, Ground Floor, Purasawalkam, Chennai-84

7. V.Chandrasekaran(deceased)
   S/o T.G.Vellaya Nadar,
   Res At No.21, Madam First Lane, Ground Floor, Purasawalkam, Chennai-84

8. Deivanai
   W/o Alagudurai,
   Res At No.21, Madam First Lane, Ground Floor, Purasawalkam, Chennai-84

9. Marimuthammai
   W/o V.Vijaykumar, No. 4/1 Pandaram Lane,
   Dr.Alagapa Road, Chennai-84

10. V.Sundar (died)
    S/o T.G.Vellaya Nadar, 1/7 Ambupotta Theru,
    Thirumaignanam, Thirukkadayur,
    Nagapattinam Dist.

11. V.Sridharan
    S/o T.G.Vellaya Nadar, Having Business At
    Saravana Agencies, 13/A-1 Sivankoil Road,

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Sri Devi Karumariyamman Nagar,
Thiruverkadu, Chennai-77

12. V.Rajendran
S/o T.G.Vellaya Nadar, Having Business At Saravana Agencies, 13/A-1 Sivankoil Road, Sri Devi Karumariyamman Nagar, Thiruverkadu, Chennai-77

13. N.Pushpavalli
W/o Nagarathinam, New No. 18 Old No. 21, New Solaippan Street, New Washermenpet, Chennai-21

14. S.Mallika
W/o V.Sridharan, Res At No. 3 Sivan Koil Street, Thiruverkadu, Opp To Panchayat Board Office, Chennai-600077

15. Sridevi
D/o V.Sridharan, Res At No. 3 Sivan Koil Street, Thiruverkadu, Opp To Panchayat Board Office, Chennai-600077

16. Saravanan
S/o V.Sridharan, Res At No. 3 Sivan Koil Street, Thiruverkadu, Opp To Panchayat Board Office, Chennai-600077

17. Shyam
S/o V.Sridharan, Res At No. 3 Sivan Koil Street, Thiruverkadu, Opp To Panchayat Board Office, Chennai-600077

18. Kumuthavalli
W/o. V. Chandrasekaran (late)
33/30, Poondi Thangammal St,
New Washermenpet, Chennai 81

19. C. Santhosh
Rep By Her Mother Mrs. Kumuthavalli,
33/30, Poondi Thangammal St,
New Washermenpet, Chennai 81.

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RR18 And 19 brought on record as LRs of the Deceased R7 Viz (V.Chandrasekaran)
R19 Minor Rep By its Mother Natural Guardian R18 Viz (Kumuthavalli) Vide Order of Court dated.07.11.25 made in CMP.8200 and 8204 of 2022 In OSA.304 of 2018

20. S.Amudha
W/o V.Sundar
Res at 1/7, Ambu Pottu Theru,
Thirumaignanam,
Thirukkadayur,
Myladuthurai District

21. S.Shree Shanmugam (minor)
S/o V.Sundar
Res at 1/7, Ambu Pottu Theru,
Thirumaignanam,
Thirukkadayur,
Myladuthurai District

RR 20 AND 21 brought on record as LRS of the deceased R 10 viz (V.SUNDAR) R21 minor represented by its mother natural guardian R20 viz (S.AMUDHA) vide order of the court dated 05.10.2026 made in cmp. 18881,18884, 18886, 18888 of 2026 in OSA 304 of 2018

..Respondent(s)

Case QR

OSA No. 370 of 2018

CNR:{HCMA010804032018}

1. V.Thangamani
S/o.T.G.Vellaya Nadar
2. V.Krishnamurthy
S/o.T.G.Vellaya Nadar
3. Marimuthammal
W/o.V.Vijayakumar, No.4/1, Pandaram Lane,
Dr.Alagappa Road, Chennai 84.

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4. V.Sundar
   S/o.T.G.Vellaya Nadar, 1/7, Ambupotta Theru,
   Thirumaignanam, Thirukkadayur,
   Nagapattinam Dt.

5. V.Rajendran
   S/o.T.G.Vellaya Nadar,
   having business at Saravana Agencies,
   13/A1, Sivankoil Road,
   Sri Devi Karumariyamman Nagar,
   Thiruverkadu, Chennai 77.

..Appellant(s)

Vs

1. A.Kanagalakshmi
   W/o.S.Adityan, D/o.T.G.Vellaya Nadar,
   Flat No.F1/6, Mullai Apartments,
   6th Main Road, Eri Scheme, Mogappair,
   Chennai 37.
2. U.Sudamani
   W/o.B.Udhayakumar, D/o.T.G.Vellaya Nadar,
   No.2, Kothangudi St, Chidambaram,
   Cuddalore Dt.

3. J.Raja Rajeshwari
   W/o.Jayalingam, D/o T.G.Vellaya Nadar,
   1108, Poombukar Nagar 2nd Main Road,
   Chennai 99.

4. V.Gururaj
   S/o.T.G.Vellaya Nadar

5. V.Chandrasekaran
   S/o.T.G.Vellaya Nadar

6. Deivanai
   W/o.Alagudurai

7. N.Pushpavalli
   W/o.Nagarathinam, N.No.18, O.No.21,
   New Solaippan St, New Washermenpet,

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Chennai 21.

