



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-07-2026

CORAM

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

AS No. 500 of 2016

1. Dakshinamoorthi
S/o Puliyendra Naicker, Venganeri Village, Old
Mamallapuram Road, Chengalpattu Taluk.
2. Jothy
S/o Puliyendra Naicker,venganeri Village ,old
Mamallapuram Rd, Thiruporur Post, 603 110,
Chengalpattu Tk
3. Nandakumar
S/o Puliyendra Naicker,venganeri Village ,old
Mamallapuram Rd, Thiruporur Post, 603 110,
Chengalpattu Tk
4. Dasarathan
S/o Puliyendra Naicker,venganeri Village ,old
Mamallapuram Rd, Thiruporur Post, 603 110,
Chengalpattu Tk
5. Roja
W/o Manimaran, No.21, Saivamuthiah, 6th St
Royapettah, Chennai -14
6. Sompoomammal
W/o Late Puliyendra Naicker, Venganeri
Village ,old Mamallapuram Rd, Thiruporur
Post, 603 110, Chengalpattu Tk

..Appellant(s)

Vs

1. Narayanasamy Naicker(died)
1.Arjuna Naicker, S/o Narayanasamy Naicker,
Poonthandalam Village, No. 114, Thiruporur
Post, 603 110, Chengalpattu Tk ,Moorthy(died)



2. Dhanapal

S/o Narayana Samy Naicker, Poonthandalam
Village, No. 114, Thiruporur Post, 603 110,
Chengalpattu Taluk.

3. Meenakshi Ammal

W/o Thirunavukkarasu, No. 1/132,
Pooniamman Koil St , Medavakkam,
Chennai -600 048.

4. Varadammal

W/o Late Moorthy, No. 114, Periya
Palayathamman Koil St, Poonthandalam
Village, Via , Thiruporur 603 110,
Chengalpattu Taluk.

5. M.Mahesh

S/o Late Moorthy, No. 114, Periya
Palayathamman Koil St, Poonthandalam
Village, Via , Thiruporur 603 110,
Chengalpattu Taluk.

6. M.Prabakaran

S/o Late Moorthy, No. 114, Periya
Palayathamman Koil St, Poonthandalam
Village, Via , Thiruporur 603 110,
Chengalpattu Taluk.

7. Suseela, W/o. Arjuna Naicker,
Chelliamman Koil St, Thandalam Village,
O.M.R. Road, Tiruporur Taluk,
Chengalpattu District.

8. Viswanathan, S/o. Arjuna Naicker,
Chelliamman Koil St, Thandalam Village,
O.M.R. Road, Tiruporur Taluk,
Chengalpattu District.

9. Samanthi, D/o. Arjuna Naicker,
Chelliamman Koil St, Thandalam Village,
O.M.R. Road, Tiruporur Taluk,
Chengalpattu District.



10. Karunkaran, S/o. Arjuna Naicker,
Chelliamman Koil St, Thandalam Village,
O.M.R. Road, Tiruporur Taluk,
Chengalpattu District.

R1 DIED, RR7 TO 10 ARE BROUGHT ON
RECORD AS LRS OF DECEASED 1st
RESPONDENT VIZ, Arjuna Naicker, VIDE
ORDER OF COURT DATED 12/06/2023
MADE IN CMP.NOS.15606 AND 15607/2022
IN AS.NO.500/2016 (DBCJ)

..Respondent(s)

Appeal Suit as against the order dated 21.03.2016 in O.S.No.243 of 2005 passed
by the Court of Additional District Judge, Chengalpattu.

For Appellant(s): Mr. V.Raghupathi

For Respondent(s): Mr. S.Mukunth, Senior Advocate
for Mr.V.Nicholas
assisted by B.Bharath Kumar
for R2 to 10
R1 - Died

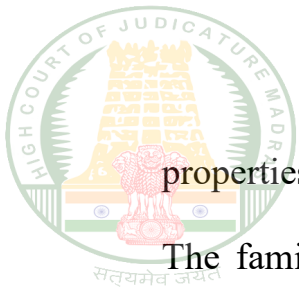
JUDGMENT

Unsuccessful defendants 2 to 7 have preferred this appeal. The Suit is
filed for partition of the Suit schedule properties into 25th equal shares and
allotment of 19/25th share to the plaintiffs 2 to 5.

