
(2012) 11 MAD CK 0251
In the Madras High Court
Case No : S.A. No. 589 of 2009

Thangavel (died) and Others

APPELLANT

Vs

Chidambaram and Another

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35A

Citation : (2012) 8 MLJ 787

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : V. Nicholas, for the Appellant; V. Raghavachari, for the Respondent

Judgement

P.R. Shivakumar, J.—The defendants 1 to 4 in the original suit are the appellants in the second appeal. The plaintiff is the first respondent and the 5th defendant in the suit is the 2nd respondent in the second appeal. For the sake of convenience, the parties are referred in accordance with their ranks in the original suit. The plaintiff Chidambaram, filed initially O.S. No. 183 of 2001 on the file of Sub Court, Krishnagiri. Subsequently, due to enhancement of pecuniary jurisdiction of the Munsif Courts, the suit came to be transferred to the Court of the District Munsif, Krishnagiri and re-numbered as O.S. No. 134 of 2004. The said suit was filed praying for the relief of partition claiming 1/5th share in the suit properties, for separate possession of the share of the first respondent herein/plaintiff and for a permanent injunction not to alienate or encumber the suit properties. The said prayer was made on the basis of plaint averments which are as follows:

i) 1. Kaveri Gounder, 2. Ganapathy Gounder, 3. Kullan @ Boopathy, 4. Vedi and 5. Thangavel (the deceased first defendant) are the sons of one Govinda Gounder. The above said sons of Govinda Gounder divided their ancestral properties under a partition deed dated 24.4.1974. Thangavel, the deceased first defendant had got two wives. Chidambaram, the plaintiff and Usha Rani, the fifth defendant are the son and daughter of Thangavel born through his first wife

Muthu Vedi. The said Muthu Vedi is no more. Chidambaram and Usha Rani are her legal heirs. Thulasi, the second defendant is the second wife of Thangavel. Moraji and Sangeetha, the third and fourth defendants are the illegitimate children of Thangavel born through Thulasi.

ii) Plaintiff was made to understand that Thangavel, the deceased first defendant, out of the income derived from the share he got from the ancestral property and also using the earnings of Chidambaram (plaintiff), purchased some properties through his brother Ganapathy Gounder in 1997 and created sham and nominal sale deed in favour of Thulasi, the second defendant. As such in order to avoid technical objection, the second defendant has also been made a party to the suit even though such sale deed in the name of the second defendant would not confer any valid right or title on her. Since the appellants and the second respondent (defendants 1 to 5) neglected to give the plaintiffs share of income derived from the properties and on the other hand, they were trying to alienate the same, the first respondent herein/plaintiff was constrained to file the suit for the above said reliefs.

2. The 5th defendant (second respondent herein), namely Usha Rani did not contest the case. The suit was contested by the defendants 1 to 4 (appellants) based on the averments made in the written statement and additional written statement filed by Thangavel, the deceased first defendant and adopted by the defendants 2 to 4. The averments found in the written statement and additional written statement, in brief, are as follows:

The relationship of the parties as furnished in the plaint are not disputed. However, the contention that the appellants 3 and 4/defendants 3 and 4 are the illegitimate children of the first appellant/first defendant is not correct. Such allegation has been made with ulterior motive. The properties purchased in the name of the second appellant/second defendant are her separate properties and no one can claim any right, title or possession in respect of the same. The first defendant educated the plaintiff by spending about Rs. 2.00 Lakhs borrowed from his relatives, friends and acquaintances. The plaintiff has filed the suit with ulterior motive. In fact, he has been instigated by Marimuthu, the husband of the 5th defendant, a conductor in ASTC to file the suit. The first defendant spent about a sum of Rs. 2.00 Lakhs for the marriage of the 5th defendant and taking the same into consideration, she orally relinquished her share in the properties of the first appellant/first defendant. The other allegations made in the plaint are also denied. Except some of the suit properties, other suit properties were purchased jointly by the first defendant and his brothers, out of their own income and such self-acquired properties jointly acquired by them, were divided under the partition. Hence the properties, which the first defendant got as a share in the partition are his absolute properties and the plaintiff can make any claim to a share in it. The properties standing in the name of the second defendant are her separate properties. Agricultural loans have been obtained from co-operative banks and a housing loan has also been obtained from Krishnagiri Co-Operative

Housing Society. Suppressing those facts and without coming forward to shoulder the liability of repaying the said loans, the plaintiff wanted a share and the same was rightly refused by the first defendant.

