2026:MHC:4053

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.07.2026

Pronounced on : 01.10.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

AS(MD) NO. 196 of 2018

{CNR: HCMD011030932018}

Case QR

and

C.M.P(MD)No.11578 of 2018

V.K.Krishnan (Died)

1.V.K.Jegannathan,
S/o.V.K.Krishnan,
9/6, Gurusady Lane,
Madurai - 625 001.

2.V.K.Sudharsanan,
S/o.V.K.Krishnan,
9/6, Gurusady Lane,
Madurai - 625 001.

3.G.K.Gayathri,
D/o.V.K.Krishnan,
9/6, Gurusady Lane,
Madurai-625 001.

4.V.K.Anusuya,
W/o.V.K.Krishnan,
9/6, Gurusady Lane,
Madurai - 625 001. ... Appellants/Plaintiffs

Vs.

1.V.K.Janarthanan,
S/o.V.K.Kesavaram,
175, East Veli Street,
Madurai - 625 001.

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2.M.S.Saroja,
W/o.Sankaran,
229-A, Lakshmipuram,
Palani-2,
Dindigul District.

3.K.K.Indira,
W/o.Late.Kuppusamy,
72 - D/1, Ishmailpuram 19th Street,
Munichalai,
Madurai - 625 009.

4.V.K.Ramila (Died)

5.R.Chandravathy,
W/o.Rajendran,
14, North Car Street,
Palani,
Dindigul District.

6.G.C.Lalitha,
W/o.Chandrasekaran,
25, Venkateshwara Colony 11th Street,
Madhavaram Milk Colony,
Chennai - 51.

7.V.K.Lakshmi,
W/o.M.D.Poornachari,
8, Bharathi Nagar 4th Street,
Krishnapuram Colony,
Madurai-625 014.

8.K.M.Sakunthala,
W/o.Muralitharan,
17, Krishnapuram Colony, 5th Street,
Madurai - 625 014.

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9.A.Kuberan,
S/o.Arumuga Perumal Naidu,
3, Panthadai 2nd Street,
Madurai - 625 001.

10.V.K.Lakshmanan,
S/o.V.K.Kesavaram,
6, Gurusadi Lane,
Madurai-625 001.

11.V.K.Thulasiram,
S/o.V.K.Kesavaram,
5/12/39, Annai Therasa Street,
Vivekananda Avenue,
Valluvar Colony Extension,
Madurai - 625 014. ...Respondents/Defendants

(Memo dated 01.06.2026 filed on 02.06.2026 in USR.No.18403 is recorded as R4 died and appellants 1 to 4 and respondents 1 to 3, 5 to 8, 10 and 11, who are already on record, are the legal heirs of the deceased R4 vide Court order dated 04.06.2026 made in A.S(MD)No.196 of 2018)

PRAYER: This Appeal Suit is filed under Order 41 Rule 1 and 2 of CPC r/w Section 96 of CPC., to set aside the judgment and decree dated 26.02.2018 passed in O.S.No.229 of 2004 by the V Additional District Judge, Madurai, by allowing this appeal, thereby decreeing the suit as prayed for with costs.

For Appellants : Mr.K.V.Ravichandran
For R1 & R6 : Mr.V.N.Arjun
for Mr.N.Vallinayagam
For R2, R3, R5,
R7 & R8 : Dr.M.D.Poornachari
For R10 : Mr.S.Balakrishnan
R4 : Died
R9 & R11 : Dismissed for Default
vide Court order dated 09.08.2019

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JUDGMENT

This Appeal Suit is directed against the judgment and preliminary decree dated 26.02.2018 passed in O.S.No.229 of 2004 by the learned V Additional District Judge, Madurai.

2. The appellants are the plaintiffs in O.S.No.229 of 2004 on the file of the V Additional District Judge, Madurai. The respondents 1 to 11 are the defendants 1 to 11 in that suit. The appellants/plaintiffs filed the suit for partition seeking for 2/5 + 2/11 share in the suit properties and for permanent injunction restraining the defendants from interfering with the plaintiffs' possession or alienation or encumbering the suit properties.