For the sake of convenience, the parties are referred to as per their
ranking in the suit.

2. Brief case of the plaintiffs are as follows:

2.1. The plaintiffs and the defendants are members of Joint Hindu family
owning suit schedule properties. The family had substantial ancestral

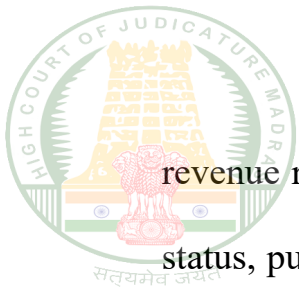


properties. The members of the family were cultivating lands of 3rd parties.

The family owned sheep, cows and buffaloes. From and out of the income derived from the joint family, substantial properties were purchased in the name of the family members. The 1st defendant has been acting as the Manager of the Joint Family from the year 1980. The 1st defendant has taken an hostile attitude towards the plaintiff. Hence, the plaintiff issued a Legal Notice (Ex.A1) dated 24.09.1996 to the 1st defendant calling for partition. The 1st defendant gave a reply notice (Ex.A2) dated 17.11.1996 with false allegations. The 1st defendant, with an intention to develop their shares, has executed settlement deeds in favour of his sons / defendants 2 to 5 and the 1st defendant also settled properties in favour of his daughter / 6th defendant. Hence the Suit.

3. Brief case of the defendants are as follows:

3.1. The first defendant, in his written statement dated 24.08.2000, resisted the claim of the plaintiffs that the suit properties are ancestral and joint family properties of the plaintiffs and the first defendant and the same have been divided during the Tamil month of Thai in 1981 by way of oral family partition before Panchayatdars. The plaintiffs and the first defendant have already divided, the partition is true, valid and acted upon. Since the partition, the shares are in separate possession and enjoyment of the respective parties. Some shares have been sold and some shares have been mortgaged with the Bank. The sharers have also purchased certain properties after partition and such properties are the self acquired properties of the sharers. Patta and other

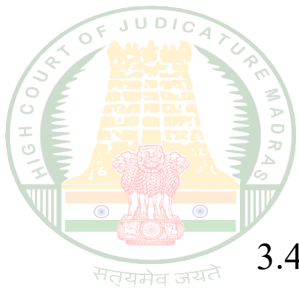


revenue records have been separately obtained. The plaintiffs, who claim joint status, purposely omitted to include the properties acquired by them after 1981.

The properties purchased in the name of the members of the joint family have been allotted to the other members in the partition took in the Tamil month of Thai in 1981.

3.2. With regard to the omission of properties to be included in the plaint, it is specifically pleaded that Item No.15 of the suit properties purchased in the name of the defendant's mother in the year 1964 fell to the share of the fourth plaintiff, who sold the same, through his power agent. So also, Item No.19 of the suit properties purchased in the name of the first plaintiff was allotted to the fourth plaintiff, who sold the same through his power agent. Certain items, which are subjected to the family partition, omitted to be included in the suit.

3.3. The properties purchased in the name of the second plaintiff including Item No.2 fell to the share of the third defendant, who mortgaged the same in favour of one Vedagiri of Thandalam. Like Item Nos.23, 28 and 30 purchased in the share of the second plaintiff. Item Nos.31, 33, 35, 37, 38, 41 and 42 purchased in the name of the second plaintiff was allotted to the first defendant and he obtained patta transfer in his name and he is in separate enjoyment of the same.



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3.4. After partition, the first defendant purchased properties under different sale deeds from various parties from and out of his own income, which includes cultivable lands, house site together with houses. Such properties are always treated as self acquired properties of the first defendant. The plaintiffs purposely included such items and made a false claim. In family partition, the first plaintiff not take claims. In the family partition, the first plaintiff did not take any share, except 0.50 Cents of grandfather and it was agreed that he should be maintained by all the sons periodically.

3.5. After the oral partition, he has purchased various properties and the properties acquired by him in the oral partition were settled by him in favour of the defendants 2 to 5 by way of two different settlement deeds, dated 23.08.1995, which are acted upon and further, the defendants 2 to 5, who are the sons of the first defendant, out of their hard work for a period of more than thirty years, have developed the properties and made it as more valuable properties in the locality and eyeing for the same, with malafide intention, the partition suit has been laid by the plaintiffs.

