

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 12.09.2025

Judgment pronounced on : 10.10.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.141 of 2025
& CMP.Nos.13809 & 2853 of 2025

A.Natesan

..Appellant

Vs.

A.Chinnappan

..Respondent

Prayer: Appeal Suit filed under Section 96 of CPC, to set aside the judgment and decree dated 11.12.2024 in O.S.No.323 of 2021 on the file of the learned Additional District Judge, Fast Track Court, Mettur, by allowing the appeal suit.

For Appellant : Mr.N.Manoharan

For Respondent : Mr.M.R.Jothimanian

JUDGMENT

The unsuccessful plaintiff in O.S.No.721 of 2022, before the Additional District Judge, Fast Track Court, Mettur, is the appellant. The plaintiff had sought for the relief of partition of his alleged half share in the suit properties, by metes and bounds.



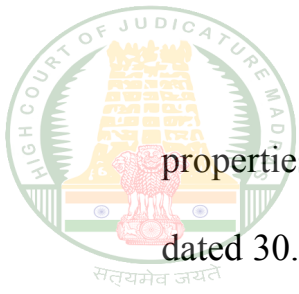
2. The facts, set out in the plaint in brief, are as follows:

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The plaintiff and the defendant are brothers. They had entered into a partition deed on 30.04.1984 amongst themselves and their father and two other brothers. In the said partition deed, one item of properties, namely schedule 'C' thereto was allotted to the share of the plaintiff and similarly, schedule 'E' was allotted to the share of the defendant. The properties, which were forming part of the said 'C' and 'E' schedules were situate in Veerakkal village. The properties in Thoramangalam village, being the suit properties, stood jointly allotted to both the plaintiff and the defendant, claiming that the plaintiff and the defendant have been in joint cultivation of the said lands in Thoramangalam village and that when the plaintiff demanded for partition, the defendant attempted to alienate his half share and despite mediation talks initiated, the defendant did not come forward for giving the plaintiff his due half share and under such circumstances, the plaintiff approached the Court seeking partition.

3. The facts, set out in the written statement in brief, are as follows:

The partition deed dated 30.04.1984 was complete and there was no property set apart for common enjoyment as alleged. The suit is bad for non-joinder of other parties to the partition deed and also non-inclusion of the



properties that were purchased in the name of the plaintiff. The partition deed dated 30.04.1984 has been given effect to by metes and bounds and the plaintiff and the defendant are in separate possession and enjoyment of their respective shares. The plaintiff, in fact, took steps for subdivision and the lands have also been sub-divided and separate pattas have been issued and pursuant to the same, both the plaintiff and the defendant have been paying tax to the Government in their individual names. The plaintiff himself availed a loan from Thoramangalam Cooperative Society and State Bank of India, Jalakandapuram Branch, evidencing separate possession and enjoyment of the plaintiff's share in the suit properties. The defendant has invested huge monies in developing the lands allotted to his share and he has developed coconut groves. As the defendant did not have any male issues, the plaintiff started attempting to pressurize the defendant to sell the properties to him and since the defendant refused, the plaintiff has been having a grudge and thereby started interfering with the defendant's peaceful possession and enjoyment, which necessitated the defendant to file O.S.No.181 of 2021 to protect his possession. The defendant therefore sought for dismissal of the suit.

4. Issues framed by the trial Court:

The Trial Court, considering the pleadings available, framed the following issues:



i. *Whether suit property along has been kept in common for enjoyment of the plaintiff and defendant?*

ii. *Whether plaintiff is entitled to $\frac{1}{2}$ share in the suit property?*

iii. *Whether the entire property belong to the plaintiff and defendant partitioned including the suit properties among the plaintiff and defendant?*

iv. *Whether the suit is hit by partial partition?*

v. *Whether the suit is bad for non-joinder of necessary parties?*

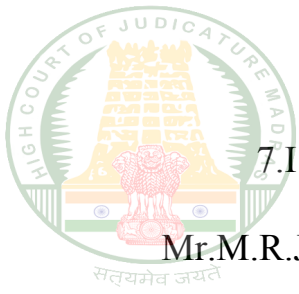
vi. *Whether the suit property fell to the share of the defendant in the oral partition?*

vii. *To what other reliefs?*

5. Witnesses examined and exhibits marked before the Trial Court:

During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A5. On the side of the defendant, he examined himself as D.W.1 and marked Exs.B1 to B5. One Raja (Surveyor) was examined as D.W.2 and through him, Exs.X1 to X3 were marked.