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

4. The brief facts are as below:

(a) The case of the plaintiffs (appellants herein):-

The 1st plaintiff and defendants 1 to 8, 10 & 11 are siblings and they were born to V.K.Kesavaram. The father of V.K.Kesavaram, is Vaithiam

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Kuppusamy Iyer, who was a Sidha Vaithiyar and was running Sidha Vaithiya Medicine. After his death, V.K.Kesavaram continued the profession. The 1st item is ancestral property of the 1st plaintiff and his siblings. The other items of the suit properties were purchased from the income of the ancestral property. All the properties were enjoyed as ancestral properties. When V.K.Kesavaram was alive, the marriage of the 2nd defendant was solemnized. V.K.Kesavaram died on 05.07.1975 intestate. Thereafter, the marriages of defendants 3, 5 to 7 and 8 were performed by the 1st plaintiff from his own money. The said marriage expenses have to be provided at the time of partition. The 1st plaintiff and the defendants 1, 10 & 11 are entitled to 1/5 + 1/11 share each in the suit properties. The defendants 2 to 8 are entitled to 1/11 share each in the suit properties. The defendants 4 and 10 remained unmarried. The defendants 1 to 8 and 10 colluded together against the plaintiffs and created a fraudulent document in favour of the 9th defendant in respect of the 3rd item of the suit property. The plaintiffs demanded amicable partition, but the defendants evaded. Hence, the plaintiffs filed the suit.

(b) The case of the defendants 1 and 6:-

The suit properties are not ancestral properties. The 1st item was gifted

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to the father of these defendants, namely V.K. Kesavaram, by his great grandmother Kumba Veerammal. Their father V.K.Kesavaram did business separately and not jointly with his father Vaidhyam Kuppusamy Iyer. The said Vaidhyam Kuppusamy Iyer was living with his second wife and her children separately. The father of these defendants, V.K.Kesavaram, purchased items 2 and 3 out of his own income in the years 1959 and 1962, respectively. So, the suit properties are self acquired properties of V.K. Kesavaram, and he died intestate. So, his children are entitled to share 1/11th each in the suit properties. The share stated by the plaintiffs in the plaint is incorrect. The marriage expenses of the defendants 1, 3, 5, 6 and 7 were met from the common family fund and not met by the 1st plaintiff. With consent of the plaintiffs, the defendants 1 to 8 have sold their share in the 3rd item to the 9th defendant. So, the defendants 1 and 6 are entitled to 2/11 share in items 1 and 2 of the suit properties. The relief of injunction against the co-owner is not maintainable. The 4th item of the suit property was purchased by the 1st defendant from out of his own income. Then he settled the 4th item of the suit property to his mother through a registered settlement deed on 15.08.1983. Thereafter, during her lifetime, she bequeathed the 4th item to her daughters, namely the defendants 2 to 8. After the demise of the mother, the defendants

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2026:MHC:4053

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2 to 8 are entitled to the 4th item. The 7th item is the same as the 4th item. The 5th item was the exclusive property of the 4th defendant and she sold away the same. The 9th item is also nothing but the 2nd item of the suit property. The 10th item of the suit property is exclusive property of the 3rd defendant.

(c) The case of the 2nd defendant:-

The relationship stated in the plaint is correct. This defendant is the eldest daughter of her father, V.K.Kesavaram, and assisted him in his siddha medicine business along with his eldest son. The 1st item of suit property is not ancestral property. The averment that the items 2 and 3 of suit properties were purchased out of ancestral income is denied. Their father V.K.Kesavaram died intestate on 05.07.1975. So, this defendant is entitled to an equal share in the suit properties as the properties of V.K.Kesavaram. During his lifetime, this defendant's marriage was solemnized. The marriages of other defendants were performed out of income derived from family properties. The plaintiffs have to prove that the marriages of defendants 3, 5 to 8 were met out by the 1st plaintiff's income. The share claimed by the plaintiffs as 1/5 and 1/11 in all items is not correct. The averment that the defendants 2 to 8 colluded against

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the plaintiffs is incorrect. Only with the consent of the 1st plaintiff and the defendants 10 and 11, the defendants 1 to 8 sold the suit 3rd item property to the 9th defendant. So, the 3rd item is not available for partition. The plaintiffs have to prove the existence and possession of the other items of the suit properties.