3. Based on the above said averments, the defendants 1 to 4 had prayed for the dismissal of the suit with compensatory cost u/s 35-A of the Code of Civil Procedure.

4. Four issues and one additional issue were framed by the trial Court. They are as follows:

Issues:

1) Whether the plaintiff has got a right to share in the suit properties? 2) Whether the plaintiff is entitled to the relief of partition as prayed for? 3) Whether the plaintiff is entitled to the relief of permanent injunction and 4) To what relief the plaintiff is entitled?"

Additional Issue:

Whether the suit properties are ancestral properties or self-acquired properties?

5. The parties went for trial, in which, the plaintiff figured as the sole witness (P.W. 1) on his side, whereas seven witnesses were examined as D.Ws. 1 to 7 on the side of the contesting defendants. Four documents were marked as Exhibits A-1 to A-4 on the side of the plaintiff and thirteen documents were marked as Exhibits B-1 to B-13 on the side of the contesting defendants.

6. The learned trial judge, upon considering the pleadings and evidence, decided all the issues against the plaintiff and dismissed the suit with cost by judgment and decree dated 27.2.2008. As against the said dismissal of the suit, the plaintiff filed an appeal on the file of the Principal Subordinate Judge, Krishnagiri as A.S. No. 11 of 2008. The learned lower appellate judge, after hearing the arguments advanced on both sides, by his judgment and decree dated 9.1.2009, allowed the appeal in part without cost and granted a preliminary decree for partition and also the relief of permanent injunction in respect of items 1, 2 and 4 of the suit properties and dismissed the suit in respect of item No. 3 of the plaintiff's schedule properties. The said decree of the lower appellate Court dated 9.1.2009 made in A.S. No. 11 of 2008 is challenged by the appellants herein/defendants 1 to 4 in the second appeal.

7. At the time of admission, the following question was formulated as the substantial question of law involved in the second appeal:

Whether the lower appellate Court is correct in granting a decree for partition in respect of the separate properties of the first defendant while sufficient materials are available to show that they are separate properties?

8. The arguments advanced by Mr. V. Nicholas, learned counsel for the appellants and by Mr. V. Raghavachari, learned counsel for the respondents were heard. The

judgments of the Courts below, pleadings of the parties and other documents were also perused. This Court paid its anxious consideration to the same.

9. Before dealing with the abstract substantial question of law formulated at the time of admission, it shall be convenient to briefly state the admitted facts. The plaintiff (first respondent) and the 5th defendant (second respondent) are the son and daughter of the deceased first defendant Thangavel born through his first wife Muthu Vedi. The second defendant Thulasi is the second wife of Thangavel. Though the plaintiff has chosen to contend in his plaint that the appellants 3 and 4 are the illegitimate children of Thangavel born through his second wife Thulasi, he has not denied the status of the second defendant Thulasi as wife of Thangavel. Whether Thangavel married Thulasi during the life time of his first wife Muthu Vedi or the said marriage took place after the death of Muthu Vedi has not been stated in the plaint. However during evidence, it has been admitted by the plaintiff that only after the death of his first wife Muthu Vedi, Thangavel married the second defendant Thulasi and that the defendants 3 and 4 are the legitimate children of Thangavel born out of a lawful wedlock. That is the reason why, even while claiming the suit properties to be the properties of the coparcenary consisting of Thangavel and his children as coparceners, the plaintiff has chosen to claim only 1/5th share. The same has been made on the premise that the defendants 3 and 4 and also the fifth defendant are entitled to 1/5th share each as co-parceners.

10. Items 1 and 2 of the plaint schedule properties are the properties allotted to Thangavel, the deceased first defendant in a partition that took place on 24.4.1974 between himself and his four brothers. The plaintiff has claimed that the said properties were the ancestral properties inherited by the first defendant and his brothers and hence those properties allotted to the first defendant in the said partition are the joint family properties, regarding which, the plaintiff has got a right to share by birth. So far as the third item of suit property is concerned, admittedly the same was purchased in the name of the second defendant and it stands in her name. The plaintiff has claimed that the said property is also a joint family property, since it was purchased out of the income derived from the joint family and also using the money earned by the plaintiff. The contesting defendants contend that none of the suit properties is a joint family property, in which the plaintiff has got a right by birth.