8. Mahaveer Chand Ranka
   S/o.Bhimraj

9. Gulabi Devi
   W/o.Mahaveer Chand

10. Mahaveer Chand
    S/o.Bhimraj

11. S.Mallika
    W/o.V.Sridharan

12. Sridevi
    D/o.V.Sridharan

13. Saravaran
    S/o.V.Sridharan

14. Shyam
    S/o.V.Sridharan

..Respondent(s)

Case QR

OSA No. 390 of 2018

CNR:{HCMA013183412018}

1. Tmt.A.Kangalakshmi
   W/o.Adityan, D/o.T.G.Vellaya Nadar, No.F-1/6, Mullai Apartments, 6th Main Road, Eri Scheme, Mohappair, Chennai - 600037

2. Tmt.U.Sudamani(died)
   W/o.B.Udayakumar, No.2, Kothangudi Street, Chidambaram, Cuddalore District.

3. Tmt.J.Raja Rajeswari
   W/o.Jayalingam, D/o.T.G.Vellaya Nadar, 1108, Poombukar Nagar 2nd Main Road, Chennai - 600099

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4. Mr.U.Sivashanmugam
   S/o.B.Udhayakumar (Late) No.1, V.S.Nagar,
   O.P.Main Road, Annamalai Nagar,
   C.Kothangudi Village, Chidambaram Taluk,
   Chidambaram District

5. Vimala Devi
   D/o.B.Udhayakumar (Late) No.1, V.S.Nagar,
   O.P.Main Road, Annamalai Nagar,
   C.Kothangudi Village, Chidambaram Taluk,
   Chidambaram District.
   [Appellants 4 and 5 brought on record as LRs of the deceased 2nd appellant viz Tmt.U.Sudamani vide order of court made in CMP.29305, 29306 and 29309 of 2023 in OSA.390 of 2018]

..Appellant(s)

Vs

1. V.Gururaj
   S/o.T.G.Vellaya Nadar
2. V.Thangamani
   S/o.T.G.Vellaya Nadar,

3. V.Krishnamurthy
   S/o.T.G.Vellaya Nadar,

4. V.Chandrasekaran(deceased)
   S/o.T.G.Vellaya Nadar,

5. Deivanai
   W/o.Alagudurai,

6. Marimuthammal
   W/o.V.Vijayakumar, No.4/1, Pandaram Lane,
   Dr.Alagappa Road, Chennai - 600084

7. V.Sundar (deceased)
   S/o.T.G.Vellaya Nadar,
   1/7, Ambupotta Theru, Thirumaignanam,
   Thirukkadayur, Nagapattinam District.

8. V.Sridharan

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S/o.T.G.Vellaya Nadar,

9. V.Rajendran (Deceased)
S/o.T.G.Vellaya Nadar

10. N.Pushpavalli
W/o.Nagarathinam, New No.18, Old No 21,
New Solaiyappan Street, New Weshermenpet,
Chennai - 600 021

11. Mahaveerchand Ranka
S/o.Bhimraj,

12. Gulab Devi
W/o.Mahaveerchand

13. Mahaveerchand
S/o.Bhimraj

14. S.Mallikka
W/o.V.Sridharan,

15. Sri Devi
D/o.V.Sridharan,

16. Saravanan
S/o.V.Sridharan,

17. Shyam
S/o.V.Sridharan,

18. Kumuthavalli
W/o. V. Chandrasekaran (late)
33/30, Poondi Thangammal St,
New Washermenpet, Chennai 81

19. C. Santhosh
Rep By Her Mother Mrs. Kumuthavalli,
33/30, Poondi Thangammal St,
New Washermenpet, Chennai 81.
[RR18 And 19 brought on record as LRs Of
The Deceased R4 Viz(V.Chandrasekaran) R19
Minor Rep By Its Mother Natural Guardian R18

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Viz(Kumuthavalli) Vide Order Of Court Dated.07.11.25 made in CMP.14056 and 14060 of 2021 In OSA.390 Of 2018]

20.S.Amudha
W/o V.Sundar
Res at 1/7, Ambu Potta Theru,
Thirumaignanam,
Thirukkadayur,
Myladuthurai District

21.S.Shree Shanmugam (minor)
S/o V.Sundar
Res at 1/7, Ambu Potta Theru,
Thirumaignanam,
Thirukkadayur,
Myladuthurai District

RR 20 and 21 brought on record as LRS of the deceased R7 viz (V.SUNDAR) vide order of the court dated 23.03.2026 made in CMP.870, 874, 878 of 2026 in OSA 390 of 2018
R21-Minor represented by his (Mother) Guardian R20 VIZ (S.Amudha) vide order of court dated 05.10.26 made in CMP.886 of 2026 in OSA. 390 OF 2018

22.R.Divyaraman
S/o.V.Rajendran (late),
37A, Ramamurthy Colony Main Raod,
JJM Eden App, C, Block, F2,
Thiru.Vi.Ka.Nagar, Chennai - 82.
[R22 Brought On Record as LRs of the Deceased R9 Viz (V.Rajendran) Vide Court Order Dated.27.04.2026 made in CMP.10301 Of 2026 in OSA.390/2018]

..Respondent(s)

OSA No. 304 of 2018

OSA No.304 of 2018 is preferred under Order XXXVI Rule 1 of the OS Rules read with Clause 15 of the Letters Patent seeking to set aside the judgment and

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preliminary decree passed in CS.No. 662/2010 dt. 06/04/2018 and allow the appeal and thus render justice.

OSA No. 370 of 2018

OSA No.370 of 2018 is preferred under Order XXXVI Rule 1 of OS Rules read with Clause 15 of the Letters Patent seeking to set aside the Judgment and Preliminary decree passed by the Honourable Learned Judge in CS No 662/2010 dated 06/04/2018 and allow the appeal and thus render justice.

OSA No. 390 of 2018

OSA No.390 of 2018 is preferred under Order XXXVI Rule 1 of OS Rules red with Clause 15 of the Letters Patent seeking to set aside the judgment and decree dated 06/04/2018 in CS.NO.662/2010 on the file of this Hon'ble Court in so far which are against the claim and interest of the appellants and allow the above Original side appeal as prayed for with costs and thus render justice.