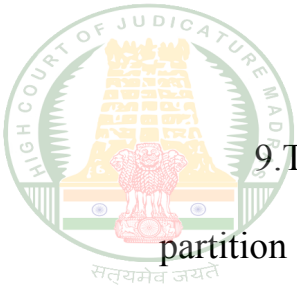
6. The trial Court, upheld the contentions of the defendant and dismissed the suit.



7. I have heard Mr.N.Manoharan, learned counsel for the appellant and Mr.M.R.Jothimanian, learned counsel for the respondent. I have also gone through the oral and documentary evidence adduced by the parties before the Trial Court and also gone through the judgment and decree passed by the Trial Court.

8. Arguments of the learned counsel for the appellant:

Mr.N.Manoharan, learned counsel for the appellant would state that the relationship between the parties is not in dispute. The factum of execution of the registered partition deed in Ex.A1 = Ex.B3 is also admitted. Under the said partition deed, the plaintiff was allotted 'C' schedule properties and the defendant was allotted 'E' schedule properties. The father of the plaintiff and the defendant and their brothers were allotted separate properties which were set out under different schedules to the said partition deed. Insofar as the properties that are situate at Veerakkal village, there is no dispute. However, it is only in respect of the properties that have been set out in schedule 'C', situate at Thoramangalam village, the plaintiff claims that these lands were jointly allotted to the plaintiff and the defendant.



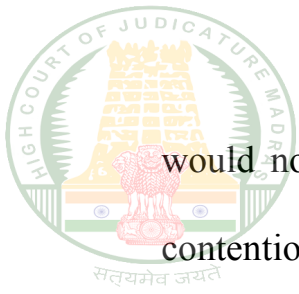
9. The learned counsel for the appellant would take me through the said partition deed and point out to the schedules under which the plaintiff and the defendant were allotted their respective shares and invite my attention to the undivided share that has been allotted to both the plaintiff and the defendant. He would contend that there was no division by metes and bounds and therefore, the plaintiff was well within his right to seek for partition of the said lands which were jointly allotted to the plaintiff and the defendant, without demarcation or setting out boundaries to their respective portions. He would also refer to the FMB map which has been exhibited as Ex.X3 and contend that there is a common Well which is situate in the lands that have been cultivated by the defendant from which the plaintiff is entitled to draw water to his lands and similarly, there is also a residential building, which is common to both the plaintiff and the defendant, which is falling within the lands that are being cultivated by the plaintiff. He would therefore state that unless there is a regular partition deed between the parties, both the plaintiff and the defendant would not be in a position to conveniently enjoy the lands allotted to them under schedule 'C' to Ex.A1= Ex.B3, partition deed.

10. The learned counsel for the appellant would also invite my attention to the suggestion put to the appellant who has examined himself as P.W.1 by



the learned counsel for the defendant that in respect of the properties jointly allotted to the plaintiff and the defendant, they have effected an oral partition and the same has also been acted upon, by obtaining separate patta and subdivision. The contention of the learned counsel for the appellant in this regard is that the suggestion put to the plaintiff virtually effaces the defence taken in the written statement where there was no such plea of oral partition, but, it was only contended that the properties had been divided by metes and bounds even under the partition deed, Ex.A1=Ex.B3. He would also refer to the evidence of D.W.1 where D.W.1 has admitted that in respect of suit properties, there is no document to evidence which portion was allotted to the plaintiff and which portion was allotted to the defendant and also to the admission of D.W.1 that excepting the suit properties, in respect of all other properties, boundaries have been mentioned, however, the said suggestion that there was no boundaries indicated in respect of suit properties has been denied by D.W.1.