11. In view of the above admitted facts and the rival claims regarding the status in which the suit properties were held, the success or otherwise of the claim of the plaintiff depends on the outcome of the issue as to whether the suit properties are the joint family properties or self acquisitions of the first defendant and the second defendant. It is the contention of the plaintiff that the suit properties were the ancestral properties of the first defendant Thangavel and he got them by way of a partition among Thangavel and his four brothers and that hence they are the coparcenary properties, in which plaintiff has got a right to share by birth. Though the plaintiff has stated that some of the properties were

ancestral properties and some other properties were purchased in the name of the second defendant out of the income derived from the ancestral properties and using the money earned by the plaintiff, he has not made it clear in his plaint as to what are the properties that came to the first defendant as his share in the ancestral properties and what are the properties purchased out of the joint family income. However, during evidence it has been made clear that the properties described as items 1 and 2 in the plaint schedule are the properties allotted to the share of the first defendant Thangavel in the partition that took place on 24.4.1974 among Thangavel and his four brothers. Since those properties came to be allotted to Thangavel, the deceased first defendant in the said partition, the plaintiff claims that the same was his ancestral property and that was the reason why it came to be allotted in the said partition to the first defendant.

12. Per contra, it is the contention of the contesting defendants, namely defendants 1 to 4, that the properties, which were the subject matter of partition under the deed of partition dated 24.4.1974, were the self-acquisitions of the first defendant and his four brothers and the properties were divided among themselves, since all of them made the joint purchase in the name of their elder brother Kaveri Gounder. The plaintiff has also claimed the said properties were the properties of his paternal grandfather Govinda Gounder and they were divided among his five sons. However, he has chosen to produce only a certified copy of the partition deed dated 24.4.1974 as Exhibit A-1 as the only document to show that the properties dealt with in the partition deed, were the properties of the plaintiffs paternal grandfather Govinda Naicker or that the properties were the joint family properties of Thangavel and his brothers. A careful consideration of the evidence adduced by the parties and the documents would clearly show that none of the properties shown as items 1, 2 and 4 in the plaint schedule belonged to Govinda Gounder, the paternal grandfather of the plaintiff.

13. The plaintiff, who figured as the sole witness on his side, has stated in his testimony and proof affidavit that the properties described as items 1 and 2 in the plaint schedule were the properties allotted to his father Thangavel under the partition deed dated 24.4.1974. The plaintiff, while deposing as P.W. 1, admitted that he was not aware of the date of death of the paternal grandfather Govinda Naicker. It is also his clear admission that the first item of the suit property was purchased by his senior paternal uncle Kaveri Gounder from Karia Gounder, Vedi Gounder and Krishnan. Though the plaintiff has produced a document relating to the third item, which stands in the name of the second defendant, he has not produced any document to show that the other two items, namely items 1 and 4 of the suit properties were the ancestral properties of his father. In this regard, he would state that, excepting the partition deed, he has no other document in support of his case that those properties belonged to his paternal grandfather Govinda Gounder. A certified copy of the partition deed dated 24.4.1974 bearing document No. 791 of 1974 has been marked as Exhibit A-1. Similarly, the contesting defendants have also produced a certified copy of the said partition deed as Exhibit B-12. There is nothing in the said document to show that the

properties divided among the brothers were the properties of their father Govinda Gounder. It simply states that the first defendant and his four brothers even though they were living separately, they enjoyed the properties jointly and hence they decided to divide the properties among themselves. The properties described in "E" schedule in the said document were allotted to the share of the first defendant Thangavel. 1) An extent of 2.02 acres out of 2.59 acres comprised in Survey No. 266/2A and 2) An extent of 1.50 acres out of 6.30 acres comprised in Survey No. 79/1, were the two properties allotted to the share of the first defendant Thangavel under the said partition and they have been shown as items 1 and 2 in the plaint schedule. Besides having made clear averments in the written statement that the father of Thangavel did not leave any immovable property to be inherited by his sons, the contesting defendants have stated clearly that Thangavel and his brothers divided the properties jointly purchased by themselves under the partition deed, certified copies of which have been marked as Exhibit A-1 and B-12. They have also adduced clear evidence to the said effect.