For Appellant(s): Mr.K.V.Bhashyam Chari
in OSA No.304 of 2018

Mr.K.Bijai Sundar
in OSA No.370 of 2018

Mr.P.M.Subramanian, Senior Advocate
for Mr.S.Kanniah in OSA No.390 of 2018

For Respondent(s): Mr.K.V.Bhashyam Chari
for RR11 to 13 in OSA No.390 of 2018
for RR8 to 10 in OSA No.370 of 2018

Mr.K.Bijai Sundar
for RR5,6,9,12,20 and 21 in OSA No.304 of 2018
for RR2,3,6,20,21,22 in OSA No.390 of 2018

Mr.P.M.Subramanian, Senior Advocate
for Mr.S.Kanniah
for RR1 and 3 in OSA Nos.304 and 370 of 2018

RR2, 7, 10 and 12 died in OSA No.304 of 2018

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Order QR

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RR2 and 5 died in OSA No.370 of 2018
RR4,7 and 9 died in OSA No.390 of 2018

Common Judgment

N.Sathish Kumar J.

These three original side appeals have been filed challenging the preliminary decree and judgment of the learned Single Judge made in a suit for partition in C.S.No.662 of 2010 dated 06.04.2018.

2.O.S.A.No.390 of 2018 has been filed by the plaintiffs in C.S.No.662 of 2010, O.S.A.No.370 of 2018 has been filed by defendant nos.2, 3, 6, 7 and 9 and O.S.A.No.304 of 2018 has been filed by 11 to 13 defendants, who are subsequent purchasers. Since all the appeals have arisen out of the same judgment, we are inclined to dispose of all the three original side appeals by way of this common judgment. The parties in this case are referred to as per their own rankings in the suit.

3.The following are the brief facts which are necessary for the disposal of these appeals by way of this common judgment:

3.1.The plaintiffs 1 to 3, defendants 1 to 5 and 7 to 10 and one V.Shanmugam are the sons and daughters of one T.G.Vellaya Nadar and Thanalakshmi Ammal. 6th defendant is the wife of another pre-deceased son of said T.G.Vellaya Nadar and Thanalakshmi, namely Vijayakumar. Defendants

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14 to 17 are the legal heirs of the 8th defendant. Defendants 11 to 13 are the subsequent purchasers of the suit property. According to the plaintiffs, the suit property is a joint family property, to which the said Vellaya Nadar was the kartha. The said Vellaya Nadar had vast ancestral properties in Tharangambadi village, Nagapattinam District and also in Chennai, including a Bungalow with 25 grounds of land situated in Door No.21/57, Dr. Azhagappa Road, Purasawalkam, Chennai-600 084. By a partition deed dated 13.12.1956 bearing document No.12/1957, the agricultural lands situated in Tharangambadi and the property in Chennai were partitioned among the family members. By the said partition deed dated 13.12.1956, the bungalow along with 25 grounds of land in Dr.Azhagappa Road, Purasawakkam and a house site in Tharangambadi village were kept as undivided common property of the family and those properties which were kept undivided were shown as J-Schedule property in the partition deed. According to the plaintiffs, the plaintiffs have equal rights in those properties kept as common along with defendants 1 to 10.

3.2.It is the further case of the plaintiffs that plaintiffs and defendants 1 to 10 have already sold the house and land in Tharangambadi village covered in the J-schedule in the partition deed. Further, according to the plaintiffs, the plaintiffs and defendants 1 to 10 have jointly executed a registered power of attorney dated 02.07.2009 registered in the Sub Registrar Office, Purusawakkam, Chennai. The plaintiffs' share in the sale consideration received were paid to them. It is the further case of the plaintiffs that out of the 25

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grounds of land kept as undivided common property of the family, only 4 grounds and 7 square feet is available after the sale. When that being so, defendants 1 to 10 entered into an agreement dated 08.04.2010 registered as document no.1308 of 2010 with defendants 11 to 13 for the sale of the land measuring 4 grounds and 7 square feet. The said sale agreement is not binding on the plaintiffs and that the plaintiffs are entitled to 3/13 share in the suit property. Hence they filed the suit.

3.3.The first defendant filed the written statement admitting the earlier partition on 13.12.1956 between the father and sons, daughters, wife and mother and also that the bungalow along with 25 grounds of land in Dr.Azhagapa Road, Purasawakkam was kept as undivided common property which has been covered in J-Schedule in the partition deed. It is his further contention that as far as the Tharangambadi property is concerned, the plaintiffs and defendants 1 to 10 have sold the property and each of them got their sale consideration. It is also admitted that defendants 1 to 4 and 6 to 9 have sold the suit property to defendants 11 to 13 and also received the entire sale consideration from them and also handed over the possession of the suit property to defendants 11 to 13 and out of the 25 grounds in the common property shown as J-Schedule in the partition deed, already 21 grounds was sold jointly when their father was alive between 1957 and 1973. The remaining 4 grounds and 7 square feet and a house were kept in possession and enjoyment of their father and sons, namely defendants 1 to 4 and 6 to 9. According to the first defendant, the 2nd, 4th and 9th

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defendants are the sons who were born to their father and mother after the partition and they were also in the common enjoyment of the suit property. The 1st and 3rd plaintiff196s and 5th defendant are daughters who were born after the partition and they were given enough things in the marriage and sufficiently settled when their father was alive.