3.6. Further, the property purchased by the second plaintiff after the oral partition at Thandalam Village, measuring to an extent of 3 Acres, was not included in the suit. The second plaintiff has got vaalpattarai in 1.00 Acre. He



has got tractor also. He has got 5.00 Acres at Vengaleri and 1.00 Acre at Thandalam Village well, pumpset. He has got 12 Acres from family partition at Vengaleri and he is in possession by way of obtaining patta etc.

3.7. The third defendant has got 9 Acres in the family partition at all 4 village Tractor. The fourth defendant obtained 9.50 Acres in partition in Vengaleri and Thandalam. He has got 2 JCB each worth Rs.15 lakhs, which are rented. He has mortgaged the property obtained in partition. He has also acquired properties after partition including the site at Thiruporur worth Rs.3 lakhs. He has purchased 1 Acre at Thandalam.

3.8. The suit is bad for repartition, besides the properties purchased by the plaintiffs, after the oral partition, were not included in the suit and hence, the suit is bad for partial partition and the attitude of the plaintiffs in not including their properties purchased by them after the oral partition is mala fide in nature.

4. After the written statement filed by the 1st defendant, the sixth defendant, who is the daughter of the first defendant, was impleaded. Additional written statement was filed by her. Subsequently, after the death of the first defendant, his legal representatives were brought on record and hence, the son of the first defendant has filed additional written statement on 20.01.2007, wherein he has specifically stated that since the fifth plaintiff, who is a man of



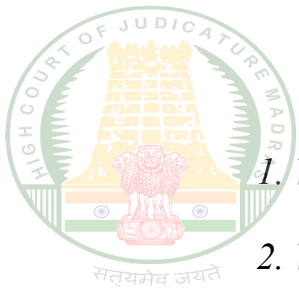
conscious, has not chosen to contest the case, since there was an oral partition as pleaded by the first defendant, while he was alive, by way of written statement.

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5. A reply statement was filed by the plaintiffs 4 and 5 and it was taken on record. After impleadment, the sixth defendant also filed a separate written statement supporting the contention of the first defendant that after the settlement effected by her father, she made lot of improvements over a period of thirty years and in view of the escalation of the price of the land and the various buildings constructed by her from the income of her husband, her Pangalies were unable to digest her enrichment in life.

6. Additional written statement was filed by the third defendant by stating that the properties are not available for partition, since there was already a partition among the sharers. Separate portions were also given and taken. So also, various additional written statements were filed due to the impleadment of the parties at different stages.

7. Based on the above pleadings, the trial Court has originally formulated five issues, thereafter formulated three additional issues and subsequently, formulated three additional issues and at the time of pronouncing the Judgment, formulated five issues, which are re-casted hereunder:

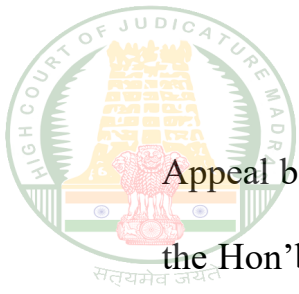


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1. *Whether the suit properties are joint family properties or not?*
2. *Whether the oral partition pleaded is true?*
3. *Whether the settlement deed dt. 23.8.1985 is true and valid and binding on the parties?*
4. *Whether the plaintiff is entitled to the partition as prayed for?*
5. *To What relief?*

8. On the side of the plaintiffs, the fourth plaintiff was examined as PW1, one Balarama Naicker was examined as PW2, one Tickaraman was examined as PW3 and Exs.A1 to A4 were marked. On the side of the defendants, the second defendant was examined as DW1 and filed his additional proof affidavit and Exs.B1 to B44 were marked.