14. D.W. 1, the deceased first defendant has deposed in clear terms that except the third item of suit properties, all other items of the suit properties were the self-acquisitions of himself and his brothers and that joint acquisitions made in the name of his elder brother Kaveri Gounder alone were divided among themselves under the partition deed dated 24.4.1974. In this regard, the learned trial judge, on a proper appreciation of the pleadings and evidence had arrived at a correct conclusion that the plaintiff had failed to prove that his paternal grandfather had left any property as ancestral property, in which the plaintiff could claim a right to share by birth. However, the learned lower appellate judge seems to have been carried away by the fact that the first defendant was admittedly 11/2 years old when his father Govinda Gounder died and the properties divided among the first defendant and his four brothers were the acquisitions made in the name of Kaveri Gounder, namely the elder son of Govinda Gounder. The learned lower appellate judge, as rightly contended by the learned counsel for the appellants, acted on surmises and held the properties divided under the partition deed, certified copies of which have been produced as Exhibits A-1 and B-12, were the ancestral properties of the deceased first defendant Thangavel and his brothers. Learned lower appellate judge has also chosen to observe, without any basis, that it had been admitted by the defendants that the properties divided under the said partition deed were the ancestral properties. On the other hand, it has been a clear and categorical stand taken by the contesting defendants that Govinda Gounder, the father of the first defendant/paternal grandfather of the plaintiff, did not acquire any property during his life time and that the joint self-acquisitions of D1-Thangavel and his brothers in the name of their elder brother Kaveri Gounder alone were divided under the said partition deed dated 24.4.1974. When such is the clear stand taken by the contesting defendants, the lower appellate judge seems to have rendered an observation, which is perverse, that the properties dealt with under

the partition deed were admitted to be the ancestral properties.

15. The learned lower appellate judge also seems to have been carried away by the admission made by the first defendant as D.W. 1 that he and the plaintiff resided under the same roof as members of the same family to take it as an admission that they were co-parceners and the suit properties 1, 2 and 4 were the coparcenary properties. It is also obvious that the learned lower appellate judge was carried away by the fact that the defendants have stated in their written statement that the plaintiff was not justified in seeking partition of the property without coming forward to shoulder the responsibility of discharging the loans, as one of admissions that the suit properties 1, 2 and 4 were the joint family properties. A careful consideration of the defence plea of the defendants 1 to 4 and the evidence of D.W. 1 will show that they have not made such admission and on the other hand have contended that even though the properties were claimed to be the separate properties of the first defendant, since the plaintiff did not come forward to shoulder the responsibility of discharging the debts of the father, the father was justified in refusing to give any share in his separate property to his son. The same cannot be taken as an admission that the properties held by the father were the joint family properties of the first defendant and his son. A further admission that both of them were living as a single family, will not amount to an admission that there was a Hindu Undivided Mitakshara coparcenary. The mere fact that a person is living along with his wife, son, daughter as one family will not give rise to a presumption that there is a coparcenary possessing ancestral property, in which his sons and daughters have got a right to share by birth. The person, who claims the property to be the coparcenary property, should prove it. In this case, excepting the partition deed, certified copies of which have been produced and marked as Exhibits A-1 and B-12, there is no other evidence adduced on the side of the plaintiff to prove that there was any ancestral property in the hands of the first defendant or his brothers, in which the plaintiff could claim a right to share by birth.

16. As pointed out supra, though the plaintiff has contended in his plaint that some of the suit properties were the properties of his paternal grandfather Govinda Gounder and they were partitioned among his sons since 1974, he has not stated which of the suit properties were the properties of Govinda Gounder and which of the items were the acquisitions made subsequent to the death of Govinda Gounder. In addition, in his evidence as P.W. 1, he has admitted that except Exhibit A-1, the certified copy of the partition deed, there is no other document to show that his grandfather had got any property and left them to be inherited by his sons. In Exhibit A-1 and Exhibit B-12, there is nothing to show that the properties divided therein were the properties left by Govinda Gounder and inherited by his sons. On the other hand, the contesting defendants have produced Exhibits B-1 and B-2 to show that they had been purchased in the name Kaveri Gounder, the elder brother of the first defendant. In addition, evidence has been adduced through D.W. 2-Chinnasolai, D.W. 3-Madhappan,