(d) <u>The case of the defendants 3, 4, 5, 7 and 8</u>:-

The 1st item of suit property was gifted by grandmother Kumba Veerammal to V.K.Kesavaram, who is the father of the plaintiffs and the defendants 1 to 8, 10 and 11. The item Nos.2 and 3 were purchased by V.K.Kesavaram from income obtained by doing hereditary siddha vaithyam practice with the help of plaintiffs and defendants 1 to 8, 10 and 11. Their father V.K.Kesavaram died on 05.07.1975 intestate. The marriages of the defendants were solemnized with common family fund. With consent of the 1st plaintiff, the 3rd item was sold to the 9th defendant. There is no collusion between the defendants 1 to 8 and 9. The 4th item (same as the 7th item) is in possession of these defendants by virtue of a Will executed by their mother in 1985. The 10th item was purchased by the 3rd defendant and hence, it is her exclusive property. The plaintiffs have to prove the existence of the other items

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for partition. The plaintiffs have added the other items according to their whims and fancies with a view to drag the suit.

(e) The case of the 9th defendant:

Except for the 2nd defendant, the other defendants have sold the 3rd item of suit properties to this defendant under sale deeds dated 02.02.1998 and 16.02.1998 even prior to the filing of the suit. So, the suit against this defendant became infructuous. The plaintiffs have no cause of action against this defendant.

(f)The case of the 10th defendant:

Originally, the suit for partition was filed in respect of three items only. The plaintiffs have added the other items during pendency of the suit. This defendant has purchased the 8th item out of his own income by doing lottery business. This defendant is in exclusive possession and enjoyment of the 8th item.

(g)The case of the 11th defendant:

The relationship stated by the plaintiffs is admitted. The 1st item is

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ancestral property. The suit items 2 and 3 were purchased by his father out of income from ancestral property. His father died intestate on 05.07.1975. The 4th and 7th items were purchased from out of family income in the name of the 1st defendant. At that time, the 1st defendant was studying in college. So, he has no exclusive right over the 4th and 7th items. The transfer of that property to their mother by the 1st defendant was only as a name lender. The 4th item was enjoyed as joint family property. The items 5 and 6 were purchased from out of family income in the name of defendants 4 and 8, so defendants 4 and 8 have no exclusive right over the same. As the 3rd defendant became a widow within a few years, the 10th item was purchased in her name from income of family. The alleged settlement deed dated 15.08.1983 executed by the 1st defendant in favour of their mother is not valid. Based on that settlement deed, their mother executed a Will dated 16.08.1985 in favour of defendants 2 to 8, which is also not a valid one. Moreover, their mother was bedridden without consciousness from 1985 onwards. The items 4 to 10 were purchased by income derived from the business run by the 1st plaintiff and defendants 1, 10 and 11. So, this defendant is entitled to a 1/5 share in items 1 to 3 and a 1/4 share in items 4 to 10.

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5. The trial Court framed the following issues upon the pleadings of both parties.

(1) Whether the plaint schedule properties are joint family properties and whether the properties are available for partition?

(2) Whether the plaintiffs are entitled to 1/5th + 1/11th share over the plaint schedule properties as prayed for?

(3) If the plaint schedule properties are partible to parties, what will be their share?

(4) Whether the plaint schedule properties are co-parcenary properties or not?

(5) Whether the marriage expenses of defendants 2 to 8 are to be reduced from their respective shares?

(6) Whether there should be any allotment to the 4th and 10th defendant towards their marriage expenses at the time of partition?

6. During trial, on the plaintiffs' side, the 2nd plaintiff was examined as P.W.1 and Ex.A.1 to Ex.A.30 were marked. On the defendants' side, defendants 1 to 4, 10 and 11 were examined as D.W.1 to D.W.6 and Ex.B.1 to Ex.B.28 were marked.