9. The Court below, upon appreciation of oral and documentary evidence, finds that even though defendants have pleaded oral partition but they have not let in any evidence. The party who speaks about oral partition have to prove it. The pattas relied upon by the defendants in Exs.B17, B24, B27, B29 were obtained after the filing of the Suit. The Court below decreed the suit as prayed for in the plaint. Aggrieved over the same, the unsuccessful defendants 2 to 7 have preferred the appeal in A.S.No.500 of 2016 before this Court and the said appeal came to be allowed on merit by this Court, vide judgment dated 27.12.2024. Aggrieved over the same, the plaintiffs have preferred Civil



Appeal before the Hon'ble Supreme Court in SLP(Civil) No.11921 of 2025 and the Hon'ble Supreme Court of India, vide its order dated 17.09.2025, remanded

the matter for fresh consideration. The relevant portion of the order is extracted hereunder:

“4. Learned senior counsel for the appellants submitted that the plaintiffs were father, three sons and one daughter on one side whereas, the second son of the first plaintiff was the defendant on the other side. It was submitted that all the properties were jointly belonging to the undivided family and for the first time, in 1988, when the suit was filed, it was sought to be partitioned. Learned Senior Counsel submitted that the properties were held in the name of various persons individually, but at the time of partition, the entire properties belonging to the family as a whole, was made subject matter of the suit for partition and were included as scheduled property. It was further submitted that the sole defence of the defendants – respondents was that already a partition among the family members has taken place in the year 1981 and thus, second suit for partition was not maintainable. Learned senior counsel submitted that the said issue had been negated as oral partition could not be prove before the Trial Court and accordingly, all the properties were partitioned. However, it was submitted that the High Court has upturned the finding on very specious grounds and more on presumptions. It was submitted that the High Court has presumed that just because there were lands bought in individual names post 1981, it indicated that there was an oral partition in the year 1981. However, it was submitted that the High Court has lost sight of fact that all properties, which had been bought till the date of institution of the partition suit in the name of any of the plaintiffs had been included and only the properties which had been bought later in individual names did not form part of the scheduled property. Learned senior counsel submitted that the properties in question which stand in the name of the respondents – defendants, were purchased in the year 1988/89 i.e., much prior to the suit for partition.

5. Per contra, learned counsel for the respondents – defendants submitted that selective inclusion of the properties by the appellants – plaintiffs indicated that the partition had occurred between the parties orally in the year 1981 and also been acted upon. It was submitted that the High Court has rightly taken note of the shifting stand of the appellants, inasmuch as on the one hand, they



had taken a stand that all properties, though standing in the name of individuals, be it in the name of plaintiffs or defendants, have been included, but selectively, many properties standing in the name of many of the appellants were not included. However, learned counsel submitted that if it appears to the Court that the main reason why such properties have been included in the partition suit, being the cut-off date, has not been properly considered or appreciated by the High Court, the matter be remanded to the High Court for fresh consideration.

6. Learned senior counsel for the appellants agrees to such stand taken by learned counsel for the respondents.

7. Having regard to the aforesaid, the appeal stands disposed of in the following agreed terms :-

(a) The impugned judgment dated 27.12.2024 passed by the High Court is set aside and A.S. No.500 of 2016 stands restored to its file and number.

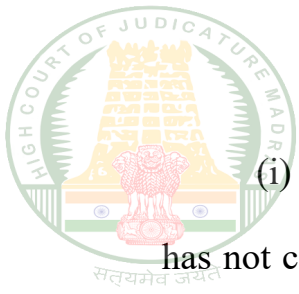
(b) The Hon'ble Chief Justice of the High Court of Judicature at Madras is requested to assign the matter to an appropriate Bench, which shall consider and decide the same de novo in accordance with law, after hearing all the parties concerned.

(c) As the matter is of the year 2016, we request the High Court to take up the matter on priority.

(d) However, till the A.S. No.500 of 2016 is not finally decided by the Trial Court, the parties shall maintain status-quo, with regard to the properties in question, in all aspects."

10. In pursuant to the aforesaid order passed by the Hon'ble Supreme Court dated 17.09.2025, the Registry of this Court has put up a note before the Hon'ble Chief Justice of this Court and vide orders of then Hon'ble Chief Justice dated 23.10.2025, this matter has been assigned to me as a "Specially Ordered Matter".

11. It is seen from the records that the appellant has filed the present appeal on the following grounds:



(i) The judgment and decree of the Court below are contrary to Law and has not correctly and properly appreciated both oral and documentary evidence adduced by the appellants / defendants.