D.W. 4-R.M. Munusamy to the effect that the first defendant and his brothers were jointly cultivating the lands they got on lease from one Annaiya Naidu; that out of the income derived from the said cultivation made in the leasehold lands, they purchased properties in the name of Kaveri Gounder, the elder brother of the first defendant and that they divided the properties thus purchased in the name of Kaveri Gounder among themselves. Of course, out of the said witnesses, D.W. 3 did not turn up for cross-examination and hence his evidence in chief examination was struck off. D.W. 2 has not been cross-examined with any suggestion disputing his assertion that the first defendant Thangavel and his brothers cultivated the lands they got on lease from Annaiya Naidu and out of the income derived by such cultivation in the leasehold lands they purchased properties jointly in the name of Kaveri Gounder. The said testimony of D.W. 2 remains unchallenged and uncontroverted. Similarly, D.W. 4 who has deposed to the effect that the grandfather of the plaintiff Govinda Gounder did not leave any property to be inherited by his sons and that the properties purchased by the first defendant and his brothers out of the income derived from the leasehold lands alone were divided in the partition. The same was not successfully challenged by the plaintiff. In addition, there is also evidence in the form of testimony of D.W. 5, working as an assistant in the office of Tahsildar, Krishnagiri to the effect that the first defendant was also cultivating the lands belonging to Annaiya Naidu as cultivating tenant and in respect of those lands, the name of the first defendant was recorded as cultivating tenant under the Tamil Nadu Record of Tenancies Act. The learned trial judge, on a proper appreciation of the said evidence adduced on the side of the plaintiff as well as the defendants, rightly concluded that none of the suit properties was proved to be the ancestral properties of the first defendant; that only the self-acquisitions jointly made by the first defendant and his brothers in the name of his elder brother Kaveri Gounder were divided under the partition deed, certified copies of which have been marked as Exhibit A-1 and B-12 and that those properties were the separate, self-acquired and absolute properties of the deceased first defendant, in which neither the plaintiff nor the other defendants could claim any share by birth during the lifetime of the first defendant. Such a well considered finding was reversed by the first appellate judge assigning unsustainable and untenable reasons based on improper interpretation of the plea made by the defendants 1 to 4 and the evidence adduced by D.W. 1. The finding of the lower appellate Court that the properties allotted to the first defendant under the partition were admittedly the ancestral properties of the first defendant, is no doubt perverse and the same deserves to be interfered with in the second appeal by this Court.

17. So far as the property shown as item 3 in the plaint schedule is concerned, the same was admittedly purchased in the name of the second defendant Thulasi. Plaintiff claims that the said property is also a joint family property, since according to him, it was purchased out of the income derived from the ancestral joint family properties and the earnings of the plaintiff himself. The plaintiff has gone further to state that such a sale deed obtained in the name of the second

defendant is only a sham and nominal document and the real purchaser was Thangavel, the kartha of the joint family. It is pertinent to note that the property described as item No. 3 in the plaint schedule was purchased on 21.4.1997 under Exhibit B-5. The contesting defendants have taken a categorical plea that the said property is the self-acquisition and separate property of Thulasi, the second defendant. In support of their contention, they have also produced Exhibits B-3 and B-4, namely certified copies of sale deeds dated 10.6.1992 and 2.1.1980 to show that the properties of her parental family were sold and thus the second defendant Thulasi had got funds from her parental family to acquire properties in her name. A certified copy of the sale deed dated 10.6.1992 has been produced as Exhibit B-3. From the same it is obvious that the second defendant Thulasi, her mother Mangammal and one Murugesan jointly sold a property in favour of one Vedi, son of Kulla Gounder for a sum of Rs. 13,000/-. A certified copy of a sale deed dated 2.1.1980 executed by the said Mangammal, the mother of the second defendant and Thulasi, the second defendant in favour of Murugesan and Sudarsan in respect of a property for a sum of Rs. 4,935/- has been produced and marked as Exhibit B-4. From the same it is obvious that the second defendant had got properties from her parental home and she sold them along with his mother and thus she was able to mobilise funds. Evidence has also been adduced to the effect that the third item of the suit property was purchased by the second defendant out of her sridhana funds provided by her parents. As such, the contention of the plaintiff that item No. 3 is also a joint family property cannot be countenanced.

18. It seems the plaintiff is obvious of the legal position that Binami Transaction Prohibition Act, 1988 provides a bar on the plaintiff from taking a plea that the property purchased in the name of the wife of a coparcener is a coparcenary property. That is the reason why the plaintiff has chosen to contend that the sale deed under which item No. 3 of the suit property was purchased in the name of Thulasi is only a sham and nominal deed. A sham and nominal transaction is not at all a transaction and no transfer of title would result from such transaction. If the sale deed Exhibit B-5 is to be held to be sham and nominal, then the property dealt with under the said sale deed would not have passed on to either Thulasi or Thangavel or any member of the plaintiffs family. In such an event there would not be any possibility of the plaintiff claiming the said property to be one of the joint family properties belonging to Thangavel and his children. In either way, the said contention of the plaintiff seems to be misconceived besides being untenable. Both the trial Court and the lower appellate Court have approached the issue regarding the third item in proper manner and arrived at a correct conclusion that the third item of suit properties was not joint family property and it was the separate property of the second defendant Thulasi, in which neither the plaintiff nor the other defendants could claim a share against her. The said finding is not challenged either by filing a separate appeal or by filing a cross objection. The same has become final.