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7. On appreciation of the evidence and the submissions made on behalf of the parties, the trial Court has held that the plaintiffs are entitled to share only in items 1 and 2 of the suit properties and that the other items 3 to 10 are not partible, and the marriage expenses for defendants 2 to 8 cannot be accounted for at the time of partition. Thereby, the trial Court passed a preliminary decree entitling the plaintiffs and defendants 1 to 8, 10 and 11 to 1/11 share each in suit items 1 and 2 and dismissing the suit in other respects by its judgment dated 26.02.2018.

8. Aggrieved by the judgment and preliminary decree of the trial Court dated 26.02.2018, the plaintiffs have preferred this appeal.

8.1. The defendants have not preferred any appeal separately or filed any cross appeal.

9. The learned counsel for the appellants/plaintiffs submitted that originally the 1st plaintiff and the defendants 10 & 11 filed the suit for partition in respect of items 1 to 3 of the suit properties as they are ancestral properties

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of the father of parties V.K.Kesavaram and also sought for marriage expenses of defendants 2 to 8 as it was met out by the 1st plaintiff. As the plaintiffs 2 and 3 have not cooperated with the 1st plaintiff, they were transposed as defendants 10 and 11 during pendency of the suit. The 1st plaintiff died pending suit and hence, the plaintiffs 2 to 5 were added as his legal heirs. The trial Court held that the suit items 1 and 2 are absolute properties of V.K.Kesavaram and granted 1/11 share each to the plaintiffs and legal heirs of V.K.Kesavaram. Now, the plaintiffs are not pressing the plea of joint family properties and are also not pressing the claim towards marriage expenses. The plaintiffs concede that the item Nos.2 and 4 are repeated as item Nos.9 and 7 respectively as held by the trial Court in paragraph No.26. They also concede that item No.3 was sold to the 9th defendant as held by the trial Court in paragraph No.25. So, now there are only seven items available for partition, out of which, the plaintiffs are not claiming partition except the items 1, 2 = 9, 4 = 7 and 5.

10. The learned counsel for the plaintiffs submitted that in respect of items 1 and 2, there is no cross appeal or separate appeal filed by the defendants. So, the finding of the trial Court that the suit items 1 and 2 are

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available for partition and allotment of share to the plaintiffs and defendants 1 to 8, 10 and 11 became final. The plaintiffs have also admitted the share.

11. The learned counsel for the plaintiffs further submitted that the suit item No.4 = item No.7 is concerned, it is admitted that the 1st defendant has purchased the said property by virtue of Ex.A.3 and later, he executed a registered Ex.A.4 settlement deed in favour of mother Kuppammal. The mother Kuppammal died on 18.01.1989. Now, the defendants 2 to 8 claim that their mother executed Ex.A.5 Will. But, the defendants 2 to 8 have not proved the Will as required by law by examining any one of the attesting witnesses and scribe. Even the defendants 2 to 8 have not produced the original Will. However, the defendants 2 to 8 state that they themselves partitioned the 4th item by way of Ex.B.18 deed dated 20.02.2006. In the absence of proof of Ex.A.5 Will, the defendants have no absolute right over the item No.4 and so Ex.B.18 is not a valid one. Therefore, the item No.4 is available for partition and hence, the plaintiffs and defendants 1 to 8, 10 and 11 are entitled to an equal share in it.

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12. The learned counsel for the plaintiffs submitted that the plaintiffs admit that the 4th defendant purchased the suit item No.5 in her name under Ex.A.6 sale deed. The 4th defendant is unmarried and a spinster and after filing appeal she died on 26.09.2020. As per section 15 of Hindu Succession Act the plaintiffs and the defendants 1, 2, 3, 5 to 8 and 10, 11 are her legal heirs and so they are entitled to equal share in item No.5.