(ii) The Court below has failed to correctly interpret the exhibits marked on behalf of the defendants.

(iii) The Court below has failed to consider the contradictions in the deposition of witnesses on behalf of the plaintiffs which also prove that already oral partition took place between the parties to the suit.

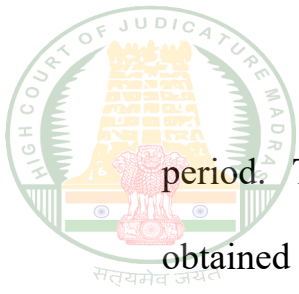
(iv) The Court below has based its judgment on mere presumptions and unreasonable inferences of both law and facts.

12. The learned counsel appearing for the appellant / defendants 2 to 7 would submit that during the Tamil month Thai 1981, there was an oral partition was held in the family and as per the oral partition, they were in possession and enjoyment of the respective shares. The plaintiffs are not in joint possession and enjoyment of the same from 1981. The properties obtained by way of oral partition by the 1st defendant. Subsequently, he had executed settlement deeds in favour of his sons and daughter in Exs.B18 and B19. The said settlement deed were acted upon and thereafter, the defendants 2 to 5 made lot of improvements in the properties. The Suit came to be filed in the year 1998 and certain properties were purchased in the year 1988 and 1989, much prior to filing of the Suit. After the oral partition, both the plaintiffs and the defendants



have purchased some properties which are covered under Exs.B1 to B29. The Settlement Deeds executed by the respective parties have been acted upon by the 4th plaintiff's son and the defendants, hence, those properties purchased by the defendants may not be partitioned again. Though the 1st defendant filed written statement, however before adducing evidence, he died. The Court below has failed to consider Ex.B9, registered Lease Deed dated 06.06.2001 in Doc.No.1224/2001. As per Ex.B9, the 2nd plaintiff has also executed Lease Deed with one N.Arjun Naicker and in favour of some lessees.

13. The learned counsel for the appellants / defendants would further submit that PW1, in his cross examination, categorically deposed that he was not aware of various property transactions held by the parties, however the Court below has disbelieved the cross examination of PW1. PW2 is only a 3rd party, but he had deposed about the exclusive possession and enjoyment of the suit properties by the either side parties. PW2 also deposed that either parties are cultivating separately in their respective shares of the land and the either parties are paying taxes in their names with regard to their respective shares. The evidence of PW3 cannot be taken into account, since he has not spoken anything about Hindu Undivided Family of the plaintiffs and defendants. The plaintiffs have failed to prove that the properties of the defendants were acquired only through ancestral joint family nucleus. The defendants have been in continuous peaceful possession and enjoyment of the Suit properties for long



period. The Court below has wrongly observed that the revenue records were obtained by the defendant only after filing of the Suit without considering the documents produced by the defendants to prove the oral partition. But the Court below has found that there is no proof without considering the documents marked by both sides including Exs.A3 and A4 and decreed the Suit, which is unsustainable in law and prays to allow the appeal.

14. *Per contra*, learned Senior Counsel appearing for the respondents / plaintiffs submits that in the written statement filed by the 1st defendant in para 5 it has been stated that ancestral joint family properties of the 1st defendant have been divided in the Tamil month of Thai 1981 by way of oral partition before the panchayatdars. The said written statement came to be filed on 24.08.2000, whereas the plaintiffs has issued legal notice to the 1st defendant on 24.09.1996, for which the 1st defendant has given a reply notice to the plaintiffs under Ex.A2 dated 17.11.1996, wherein it has been stated that there is no joint family or joint family properties, as family properties have already been decided by way of oral partition before the panchayatdars. The learned Senior Counsel pointed out that the specific date of the oral partition has not been mentioned in the reply notice in Ex.A2 dated 17.11.1996 given by the 1st defendant, whereas in the written statement filed by the 1st defendant on 24.08.2000, he has changed his version and stated that the properties were divided during the Tamil month of Thai 1981 by way of oral partition before the panchayardars.