11.It is therefore contended by the learned counsel for the appellant that the trial Court has clearly fell in error in not appreciating the oral evidence and vital admissions of the defendant himself, regarding there being no formal partition in respect of the suit properties. He would also contend that mere enjoyment of separate and independent portions for the sake of convenience

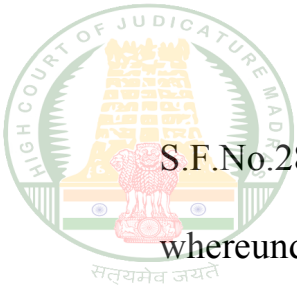


would not amount to actual devision of metes and bounds. In support of his contention, the learned counsel for the appellant would rely on the following decisions:

- 1.Badri Narayan Singh Vs. Kamdeo Prasad Singh, reported in AIR 1962 SC 338.*
- 2.Sheodan Singh Vs. Daryao Kunwar, reported in AIR 1966 SC 1332.*
- 3.Lonankutty Vs. Thomman and another, reported in 1976 3 SCC 528.*
- 4.Renganayaki and another Vs. K.R.Renganatha Mudaliar, reported in 2001 (1) CTC 222.*

12.Arguments of the learned counsel for the respondent:

Per contra, Mr.M.R.Jothimanian, learned counsel for the respondent would contend that though the plaintiff claims that S.F.No.28 at Thoramangalam village was jointly allotted to the plaintiff and the defendant, the plaintiff himself approached the revenue authorities for sub-dividing the lands and only at the request of the plaintiff, the lands have also been sub-divided and patta has also been issued in respect of the sub-divided survey numbers. He would further contend that based on the said subdivision, the plaintiff has applied for electricity service connection which is evidenced by Ex.A2. He would also rely on the exhibits marked through the Surveyor/D.W.2, namely Ex.X1 to X3 which clearly evidenced the factum of subdivision, indicating separate enjoyment of the properties originally comprised in



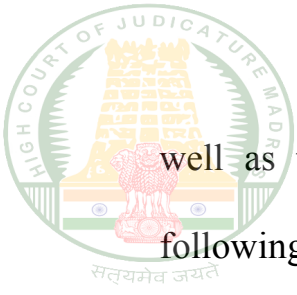
S.F.No.28 at Thoramangalam village. He would also refer to the schedule 'C' whereunder the properties in Thoramangalam village were allotted to the plaintiff and the defendant and would contend that only because of the common Well and the residential house, the boundaries have not been mentioned unlike the other properties. However, insofar as the lands, there has been a clear demarcation and nothing was reserved for joint enjoyment. He would therefore state that there is no error committed by the trial Court in dismissing the suit for partition, warranting interference in this appeal.

13.I have carefully considered the submissions advanced by the learned counsel on either side.

14.In fact, a suit filed by the defendant in O.S.No.181 of 2021 for permanent injunction was renumbered as O.S.No.721 of 2022 and was jointly disposed of, by a common judgment and the trial Court decreed the suit for permanent injunction in O.S.No.721 of 2022, filed by the defendant. Admittedly, there is no appeal as against the decree in O.S.No.721 of 2022.

15.Point for consideration:

On consideration of the pleadings, oral and documentary evidence, as



well as the submissions made by the learned counsel for the parties, the following point is formulated for consideration in this first appeal.

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(i) Whether the suit properties continued to be in common enjoyment of the plaintiff and the defendant even after Ex.A1 = Ex.B3 partition deed dated 30.04.1984?

16.The moot question that arises for consideration in this appeal suit is as to whether the lands in S.F.No.28 at Thoramangalam village have already been divided by metes and bounds or whether they continued to be in common enjoyment of the plaintiff and defendant, thereby entitling the plaintiff to the relief of partition.