3.4.It is the further contention that their father has executed a settlement deed dated 06.03.2006 whereby he settled his 1/7th share in the suit property to his sons and grandsons and directed his sons to give 2% of the sale consideration of the suit property to his each daughter. The claim of joint possession by the plaintiffs is false and they were never in possession of the suit property. Therefore, the suit is liable to be dismissed. According to the first defendant, there are nine sons born to Vellaya Nadar and six sons were born before partition dated 13.12.1956 and subsequently three sons were born to them and one son V.Shanmugam died unmarried and another son Vijayakumar died leaving behind the sixth defendant, his wife, son and daughter. Therefore, at present, there are eight sons who are entitled to the suit property and each entitled to 1/8th share. The first defendant and eight defendant have jointly executed an agreement for sale and general power of attorney on 13.04.2010 and received their respective sale consideration and other defendants 2 to 4 and 6 to 7 and 9 have sold their 6/8th share in the suit property and received the sale consideration by executing the sale agreement dated 08.04.2010 and general power of attorney dated 16.04.2010 to defendant 11 to 13. The defendants have

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delivered the vacant possession of the suit property to defendants 11 to 13. Therefore, the claim of the plaintiffs for 3/13th share is unsustainable.

3.5.Defendants 2,3,6,7,8 and 9 have filed written statement contending that the suit has not been properly valued for the purpose of court fee and the jurisdiction and the plaintiffs have not stated that they are in joint possession of the suit property. Admitting the relationship, it is submitted by these defendants that as early as on 13.12.1956, the partition deed was executed and registered in respect of all the properties owned by their father Vellaya Nadar along with six sons, namely defendants 1,3,4 7,8 and 9, their mother and grandmother and two daughters. In the above partition, each of the six sons were allotted one schedule, namely Schedule A to F. The father was allotted the property described as Schedule G. Two of the daughters, namely 2nd plaintiff and 10th defendant were allotted Schedules I and H respectively. The property described in J-Schedule in the partition deed, namely 25 grounds out of 30 grounds was allotted to Vellaya Nadar and his six sons mentioned in the partition deed and each of them were having an undivided 1/7th share. The remaining extent of 5 grounds in Azhagappa Road was retained by Vellaya Nadar which was described in G-Schedule. The said Vellaya Nadar had sold the said G-Schedule property to settle his liabilities. Thereafter, Vellaya Nadar along with his sons had sold 21 grounds out of 25 grounds in J-Schedule leaving the remaining 4 grounds alone.

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3.6.It is the further contention that defendants 2,4 and 9 and 1st and 2nd plaintiffs and 5th defendant were born to Vellaya Nadar after the partition. Vellaya Nadar's son one Vijayakumar died in the year 1990. Another son V.Shanmugam died as a bachelor in 1995 leaving behind him his mother Thanalakshmi as his only legal heir. The said Thanalakshmi had executed a settlement deed dated 28.11.2005 settling her share inherited from her son on the two sons, namely 4th and 7th defendants. Similarly, Vellaya Nadar by settlement deed dated 06.03.2006 settled his 1/7th share in the remaining extent of J-Schedule property along with G-Schedule property and he allotted the same equally to all his seven sons and directed them to pay 2% out of the sale consideration to all his daughters. The said Vellaya Nadar died on 10.05.2006 and their mother Thanalakshmi died on 19.07.2006. Later on 02.07.2009, the G-Schedule property in Tharangambadi was sold by all seven sons and five daughters jointly and each of them got an equal share in the sale consideration. It is further evidence that the settlement deed dated 06.03.2006 has been acted upon by the daughters including the plaintiffs. Hence as per the settlement, the plaintiffs are entitled to only 2% of the sale consideration at the time of sale of J-Schedule property and that they do not have any right or interest in respect of the said property. The second plaintiff was also allotted a property in the earlier partition deed. Therefore, she cannot challenge the earlier partition deed. Further, defendants 1 to 4, 7 to 9 and 6th defendant (wife of Vijayakumar) along with the son and daughter are co-owners of the suit property and they have

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absolute right to deal with the same and they have entered into agreements of sale dated 08.04.2010 and 13.04.2010 with defendants 11 to 13 for a sum of Rs.2,40,00,000/- and received the entire consideration and handed over the possession. They are ready to pay the 2% of the sale consideration to each of the daughters.

3.7.The defendants 11 to 13 filed written statement contending that the suit is not maintainable. According to these defendants, as per the partition deed, the said Vellaya Nadar and his sons defendants 2 to 7 alone are entitled to the J-Schedule property. Vellaya Nadar and his sons had sold more than 20 grounds and the remaining 4 grounds and 7 square feet are in enjoyment of defendants 1 to 4 and 6 to 9. According to 11 to 13 defendants, defendants 1 to 4, 7 to 9, 6th defendant, wife of late Vijayakumar, his son and daughter represented them that they are the co-owners of the suit property and that they have absolute power to deal with the suit property. On the strength of the said representation, they entered into agreements for sale on 08.04.2010 and 13.04.2010 and received the entire sale consideration and handed over the possession of the suit property to defendants 11 to 13. It is also their claim that at the request of defendants 11 to 13, the defendants 1 to 4 and 6 to 9 have executed a general power of attorney to their nominee one Mukesh M.Ranka. According to defendants 11 to 13, the sale transaction is complete. It is stated that the plaintiffs have no right over the suit property. Further, it was informed to these defendants that Vellaya Nadar had executed a settlement deed dated

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06.03.2006 registered as document No.1278 of 2006 at the Sub Registrar Office, Purusawakkam, Chennai, whereby he settled the A-Schedule property absolutely to his sons and grandson and grand daughters. In the settlement, he has specifically mentioned that his daughters have no right in the suit property. As per clause 13 of the settlement, his five daughters are entitled 2% each of the sale price and the all the six sons and daughter and son of Vijayakumar are entitled to remaining amount. Therefore, according to these defendants, the plaintiffs have no right over the suit property. Further, with reference to the sale of Tharangambadi properties, it is contended that the plaintiffs have suppressed the fact of settlement deed dated 06.03.2006 executed by their father and they have come forward with the present suit. According to these defendants, they have invested huge money of Rs.2,40,00,000/- and they are developing the property and hence, they prayed for dismissal of the suit.