15. The learned Senior Counsel for the respondents / plaintiffs would further submit that in Exs.A2 as well as in the written statement, it has been mentioned that oral partition took place before the panchayatdars. In order to prove the above said facts, the defendants have not chosen to examine any independent witness / panchayatdars who have participated in the alleged oral partition pleaded by the defendants. The Court below has rightly found that patta documents placed before the Court below came to be obtained after filing of the Suit. Though the defendants contended that during the month of Thai 1981 by way of family oral partition held in the presence of panchayatdars, they have not chosen to obtain patta between the period 1981 till the filing of the Suit i.e., in the year 2005. The Court below has rightly found the plaintiffs and the defendants are members of Hindu Joint Family and suit schedule properties were purchased out of the income derived from joint family activities in the names of the members of the family. The learned Senior Counsel further would submit that father, 3 sons, one daughter have filed the Suit against one son / 1st defendant seeking partition. The initial burden lies on the plaintiff has been fully discharged. The suit properties are joint family properties and the partition was not done in the manner known to law. When the specific contention of the 1st defendant that the suit properties were partitioned during the Tamil month of Thai 1981 by way of oral partition before Panchayatdars. It is for the respondents to prove with acceptable evidence to establish the oral partition. The defendants categorically failed to prove the oral partition. The plea taken



by defendants and the documents relied on by them, have not at all supported their case. There is no infirmity in the judgment and decree passed by the Court below and prays to dismiss the appeal.

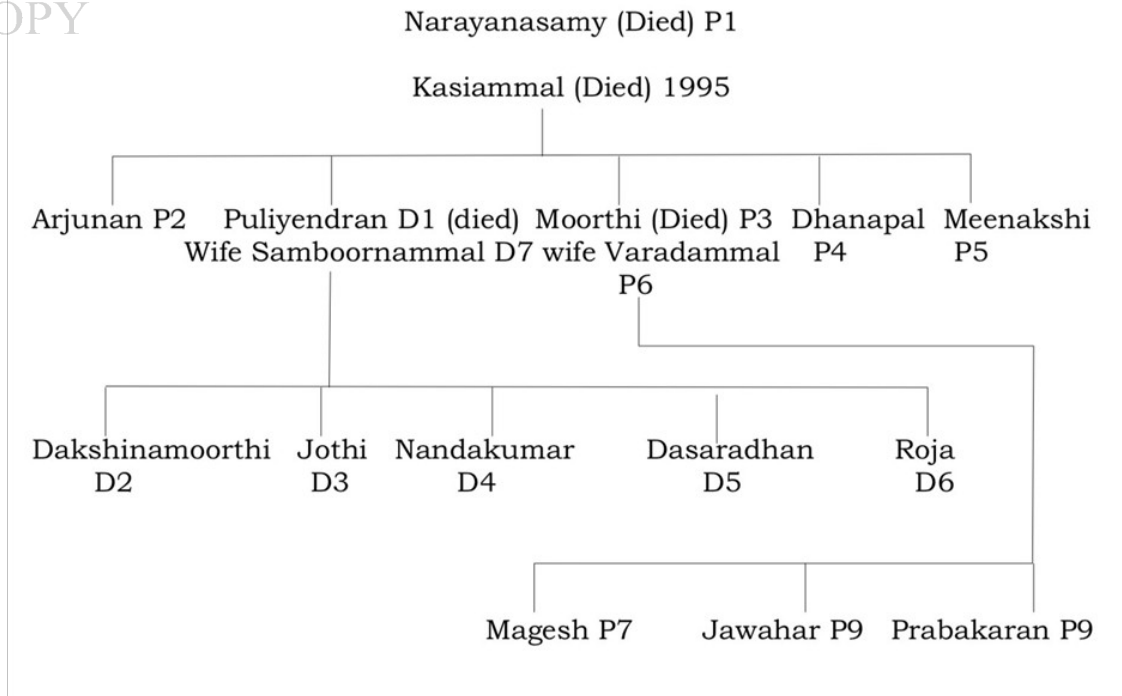
16. In the light of the above submissions made on either side, the following points arises for consideration in this appeal:

- (i) Whether the suit properties are joint family properties?*
- (ii) Whether there was an oral partition effected in the Tamil month of Thai in the year 1981 and it is true and valid?*
- (iii) Whether the Settlement Deeds in Exs.B18 and B19 dated 23.08.1995 is binding on the parties?*
- (iv) Whether the plaintiffs are entitled for partition ?*
- (v) Whether the judgment and decree passed by the Trial Court is liable to be interfered by this Court?*