17.In order to address this issue and give an answer, it is necessary to extract the schedules 'C' and 'E' of the partition deed.

Schedule 'C'

“..... சப்.ரி.டி. தோரமங்கலம் கிராமம் ரி.ச.28.1பு.ஏ 0.34க்கு தீ.நு.0.77 ரி.ச.28/2 பு.ஏ.9.19க்கு தீ.நு.20.68 ஆக மொத்தம் 9.53க்கு தீ.நு.21.45 இதில் பஞ்சாயத்தார்கள் பிரிவினை செய்து அத்து காட்டியுள்ளபடி பொதுவில் பாதி ஏ 4.76 1/2 க்கு தீ.நு.10.73 இதற்கு செஸ் ரூ.4.83 ஆக ரூ.15.56 இதன் 25 மடங்கு மதிப்பு ரூ.389.00 ஐ நெம்பரிலிருக்கும் இரண்டு கிணறுகளிலும் ஆக ரூ.3462.75 இவைகளின் உத்திவாரி வாய்க்கால் துலை ஏற்றம் வரப்புகள் இவைகளில் பொதுவில் பாதி

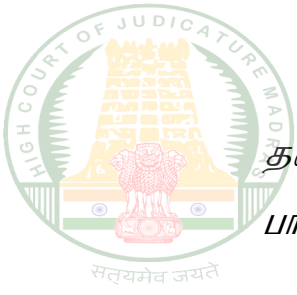


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பாத்யமும் இவைகளின் மதிப்பு ரூ.4000.00 னை ஒரு கிணற்றில் உள்ள SC.No.1204ல் இணைக்கப்பட்டுள்ள 5 HP மின்சார மோட்டார் பம்பு செட் 1லும் இதன் சகல தளவாட சாமான்களிலும் பொதுவில் பேர் பாதி பாத்யமும் இதன் மதிப்பு ரூ.2000.00 னை ரி.ச.28/2 நம்பரில் னை நெம்பர் நிலங்களுக்கு (தெ) (வ) (கி) (மே) இதன் மத்தியில் கிழமேலடி 20 தென்வடலடி 30 இந்தளவுள்ள 600 சதுரடி நிலத்தில் கட்டியுள்ள மங்கூர் பில்லை வீடு 1லும் னை வீட்டில் இணைத்துள்ள SC.No.1387லும் இதன் சகல தளவாட சாமான்களிலும் பொதுவில் பேர்பாதி பாத்யமும் இதன் கதவு எண்.6.45ல் ஒரு பகுதி இதன் மதிப்பு ரூ.6700.00 னை நிலங்களுக்கு மாழில் வழக்கப்படி போக வரவுள்ள மாழில் வழி நடை பாத்யமும் சேர்ந்தும் இதற்குச் சம்பந்தம் ஆக.....

Schedule 'E'

.....சப்.ரி.டி. தோரமங்கலம் கிராமம் ரி.ச.28.1பு.ஏ 0.34க்கு தீ.ரூ.0.77 ரி.ச.28/2 பு.ஏ.9.19க்கு தீ.ரூ.20.68 ஆக மொத்தம் 9.53க்கு தீ.ரூ.21.45 இதில் பஞ்சாயத்தார்கள் பிரிவினை செய்து அத்து காட்டியுள்ளபடி பொதுவில் பாதி ஏ 4.76 1/2 க்கு தீ.ரூ.10.73 இதற்கு செஸ் ரூ.4.83 ஆக ரூ.15.56 இதன் 25 மடங்கு மதிப்பு ரூ.389.00 னை நெம்பரிலிருக்கும் இரண்டு கிணறுகளிலும் ஆக ரூ.3462.75 இவைகளின் உத்திவாரி வாய்க்கால் துலை ஏற்றம் வரப்புகள் இவைகளில் பொதுவில் பாதி பாத்யமும் இவைகளின் மதிப்பு ரூ.4000.00 னை ஒரு கிணற்றில் உள்ள SC.No.1204ல் இணைக்கப்பட்டுள்ள 5 HP மின்சார மோட்டார் பம்பு செட் 1லும் இதன் சகல



தளவாட சாமான்களிலும் பொதுவில் பேர் பாத்
பாத்யமும்.....”