19. It has been held supra that except the properties divided among the first

defendant Thangavel and his brothers under the partition deed dated 24.4.1974, certified copies of which have been produced as Exhibit A-1 and B-12, there was no other ancestral property inherited from their father. Even in respect of the properties dealt with under the said partition deed, it has been held supra that those properties were the joint self-acquisitions made by the first defendant and his brothers and the shares allotted to each one of them in the partition were nevertheless the separate properties of the parties to the said partition deed, in which their sons or daughters would not get a right to share by birth. As it is not proved that Govinda Gounder had left any property to be inherited by his sons and on the other hand, it has been proved that his sons cultivated vast extent of lands belonging to one Annaiya Naidu and out of the income derived from the same they purchased properties in the name of Kaveri Gounder, the elder brother of Thangavel and those properties were subsequently divided among them, it has to be held that the property described as item 4 in the plaint schedule is also the absolute property of the first defendant Thangavel. Since items 1, 2 and 4 of the suit properties are held to be the absolute properties of the first defendant Thangavel, the plaintiff shall not have a right to a share in the said properties as against the first defendant Thangavel. Hence the claim made by the plaintiff against the first defendant seeking partition of his separate properties during the life time of Thangavel is bound to be rejected and the trial Court has rightly found the plaintiff to be not entitled to the relief of partition as against the first defendant Thangavel. The learned lower appellate judge, on a perverse finding, reversed the judgment of the trial Court and granted a preliminary decree for partition in respect of items 1, 2 and 4 of the suit properties. The said decree passed by the lower appellate Court as against Thangavel, the deceased first appellant/first defendant, deserves to be interfered with. The substantial question of law is answered in favour of the appellants.

20. In view of the finding regarding the above substantial question of law in favour of the appellants, even as on the date of filing of the appeal, the plaintiff was not entitled to any relief. The same was the position prevailing as on the date of the filing of the second appeal. If there had been no change due to death of any party, there would not be any difficulty in setting aside the decree passed by the lower appellate Court and confirming the decree of the trial Court dismissing the suit. But, a dramatic change has occurred in the second appeal due to the death of Thangavel, the first defendant. Admittedly, the said Thangavel died on 29.10.2009 during the pendency of the second appeal. As the remaining parties, namely plaintiff and defendants 2 to 5 are his legal heirs, a Memo was filed on 8.4.2010 and the appellants 2 to 4/defendants 2 to 4 and the respondents 1 and 2/plaintiff and the fifth defendant were recorded as legal representatives of the deceased Thangavel. Though items 1, 2 and 4 are held to be the separate properties of Thangavel, since Thangavel has died and it is not the case of any of the parties that Thangavel has left any will bequeathing his properties, it must be held that his properties, under the Hindu Succession Act, 1956, will be succeeded to by his wife Thulasi and children, namely Moraji,

Sangeetha, Chidambaram and Usharani in equal proportion and each one of them will get 1/5th share. As such the plaintiff Chidambaram will be entitled to 1/5th share in items 1, 2 and 4 of the suit properties not as a coparcener of Thangavel, but as a legal heir of Thangavel. Each one of the defendants 2 to 5 is also entitled to such a share as legal heir of Thangavel. Hence, this Court holds that the plaintiff is entitled to 1/5th share in items 1, 2 and 4 of the plaint schedule properties as a legal heir of Thangavel and not as a coparcener. The preliminary decree passed by the appellate Court has to be confirmed subject to the above said modification. But at the same time, since it has been admitted by the plaintiff himself in his evidence that the first defendant Thangavel had got debts to be discharged, the debts are liable to be apportioned among the plaintiff and the defendants 2 to 5 in the same ratio. Considering the facts and circumstances of the case, this Court comes to the conclusion that it shall be proper to direct the parties to bear their respective cost throughout. In the result, the second appeal is allowed in part and the preliminary decree for partition passed by the lower appellate Court holding the plaintiff entitled to 1/5th share as a coparcener against Thangavel is modified into one of a preliminary decree for partition of the said properties as separate properties of Thangavel, which devolved upon plaintiff and defendants 2 to 5 in equal proportion as his legal heirs, subject to a condition that the debts of Thangavel should be apportioned among the plaintiff and defendant 2 to 5 equally and the plaintiff shall pay 1/5th portion of such liability of deceased Thangavel. The dismissal of the suit in respect of 3rd item of suit properties shall stand confirmed. The parties are directed to bear their cost throughout.