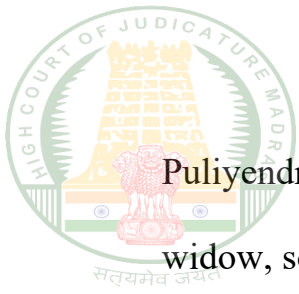
17. As per the proof affidavit filed by PW1, the following Genealogy has been mentioned:



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18. On perusal of the records, it is seen that originally the Suit was filed by the 1st plaintiff / Narayanasamy Naicker (father-died), Arjun Naicker (son) / 2nd plaintiff, Moorthy (son) / 3rd plaintiff, Dhanapal (son) / 4th plaintiff and Meenakshiammal / 5th plaintiff (daughter) against the 1st defendant / Puliendra Naicker, who is the son of the 1st plaintiff and brother of the plaintiffs 2 to 5. After filing the suit, the 1st plaintiff died. Thereafter, the plaintiffs 2 to 5 and the 1st defendant were recognised as Legal Heirs. The relief sought for by the plaintiff was also amended to the extent. The plaintiffs 2 to 5 and the 1st defendant are entitled each to 6/25th share and the 5th plaintiff / Meenakshi Ammal is entitled to 1/25th share in the suit properties. The 1st defendant

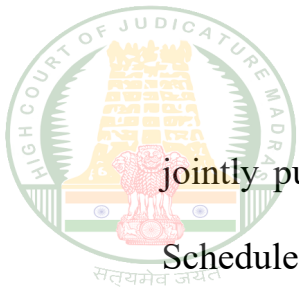


Puliyendra, after filing written statement, died on 07.04.2009, leaving his widow, sons and daughters as his legal heirs.

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POINT NO.1

19. It is seen from the records that originally the Suit was filed on 31.01.1998. It is the specific case of the plaintiffs that the suit schedule properties are joint family properties. The family had substantial ancestral properties. The members of the family were cultivating the lands of 3rd parties for Waram. The family also maintain sheep, cows and buffaloes and raised income. Substantial properties were purchased in the name of family members. A perusal of the recitals in Ex.B19 Settlement Deed dated 23.08.1995 shows that the properties mentioned therein were purchased by Puliyendran Naicker / 1st defendant and his brothers Arjuna Naicker / 2nd plaintiff, Moorthy / 3rd plaintiff and Dhanabal / 4th plaintiff while were residing in a joint family and they have purchased the property jointly. As per recitals found in Ex.B19 – Settlement Deed dated 23.08.1995, it is clear that the 1st defendant and the plaintiffs 2 to 4 used to purchase the properties as the joint family members for the benefit of joint family. Further, as per the recitals found in Ex.B19, Arjuna Naicker / 2nd plaintiff is the elder brother, Moorthy / 3rd plaintiff and Dhanapal / 4th plaintiff are younger brothers to Puliyendar Naicker / 1st defendant. Ex.B21 is the Sale Deed dated 22.12.1975 registered in Doc.No.175/1976, which shows that the 1st defendant / Puliyendra Naicker and the 3rd defendant / Moorthy



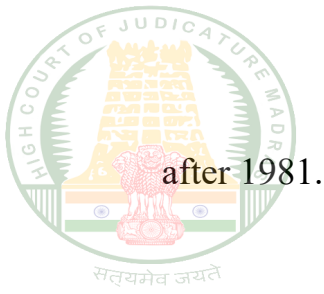
jointly purchased the property, which are Item Nos.23, 28 and 30 of the Suit Schedule Properties.