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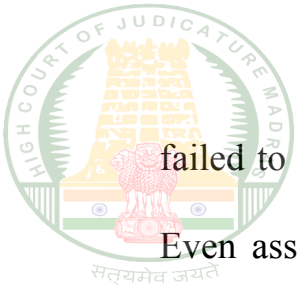
18.Thus, it can be seen from the above extracted portion of the partition deed that SF.No.28/1 measures 34 cents and SF.No.28/2 measures 9.19 acres. Though four boundaries are not mentioned, the schedule clearly indicates that the Panchayatdars have partitioned the property and allotted one half to each of the parties. Though much reliance is placed on the averment that the division is half in common to each of the plaintiff and the defendant, I am unable to countenance the argument of the learned counsel for the appellant for the simple reason that the schedule itself indicates that the Panchayatdars have demarcated the portions. If really the said lands were to be enjoyed in common, then there would have been no necessity for inclusion of the statement that the division is in terms of the Panchayatdars' decision.

19.The conduct of the parties, subsequent to the partition deed, also assumes significance, in order to find out whether there was an actual division of the suit properties, by metes and bounds. It is seen from Ex.A2 that the plaintiff has applied for electricity service connection to the Tamil Nadu Electricity Board and a revised test report was given by the Electricity Board, which has also been signed by the appellant himself. The said document is



dated 23.01.1991. It is seen from the said exhibit that the plaintiff himself has relied on the subdivision and has sought for a connection in SF.No.28/2E. If really the lands were in common enjoyment, then the plaintiff would have to have made an application in the joint names of the plaintiff and the defendant or at least the Board would have insisted upon a No Objection Certificate from the other co-owner, namely, the defendant. Admittedly, this was never done. Similarly, Ex.B2 is the computerized patta bearing No.707 issued in the name of the defendant and the same also evidences that S.F.No.28/1 as well as S.F.No.28/2 has been subdivided and S.F.No.28/1B and S.F.No.28/2D have been under the possession of the defendant. Exhibits marked as Ex.X1 to Ex.X3 also confirms the subdivision of S.F.No.28/1 and S.F.No.28/2. This only further probablizes the case of the defendant that the division was effected even at the time of Ex.A1=Ex.B3 partition deed as suggested and ordered by the Panchayatdars.

20.Though it is faintly contended by the appellant that the defendant has not been able to establish that it was only the appellant who sought for subdivision based on the separate enjoyment, in view of Ex.A2 the application for electricity service connection which has been admittedly made by the appellant, I am unable to countenance the arguments that the defendant has

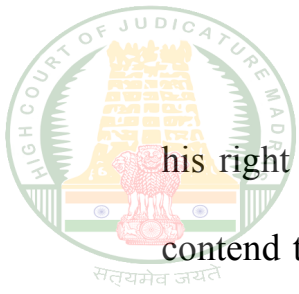


failed to establish that the subdivision was only at the instance of the plaintiff.

Even assuming for a moment that it was only the defendant who sought for subdivision and issuance of patta, even then the said subdivision has been accepted and acted upon by the appellant himself, as demonstrated by his conduct in Ex.A2.

21.Even Ex.A5 series also do not support the plaintiff's cause that there has been no division as the electricity consumption card pertains to S.F.No.28/2B which indicates that there has been a division. Even Ex.A4, tax receipts and patta No.190 indicate subdivision of both S.F.No.28/1 as well as S.F.No.28/2. Even assuming for the sake of argument, the plaintiff was not even aware of the subdivision, then there is absolutely no justification for the acts of the plaintiff in applying for electricity service connection in respect of the sub-divided survey numbers and also payment of taxes which were made only in respect of the sub-divided survey numbers.