4.On the basis of the above pleadings, the following issues were framed by the learned single judge on 21.02.2012:

(1)Whether the suit property covered under “J” schedule of the partition deed dated 13.12.1956 is an ancestral property or not?

(2)Whether the defendants alone are entitled to take over the suit property to the exclusion of the plaintiffs?

(3)Whether the plaintiffs are entitled for partition and separate possession of their 1/13th share each in the suit property?

(4)Whether the settlement deed dated 06.03.2006 executed by the father of the parties is valid and binding on the parties?

(5)Whether the sale deeds executed by the defendants after the

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suit are binding on the plaintiffs?

(6)What are the other reliefs the plaintiffs entitled to?

5.On behalf of the plaintiffs, the first plaintiff was examined as P.W.1 and Exs.P.1 to P.8 documents were marked. On the side of the defendants, the 11th defendant was examined as D.W.1 and Exs.D.1 to D.7 documents were marked. It is to be noted that though defendants 1, 2, 3, 6, 7, 8 and 9, who are family members, have filed written statements, none of them have entered into the box to dispute the claim of the plaintiffs, whereas only the 11th defendant, who is the subsequent purchaser of the subject property, alone entered into the box and contested the matter. The learned single judge considering the fact that first and third plaintiffs, defendant 2,4,5 and 9 are after born children of Vellaya Nadar and Thanalakshmi, applied the law relating to the after born children to claim partition and granted preliminary decree for partition and separate possession of their 307/10584 shares each in the suit property. However, relegated the parties to a separate enquiry for mesne profits. Aggrieved over the allotment of shares by the learned single judge, the plaintiffs have filed OSA No.390 of 2018, defendants have filed O.S.A.Nos.304 and 370 of 2018.

6.The learned senior counsel appearing for the plaintiffs/appellants in O.S.A.No.390 of 2018 would mainly submit that the share calculation made by the learned single judge is not correct. According to the learned counsel, when the children are born after the partition in the family, they became coparceners

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with the father. Therefore, by virtue of the said legal position and also by virtue of Act 39 of 2005, the daughters also become coparcener in the property allotted to the father. The learned single judge has once again divided the property to all the legal heirs equally which is not correct. The very share calculation itself is not correct. The learned counsel has submitted that one son Shanmugam died issueless and his 1/7th share of the property devolved upon the mother of the parties, namely Thanalakshmi. Therefore, each of the legal heirs also entitled to equal share in that property. Hence, according to the learned counsel, the plaintiffs 1 and 3, defendants 2, 4, 5 and 9 each are entitled to 334.30 square feet. The second plaintiff and the 10th defendant are entitled 105.57 square feet each in the entire suit property. The defendants 1, 3, 6, 7 and 8 each are entitled to 1478 square feet in the suit property. Hence, the share calculation made by the learned single judge is not correct. Therefore, the learned counsel sought to allow the appeal.

7.Mr.Bijai Sundar, learned counsel appearing for the appellants in O.S.A.No.370 of 2018 would submit that the learned single judge has not considered the settlement deed executed by the mother of the parties in respect of her share which was derived as class I legal heir of his son. That apart, the father of the parties had also executed a settlement deed and this was also not properly considered by the learned single judge. It is his contention that the settlement deed Ex.D.2, dated 06.03.2006 executed by the father of the parties and Ex.D.4, settlement deed dated 28.11.2005 executed by the mother of the

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parties in favour of some of the defendants were never considered by the learned single judge properly. Further, the learned counsel contended that even in the sale deed executed by the plaintiffs and defendants together, it has been clearly mentioned about the settlement deed executed by the father. Therefore, according to him, the settlement deed was acted upon. Such being the position, the plaintiffs are not entitled to the share as calculated by the learned single judge. Further, the plaintiffs were not in joint possession of the suit property. Therefore, the court fee paid is incorrect. The learned Single Judge has not gone into that issue at all. Hence, the learned counsel submitted that since the plaintiffs are not in joint possession of the property, the court fee ought to have been paid under section 37(1) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 and therefore, the suit is not maintainable.

8.The learned counsel Mr.K.V.Bhashyam Chari appearing for the subsequent purchasers would submit that the plaintiffs are not in joint possession of the suit property and the court fee issue was not decided by the learned single judge. Further, according to the learned counsel, the appellants in O.S.A.No.304 of 2018 are bona fide purchasers and only on the representation of the defendants, the property has been purchased and they had invested huge sum of Rs.2,40,00,000/-. Further, the father has also executed the settlement deed which has been acted upon and therefore, the plaintiffs cannot claim any share in the suit property.

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9.In the light of the above submissions made by the learned counsel for the respective parties, that points that arise for consideration in these appeals are as follows:

(a)Whether the suit has not been properly valued?

(b)Whether the plaintiffs are not in joint possession of the suit property?

(c)Whether the after born children can reopen the partition which has already completed in the year 1956?

(d)What is the ratio of the share which are entitled to by the parties to the lis?

(e)Whether the settlement deeds dated 28.11.2005 and 06.03.2006 are valid in the eye of law?

(f)To what other reliefs, the parties are entitled to?