13. The learned counsel for the plaintiffs has now submitted that since one of the legal heirs of V.K.Kesavaram died a spinster, the shares of plaintiffs and other defendants except 9th defendant enlarges to 1/10 each and hence, the plaintiffs are entitled to 1/10 share in items Nos.1, 2, 4 and 5. The plaintiffs fairly concede that item Nos.2 and 9 are one and same. So also, item Nos.4 and 7 are one and the same. The learned counsel for the appellants lastly submitted that the finding of the trial Court in respect of item Nos.1 and 2 may be confirmed, but set aside in respect of item Nos.4 and 5 and modify the preliminary decree granting enlargement of share as 1/10 share in items 1, 2, 4 and 5. In other respects, the plaintiffs are not pressing the suit.

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14. Per contra, the learned counsel for the respondents 2, 3, 5, 7 and 8 has argued that the suit properties, item Nos.1 to 3, are not coparcenary properties of the father V.K.Kesavaram. There is no pleading regarding coparcenary properties. Hence, they are his self-acquired properties and his daughters are also entitled to an equal share as that of a son. The 4th item is the absolute property of the mother, who executed a registered Will in favour of defendants 2 to 8, so the plaintiffs are not entitled to share in item No.4. The marriage expenses of these defendants were met from the source generated from the common family fund only. So, they are not liable to pay any marriage expenses as claimed by the plaintiffs and hence no amount is to be reduced. These defendants are also entitled to 1/11 share in the suit properties. Further, during pendency of the appeal, the 4th defendant died as unmarried on 26.09.2020. So, the distribution of her share in the suit properties can be considered in the final decree proceeding, and the same cannot be considered in this appeal. In support of his argument, the learned counsel relied on the following citations:

(1) (2008) 1 MLJ 610 of Madras High Court in the case of Amudha Rani and 2 Others. /v/ K.Veeraraghavan @ K.V.Raghavan and 4 Others.

https://www.mhc.tn.gov.in/judis (Uploaded on: 01/10/2026 01:27:14 pm)

2026:MHC:4053

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(2) (2009) 6 Supreme Court Cases 99 in the case of G.Sekar /v/ Geetha and Others.

(3) (2011) 9 Supreme Court Cases 788 in the case of Ganduri Koteshwaramma and Anr. /v/ Chakiri Yanadi and Anr.

(4) (2012) 1 MLJ 216 of Madras High Court in the case of K.A.Shanmugam and Anr. /v/ Tamilarasi and Ors.

15. The learned counsel for the defendants 1 and 6 adopted the arguments of defendants 2 to 8 and filed a memo to that effect by relying on a ruling reported in **AIR 1987 SC 558**.

16. The learned counsel for the 10th defendant has submitted that the suit item No.10 absolutely belonged to him. The plaintiffs have not pleaded anything about item Nos.3 to 10. Without prior pleading, they were included under Order 6 Rule 17 of CPC. So, the plaintiffs are entitled to share only in item Nos.1 and 2 and hence, the preliminary decree passed by the trial Court may be confirmed.

https://www.mhc.tn.gov.in/judis (Uploaded on: 01/10/2026 01:27:14 pm)

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17. In reply, the learned counsel for the plaintiffs has submitted that all properties were purchased from joint family earnings. The defendants contended that they were self acquired properties of father V.K.Kesavaram. The plaintiffs conceded the same. Item No. 4 was purchased by the 1st defendant, in turn, he settled it in favour of his mother. The mother died intestate. Though the defendants stated that the mother executed a Will, the same was not proved. In a suit for partition, all parties are deemed to be plaintiffs, and the written statement can be taken as the plaint, so pleadings in respect of other items are available in the suit. The 4th defendant died a spinster. Hence, the plaintiffs are the legal heirs as per Section 15 of the Hindu Succession Act. The plaintiffs also admit that the suit properties are not ancestral properties. All legal heirs of V.K.Kesavaram are entitled to an equal share. So, the citations relied on by the defendants are not necessary.

18. I have carefully considered the arguments advanced by all the parties in respect of their respective cases and perused the records of the case.

19. The points for consideration in this appeal are:

1.Whether the plaintiffs are entitled to a 1/10 share in the items 1, 2, 4, 5 of the suit

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2026:MHC:4053

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properties?

2.Whether Ex.A5 Will dated 16.08.1985 in favour of defendants 2 to 8, is proved as per law?