22.Even in respect of the admissions of defendant as D.W.1 with regard to the right of the plaintiff to draw water from the common Well which is situate within the defendant's portion, this, by no means, would imply that there was no partition in the first place at all. At best, the plaintiff can only seek for



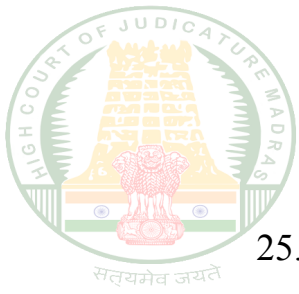
his right to draw water from the common well and to the contrary, he cannot contend that the entire lands are still in common enjoyment and that therefore, he is entitled to partition and a half share. The evidence of Surveyor, D.W.2 also evidences that there was a subdivision of S.F.No.28/1 and S.F.No.28/2. He has stated that the subdivision was effected way back in the year 1987 itself. In fact, in cross-examination, excepting for one question put to D.W.2 that subdivided S.F.No.28/2B pertains to Well and S.F.No.28/2E pertains to house. There is no further question put to D.W.2. From Exs.X1 to X3, it is clear that in patta No.190 in S.F.No.28/1A and S.F.No.28/2F have been mutated in the name of the plaintiff himself and S.F.No.28/1B and S.F.No.28/2D have been mutated in the name of the defendant and separate pattas have been issued.

23.Even insofar as the suggestion put by the learned counsel for the defendant to P.W.1 with regard to oral division as contended by the learned counsel for the appellant, the suggestion is to be viewed only in the light of the averments in the partition deed Ex.A1=Ex.B3, where there is a clear mention that the division is in terms of the Panchayatdars' directions and this also justifies the fact that there are no boundaries mentioned in respect of the suit property, whereas in respect of other properties, four boundaries have been mentioned. The evidence of D.W.1 also clearly suggests that though there is no



separate document individually allotting the portions to the plaintiff and the defendant, he has stated that even at the time of partition, it was indicated by the Panchayatdars as to which portion was allotted to the plaintiff and which portion was allotted to the defendant. Also, merely because D.W.1 admitted that there was a passage set apart for ingress and egress and that the same was not mentioned in the partition deed also does not lend support to the plaintiff's case that there was no partition. Merely because, the parties had agreed upon for providing a common pathway for convenient enjoyment of their respective portions and the same did not find a mention in the partition deed, would not imply that there was no partition at all in the first place.

24.As already discussed herein above, the fact that the schedule 'C' and schedule 'E' pertaining to S.F.No.28 in Thoramangalam village there was a partition in terms of division made by the Panchayatdars, identifying the boundaries and the subsequent conduct of the parties in approaching the revenue authorities for subdivision and separate patta and admittedly, the parties being in separate possession and enjoyment, which has also come out in oral evidence, cumulatively go to show that the parties had indeed effected a division by metes and bounds even in respect of lands at Thoramangalam village, namely the suit properties.



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25.The Trial Court has rightly assessed the oral and documentary evidence and come to the conclusion that the suit properties have already been partitioned and nothing remained for further division. I do not find that the trial Court has misread or misconstrued the evidence on record and the findings arrived at by the trial Court are based on the pleadings and evidence and it does not require interference in appeal. In view of the above, the point formulated for consideration is answered against the appellant and in favour of the respondent.

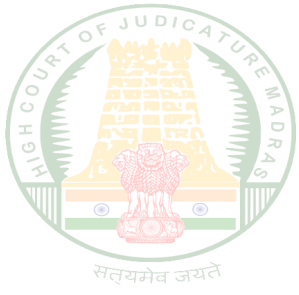
26.In fine, the Appeal Suit is dismissed. Considering the relationship between the parties, there shall be no order as to costs. Connected Civil Miscellaneous Petitions are closed.

10.10.2025

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

The Additional District Judge/Fast Track Court, Mettur.



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P.B.BALAJI.J.

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Pre-delivery judgment made in
A.S.No.141 of 2025
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