Issue Nos.(a) and (b):

10.The relationship of the parties are not in dispute. The plaintiffs 1 and 3 and defendants 2,4,5 and 9 were born after the partition got effected in the family on 13.12.1956. The defendants 1, 3 and one Vijayakumar, husband of 6th defendant and 7th and 8th defendants and one Shanmugam were sons born before the partition. Similarly, second plaintiff and 10th defendant were also born before Ex.P.6, partition deed. They are all parties in the said document and in the partition, the children were allotted certain shares in the properties. In the abovesaid partition deed, J-Schedule property which was around 25 grounds

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was kept as common property and it should be enjoyed by the father and six sons who are parties to the document. It is also admitted by both sides that out of 25 grounds, already 21 grounds were sold by the defendants. The remaining 4 grounds and 7 square feet alone were not dealt with by the parties when the suit was filed. It is the contention of the plaintiffs in the suit that they are also legal heirs of their father by virtue of Act 39 of 2005 and therefore, they are entitled to their share.

11.Though the first defendant and other defendants inter-alia contended that plaintiffs are not in joint possession of the property, except bare evasive denial in the written statement to the effect that plaintiffs are not in joint possession, they have not raised any issue seriously. None of the defendants have filed any application to decide the court fee issue. In fact, the co-owners, i.e., family members, have not even entered into the witness box. Therefore, with respect to the issue relating to the court fee, this court is of the considered view that it does not have any relevance when that issue was not even seriously raised and no application has been filed to determine the proper court fee by any of the defendants.

12.Admittedly, the plaintiffs and defendants 1 to 10 are having some interest in the property and they are co-owners. Therefore, in law, even the possession of the property by one co-owner is deemed to be the possession of the other co-owner and hence, it has to be construed that they are in joint possession of the property. Further, the plea of court fee issue which has not

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been raised seriously in the suit cannot be raised in the appellate stage. Accordingly, the issue Nos.(a) and (b) are answered accordingly.

Issue Nos.(c) to (e) :

13.It is relevant to note that the right of the after born children has been clearly set out in ***Bhagwat Ram Vs. Ramji Ram*** reported in ***AIR 1947 P.C. 140***, wherein it has been held as follows:

> 'The rights of a son born after partition often referred to as an after-born son-under the Hindu Law were much discussed by Hindu Jurists. The ancient texts bearing on the question are conflicting but it is not necessary to examine those texts as the law to be applied is now well understood by the Court in India and was also correctly applied in this case. It is enough to state that the law is well settled that a son begotten as well as born after partition, where a share has been allotted to the share of the father, as in the present case, is not entitled to have the partition to be reopened and to claim a redistribution of the shares. He is only entitled to succeed to his father and to the separate or self-acquired property to the exclusion of others'. (*Emphasis supplied*)

14.Further, in Mulla's Hindu Law, 22nd edition, it has been set out as follows:

> '**309.Son begotten as well as born after partition.**-- A father separating from his sons, may or may not reserve to himself, a share on partition. The rights of a son born as well as begotten after partition are different, depending upon whether the father has or has not reserved a share to himself.

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(1)Where the father has reserved a share to himself, a son who is begotten as well as born after partition, is not entitled to have the partition reopened; but in lieu thereof he is entitled, after the father's death, to inherit not only the share allotted to the father on partition, but the whole of the separate property of the father, whether acquired by him before or after partition, to the entire exclusion of the separated sons.

(2)Where the father has not reserved a share to himself on a partition with his sons, a son who is born as well as begotten after the partition is entitled to have the partition reopened and to have a share allotted to him not only in the property as it stood at the time of the original partition, but in the accumulations made with the help of that property.

Where at a partition between a father and his son by the first wife and two sons by the second wife, a small item was allowed to the father for maintenance, with a clause that an after-born son should be provided out of the share allotted to his mother and full brothers, it was held that the right of the after-born son to re-open the partition was not affected by the clause.'

15.Therefore, from the above, it is clear that in any property which is reserved by the father, the after born son will become coparcener with the father and the divided son will be excluded. Admittedly, in the case on hand, the parties are claiming shares only in respect of 4 grounds and 7 square feet. This aspect is not disputed and the remaining properties were sold. Though as per the original text of the Hindu Law, the after born son will become coparcener along

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with the father's share allotted to the father, in the present case, the three daughters, namely plaintiffs 1 and 3 and 5th defendant were born after the partition. It is relevant to note that after the commencement of the Hindu Succession (Amendment) Act, 2005 [39 of 2005], the daughters also elevated to the status of a coparcener as that of the sons. Admittedly under Ex.P.6 partition deed, J-Schedule was kept to be allotted to six sons born at the time of partition and the father Vellaya Nadar. Therefore, each entitled to 1/7th share in the suit property. It is also admitted that after born children, namely defendants 2,4 and 9, sons born after the partition also dealt with the properties in the J-Schedule. Therefore, we are of the view that when the after born children also became coparcener with the father in respect of their share, the daughters also by virtue of section 6 of the Hindu Succession Act, 1956 [after the amendment by the Hindu Succession (Amendment) Act, 2005] have became coparceners along with the father. The defendants 1, 3, 7 and 8, 6th defendant's husband and pre-deceased son Shanmugam cannot be considered as coparceners in respect of 1/7th share of their father in the suit J-Schedule property, since they have already become divided sons even in the year 1956. Therefore, the first and third plaintiffs, defendants 2,4,5 and 9 alone have become coparceners along with the father Vellaya Nadar in respect of his 1/7th share in the J-Schedule property in the partition deed Ex.P.6.