3. Whether the judgment and decree of the trial Court is to be modified and whether the appeal is to be allowed?

20.Point Nos.1 to 3:

On hearing both sides and on perusing the material records along with grounds of appeal, both sides admitted that the suit properties, item Nos.1 to 3, are properties of V.K.Kesavaram, who is the father of the 1st plaintiff and defendants 1 to 8, 10 and 11. There is no dispute that the suit was originally filed by the 1st plaintiff and the defendants 10 & 11 in respect of item Nos.1 to 3 of suit properties. The defendants 10 and 11, as plaintiffs 2 and 3, have not cooperated with the 1st plaintiff; and they were transposed as defendants. The 1st plaintiff died pending suit and hence the plaintiffs 2 to 5 were added as his legal heirs. The trial Court held that the suit items 1 and 2 are absolute properties of V.K.Kesavaram and granted 1/11 share each to the plaintiff and legal heirs of V.K.Kesavaram. Now, the plaintiffs are not pressing the plea of joint family properties and also not pressing the claim towards marriage expenses. The plaintiffs concede that items 2 and 4 are repeated as item Nos.9 and 7 respectively, as held by the trial Court in paragraph No.26. They also

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concede that item No.3 was sold to 9th defendant as held by the trial Court in paragraph No.25. So, now there are only seven items available for partition, out of which the plaintiffs are not claiming partition in respect of item Nos.3, 6, 8 and 10. So, the contention of the defendants 2 to 8 that they have sold item No.3 with the consent of the plaintiffs to the 9th defendant is upheld. The item No.6 belonged to the 8th defendant is also admitted. Also the 8th item was purchased by the 10th defendant is accepted. The 10th item of the suit property belonged to the 3rd defendant through Ex.A.8, is also admitted. In respect of items 1 and 2, there is no cross appeal or separate appeal by other defendants. Hence, the finding of the trial Court in respect of item Nos.1 and 2 is confirmed. The 9th item is a repetition of the 2nd item and the 7th item is a repetition of the 4th item is admitted. So, item Nos.4 and 5 have to be discussed in this appeal.

21. It is the case of the plaintiffs that the 4th item was purchased by the father V.K.Kesavaram from out of the family business. It is the definite case of the 1st defendant that he purchased item No.4 out of his own income through Ex.A.3 sale deed dated 01.03.1980. It is his further case that he executed a settlement deed under Ex.A.4 in favour of his mother Kuppammal. There is no

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dispute in these facts. But, the defendants claim that the mother Kuppammal executed a registered Will Ex.A.5 dated 16.08.1985 in favour of the defendants 2 to 8 in respect of 4th item. The trial Court has accepted the case of defendants 2 to 8 that the defendants are entitled to item No.4 by virtue of Ex.A.5 Will. But it is a settled proposition of law that even though a Will is registered one, the same has to be proved in accordance with law under the Indian Evidence Act. The same is silent in the discussion. So, the finding of the trial Court in respect of Ex.A.5 Will is wrong. Because even though the Will was stated to be registered, the same has to be proved according to law. The material records of this case reveal that the certified copy of the Will has been marked as Ex.A5. As rightly argued by the plaintiffs, the defendants have not marked the original Will to substantiate their case subject to cross examination by contesting parties.

22. According to the settled legal principle that a document is presumed to be genuine if the same is registered, as held by the Hon'ble Supreme Court in **Prem Singh and Ors. v. Birbal and Ors**. The relevant portion of the said decision reads as below:

"27. There is a presumption that a registered document is validly executed. A registered document,

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2026:MHC:4053

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therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption."

(emphasis supplied)

However, in respect of Will, though it is a registered one, it must be proved by evidence. It is settled law that the registered document in respect of immovable property can be taken as authenticate, at the same time, any Will in respect of immovable property the said Will cannot be presumed to be valid until it is proved as per Sections 63 of Indian Succession Act and 68 of the Indian Evidence Act.