16.It is the admitted case of the parties that after the sale of a larger extent of properties, only 4 grounds and 7 square feet alone is available for parties. The

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1/7th share of the father Vellaya Nadar in the remaining property in the J-Schedule property assumes the character of the joint family property along with the after born children. In this 1/7th share of said Vellaya Nadar in the suit property, after born children including daughters of Vellaya Nadar entitled to shares. The Vellaya Nadar's 1/7th share will devolve upon all his class I legal heirs. His 1/7th share in the property will be divided into 1/14 including his wife who was alive at the relevant point of time. It is also admitted that the other son one V.Shanmugam who was also allotted property in the J-Schedule died issueless and his 1/7th share would devolve on the class I legal heir, namely mother Thanalakshmi. The property inherited by her as class I legal heir would devolve as per section 15 of the Hindu Succession Act, 1956 among all legal heirs. There are totally 13 legal heirs. Therefore the 1/7th share inherited by Thanalakshmi will be again divided as 1/13th share. Therefore, their mother has 1/14th share inherited from her husband + 1/7th share of her son. It is the case of the defendants that Vellaya Nadar and Thanalakshmi both independently executed settlement deeds Exs.D.2 and D.4. Though much emphasis has been made with regard to Ex.D.2 executed by the father, it is relevant to note that as far as his 1/7th share is concerned, the property attained the character of the ancestral nature and all after born children also became coparceners. Therefore, once plaintiffs 1 and 3, defendants 2, 4, 5 and 9 became coparceners, it is well settled that as far as the joint family and the ancestral property are concerned, the settlement deed cannot be executed by one of the coparceners. Further the

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same has been executed after the cut off date 20.12.2004 under the Act 39 of 2005. Therefore, the settlement deed Ex.D.2 as far as the ancestral property is concerned cannot be valid in the eye of law and the same will not bind the after born children who became coparceners along with their father Vellaya Nadar.

17.As far as the settlement deed Ex.D.4 dated 28.11.2005 executed by Thanalakshmi, it is relevant to note that she has acquired right as class I legal heir in respect of the 1/7th share of her unmarried son, namely Shanmugam, who died issueless. Ex.P.6, partition deed itself indicates that the J-Schedule property was allotted jointly to Shamugam and his other brothers along with the father. Therefore, the said Shanmugam had 1/7th share on his own right as per the original partition deed Ex.P.6. Though a copy of Ex.D.4 settlement deed has been filed, it is relevant to note that it has been filed after comparison of the original deed and the settlement deed has also been accepted by P.W.1. P.W.1 in her evidence, particularly in her cross examination dated 22.09.2015 has clearly admitted that under Ex.D.4, her mother had settled the property in favour of 4th defendant, 7th defendant and 9th defendant. Ex.D.4 is related to 522 square feet of the suit property. It is relevant to note that 1/7th share of the deceased son, namely Shanmugam would come around 1372.43 square feet, which has been devolved upon the mother Thanalakshmi and the character of the property would be the separate property and it should be dealt with under section 15 of the Hindu Succession Act, 1956. She has executed settlement in respect of 522 square feet under Ex.D.4. Therefore, we are of the view that this

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extent which has already been settled has to be excluded from the partition.

18.Though the learned single Judge has calculated the shares with erudition and arrived at meticulous mathematical calculation, we are of the view that since the entire subject matter of the property is around 4 grounds and 7 square feet which comes to 9607 square feet, we are inclined to arrive at the shares as per the entitlement of parties considering the after born childrens' right and the succession under sections 8 and 15 of the Hindu Succession Act, 1956.

19.In the light of the above discussion, now the following are the shares to which the parties are entitled to.

19.1.Admittedly, only 9607 square feet of the property is available for partition which is admitted by the parties. As per Ex.P.6 partition deed of the year 1956, this 9607 square feet is to be divided by 1/7th share, which would come around 1372.43 square feet. Now, we hold that the after born children of Vellaya Nadar and Thanalakshmi became coparceners with Vellaya Nadar in his 1/7th share. The plaintiffs 1 and 3 and defendants 2,4, 5 and 9 are after born children and they became coparceners with Vellaya Nadar and therefore, they are each entitled to 1/7th share in 1372.43 square feet. Accordingly, the after born children, namely plaintiffs 1 and 3, defendants 2, 4, 5 and 9 are entitled to each 196.06 square feet in the 1/7th share which was originally allotted to the father Vellaya Nadar. The remaining 1/7th share of Vellaya Nadar has to be divided as per the succession under section 8 of the Hindu Succession Act,

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1956. Accordingly, 196.06 square feet is to be divided as 14 shares, namely 13 children and Thanalakshmi, the wife of Vellaya Nadar being the class I legal heirs and each will be entitled to 14.004 square feet. Therefore, from the 1/7th share of Vellaya Nadar in the suit schedule property, the plaintiffs 1 and 3 and defendants 2, 4, 5 and 9 will be entitled to 210.06 square feet each [196.06 square feet (from the coparcenery) + 14.004 square feet (derived from the father under Section 8)]

19.2.It is further to be noted that Thanalakshmi inherited 1372.43 square feet from her unmarried son Shanmugam who died issueless. She has also derived 14.004 square feet from her husband's 1/7th share. Accordingly, Thanalakshmi's share would come to 1386.43 square feet [1372.43 from her deceased son + 14.004 from her husband's 1/7th]. Out of this 1386.43 square feet, under Ex.D.4 settlement deed, she has gifted 522 square feet. Thus, after excluding this, what remains to be divided among the legal heirs is to the extent of 864.43 square feet [1386.43 – 522]. If this 864.43 square feet is divided by 13, i.e., 13 legal heirs, each of them will be entitled to 66.49 square feet [864.43 /13].

19.3.Accordingly, plaintiffs 1 and 3 and defendants 2,4,5 and 9, who are the after born children, will each get 196.06 square feet (from the coparcenery) + 14.004 square feet (derived from the father under Section 8) + 66.49 square feet (derived from the mother under Section 15)] = 276.55 square feet in total.

19.4.As far as the divided sons, namely defendants 1 and 3, 6th

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defendant's husband one Vijayakumar and defendants 7 and 8, they were already entitled to 1/7th share in the suit property as per Ex.P.6 partition deed, i.e., each of them are entitled to 1372.43 square feet. In this 1/7th share of the father dealt with under section 8 of the Hindu Succession Act, 1956, the shares of the each legal heirs would come around 14.004 square feet. Apart from that, from their mother under section 15 of the Hindu Succession Act, 1956, they will get 66.49 square feet.

19.5.Accordingly, defendants 1, 3, 6 and 7 each are each entitled to 1372.43 (from partition) + 14.004 (derived from the father under Section 8) + 66.49 (derived from the mother under Section 15) = 1452.924 square feet in total.

19.6.The defendants 14 to 17, who are the legal heirs of 8th defendant V.Sridharan, are together entitled to 1452.924 square feet.

19.7.As far as 2nd plaintiff and 10th defendant, who are daughters and who are also born prior to partition deed Ex.P.6, as the partition has already completed, they are not entitled to claim as coparceners by virtue of the Act 39 of 2005 and that they are entitled only from the share of their father's 1/7th share dealt with under section 8 of the Hindu Succession Act, 1956, i.e., 14.004 square feet and from their mother, the share of 66.49 square feet each. Accordingly, 2nd plaintiff and 10th defendant are each entitled to 14.004 (derived from the father under Section 8) + 66.49 (derived from the mother under Section 15) = 80.49 square feet in total.

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19.8.In the light of the above calculation, the shares of the respective parties are hereby given in the form of a tabulation for easy reference:

Rank of Parties	Shares allotted to them	Total shares in sq.ft.
Plaintiffs 1 and 3 and defendants 2, 4, 5 and 9 [after born children]	276.55 sq. ft each	1659.30 [276.55 x 6]
Defendants 1, 3, 6 and 7	1452.924 sq.ft. each	5811.69 [1452.924 x 4]
defendants 14 to 17 [legal heirs of 8th defendant] together	1452.924 sq.ft.	1452.924
2nd plaintiff and 10th defendant	80.49 sq.ft. each	160.98 [80.49 x 2]
Gift as per Ex.D.4 settlement deed [4th and 7th defendants together]	522 square feet	522
TOTAL		9606.90 sq.ft.

20.It is further to be noted that though the plaintiffs have proceeded on the basis that they were entitled to shares as per the Act 39 of 2005, considering the issues involved in the matter relating to the after born children, this court is of the view that though parties have not set out their claims properly, the suit being for partition, as held by this court in ***Annapoorni Vs. Janaki*** case reported in ***1995 (1) LW 141***, this court has worked out the shares in accordance with their entitlement even when their claims are not properly made in the pleadings. Further, though an argument has been advanced before the learned

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single judge with regard to the enlargement of the estate, the property is the absolute property of Thanalakshmi in lieu of maintenance, the learned single judge rightly rejected the same. It is relevant to note that such plea was never raised in the written statement also. Therefore, in the absence of any plea with regard to the right on the basis of section 14 of the Hindu Succession Act, 1956 and such contention was not argued by the learned counsel, the same cannot be considered.

21.Though it it the contention of the subsequent purchasers that they had purchased the property pending lis, it is relevant to note that merely because the property has been purchased by them, it will not bind on the other sharers. The plaintiffs have to work out their claim of future mesne profits as directed by the learned single judge in the manner known to law. Admittedly, the property was purchased during the pendency of the suit. Therefore, the sale is not binding on the plaintiffs. Further, with regard to the evasive denial made in relation to the joint possession, the co-owners have not even entered into the witness box and have not adduced any evidence. Therefore, the subsequent purchasers who purchased the property during the pendency of the suit, in our view cannot raise issue of court fee and at best, whether co-owners is in joint possession or not has to be established only by the other co-owner. Therefore, the issue nos.(c), (d) and (e) are answered accordingly.

22.Accordingly, preliminary decree is passed holding that plaintiffs 1 and 3 and defendants 2, 4, 5 and 9 are each entitled to 276.55 square feet, out of the

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total extent of 9607 square feet; that second plaintiff and 10th defendant are each entitled to 80.49 square feet; that defendant nos.1,3,6 and 7 each are entitled to 1452.924 square feet and defendants 14 to 17 are together entitled to 1452.924 square feet. The defendants shall be entitled to the preliminary decree as stated above on payment of necessary Court fee. As per Ex.D.4 settlement deed, the mother of the parties, namely Thanalakshmi had settled 522 square feet to 4th and 7th defendants. Therefore, all the shares put together would tally with the total shares in the suit property. The parties are directed to work out their shares as per the ratio indicated above.

23.Accordingly, preliminary decree is passed as indicated above and the judgment and decree passed by the learned single judge in C.S.No.662 of 2010, dated 06.04.2018 are modified. O.S.A.Nos.304 and 370 of 2018 filed by defendants are partly allowed and O.S.A.No.390 of 2018 filed by the plaintiffs is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(N.S.K.,J.) (G.K.M.,J.)
13-11-2026

Index: Yes
Speaking order
Neutral Citation: Yes

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N.SATHISH KUMAR J.
AND
GK.MUTHUKUMAAR J.

VVK

Pre delivery common judgment in
OSA No. 304 of 2018
AND
OSA NO. 370 OF 2018, CMP NO. 14052 OF 2021,
OSA NO. 390 OF 2018, CMP NO. 17688 OF 2018

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