23. The Hon'ble Supreme Court in its judgment delivered in **Leela & Others /vs/ Murugananthan & Others case in Civil Appeal No.7578 of 2023 on 02.01.2025** reported in **2025 INSC 10 held as follows:**

20.There can be no doubt with respect to the manner in which execution of a Will is to be proved. In the light of plethora of decisions including the decisions in Moturu Nalini Kanth v. Gainedi Kaliprasad (Dead, through Lrs.) 2 and in Derek AC Lobo's case (supra) this position is well settled that mere registration

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2026:MHC:4053

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of a Will would not attach to it a stamp of validity and it must still be proved in terms of the legal mandates under the provisions of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. It is not the case of the appellant that the Will dated 06.04.1990 is a registered one.

21.Now, Section 63 of the Succession Act reads thus:-

"63.Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature

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2026:MHC:4053

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or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

22.Section 68 of the Evidence Act makes it clear that at least one attesting witness has to be examined to prove execution of a Will. It is true that in the case at hand DW2 was the attesting witness who was examined in Court. Therefore, the question is whether they had deposed to the effect that the Will in question was executed in accordance with sub-rules (a) to (c) thereunder.

23.The Trial Court rightly held that the propounder of the Will has to establish by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound disposing state of mind and that he understood the nature and effect of the dispositions and put his signature out of his own free will."

24. In this case, the defendants have not examined any attestator to the Will or Scribe to the Will as a witness to prove the Will. The Ex.A.5 Will was said to be executed on 16.08.1985 by the mother Kuppammal in favour of the

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defendants 2 to 8. The plaintiffs stated that their mother Kuppammal had been bedridden without consciousness from the year 1985 till her death. The said Kuppammal died on 18.01.1989. The defendants have not disproved the said contention of the plaintiffs by examining any other material witnesses. Only the contesting defendants alone gave evidence on their side. There is no independent witness or attesting witness who was examined. So, the ExA.5 Will was not proved by the defendants as rightly argued by the plaintiffs' side. Hence, this Court is of the considered view that item No.4 is available for partition and the finding of the trial Court in this respect is liable to be set aside.

25. In respect of item No.5, there is no dispute that the 4th defendant has purchased the said property. This was not disputed by either party. So, as rightly held by the trial Court, item No.5 of the suit property is absolute property of the 4th defendant. At this juncture, during pendency of this appeal, the 4th defendant died on 26.09.2020. There is no dispute that the 4th defendant was unmarried and died as spinster. So, her siblings as parties on record were treated as her LRs by this Court as per memo filed on 02.06.2026. The parents of the 4th defendant had predeceased her. So, the available legal

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heirs are her brothers and sisters and so, they are equally entitled to her property as per Section 15 of the Hindu Succession Act.

26. In the above facts and circumstances, after the demise of the 4th defendant, the shares of the 1st plaintiff and defendants 1 to 8, 10 and 11 are getting enlarged. The learned counsel for the defendants 2 to 5 and 7 & 8 has submitted that the enlargement can be considered at the time of final decree proceedings. But the learned counsel was not be able to put forth an argument as to what inconvenience would be caused to enlarge the shares in this preliminary decree. The enlargement of shares would not prejudice the parties in any way. Therefore, this Court holds that the 1st plaintiff (since deceased and her legal heirs, plaintiffs 2 to 5) and the defendants 1 to 3, 5 to 8, 10 and 11 are entitled to 1/10 share in item Nos.1, 2, 4 and 5. In that respect, the finding of the trial Court is to be modified. The points are answered accordingly. Thus, the appeal succeeds in part.

27. In the result, this Appeal Suit is partly allowed. The judgment and preliminary decree dated 26.02.2018 passed in O.S.No.229 of 2004 by the learned V Additional District Judge, Madurai, though confirmed, the same is

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modified in respect of item Nos.1, 2, 4 and 5. The plaintiffs are entitled to 1/10 share in item Nos.1, 2, 4 and 5 of suit properties and the preliminary decree passed by the trial Court in O.S.No.229 of 20024 is modified to that effect. In other respects, the suit is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

01.10.2026

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

1.The V Additional District Judge,
Madurai.

2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
A.S(MD)No.196 of 2018
and
C.M.P(MD)No.11578 of 2018

01.10.2026

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