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20. It is relevant to note that in para 5 of the written statement filed by the 1st defendant wherein it is stated that the ancestral and joint family properties of the plaintiffs and the 1st defendant have been divided during the Tamil month of Thai 1981 by way of oral family partition before panchayatdars. DW1 admits in his cross examination that his grandfather Narayanaswami Naicker / 1st plaintiff was having joint family properties in Thandalam, Venganeri, Poonthandalam and Thiruporur Village to an extent of more than 30 acres of Punjai and Nanjai lands. From the evidence of DW1, as per the recitals found in Ex.B19 and Ex.B21, it is clear that the suit schedule properties are joint family properties of the plaintiffs and defendants. ***Accordingly, Point No.1 is answered in favour of the plaintiffs.***

POINT NOS.2 TO 5

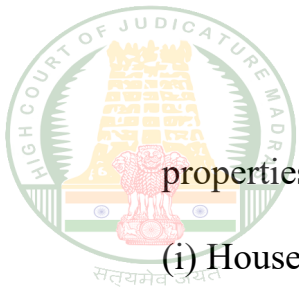
21. According to the 1st defendant, there was an oral partition among the family members in the presence of panchayatdars during the Tamil month of Thai 1981. There is no joint family properties available for partition. Pursuant to the oral partition, family properties were separated and they were in separate possession and enjoyment of their respective shares. The plaintiffs who claims joint status specifically omitted to included the properties acquired by them



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22. According to the 1st defendant, Item No.15 purchased in the name of the 1st defendant's mother in the year 1964, fell to the share of the 4th plaintiff, who sold the same through power of attorney. Item No.19 purchased in the name of the 1st plaintiff, allotted to the 4th plaintiff, who sold through power of attorney. Properties purchased in the name of the 2nd plaintiff including Item No.2 fell to the share of the 3rd defendant, who mortgaged the same in favour of Vedarigi of Thandalam. Item Nos.23, 28 and 30 were purchased in the name of the 1st defendant fell to the share of the 2nd plaintiff. Item Nos.31, 33, 35, 37, 38, 41 and 42 purchased in the name of the 2nd plaintiff allotted to the 1st defendant and the 1st defendant obtained patta transfer and in separate enjoyment. After partition, the 1st defendant purchased properties under different sale deed from various parties from and out of his self income which includes cultivable lands, house site together with houses. The properties obtained by the 1st defendant in the oral partition have been settled in favour of his sons / defendants 2 to 5 and his daughter by way of two different settlement deeds dated 23.08.1995. The defendants 2 to 5 have made lot of improvements in the said properties.

23. According to the 1st defendant, the 2nd plaintiff has got the following



properties:

(i) House property worth Rs.10,00,000/- at Thandalam,

(ii) 3 acres of lands in the same village,

(iii) Vaalpattarai in 1 acre and also got tractor.

(iv) 5.00 acres at Vengaleri and 1 acre at Thandalam village with well and pumpset.

(v) 12 acres out of family partition at Vengaleri and he is in possession by way of obtaining patta etc.

24. According to the 1st defendant, the 3rd plaintiff has got the following properties:

(i) 9 acres in family partition at all 4 villages and tractors.

(ii) 9.50 acres in partition in Vengaleri and Thandalam.

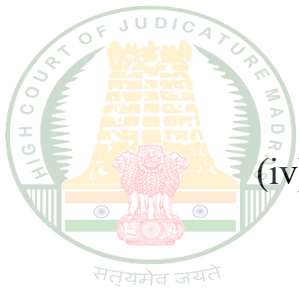
(iii) 2 JCBs each worth Rs.15 lakhs, which are rented.

25. According to the 1st defendant, the 4th plaintiff has got the following properties:

(i) 95 Acres in family partition in Vengaleri and Thandalam

(ii) 2 JCBS

(iii) Also acquired properties after partition including house sites at Thiruporur.



(iv) Purchased 1 Acre at Tandalam.

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26. It is not in dispute that the plaintiffs and the first defendant jointly had ancestral properties and they have also purchased properties in the name of family members. According to the plaintiffs, the suit properties are not yet partitioned and hence, they issued legal notice under Ex.A1 dated 24.09.1996 and it is only thereafter, they came to know that the 1st defendant executed Exs.B18 and B19 settlement deeds in favour of his sons and daughter.

27. It is pertinent to note that partition need not be in writing. It may be in oral. But the burden is upon the person who sets up the plea of oral partition. At this juncture, it is relevant to refer the judgement of the Hon'ble Supreme Court reported in ***Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1: 2020 SCC OnLine SC 641*** wherein it has been held as under:

“135. A special definition of partition has been carved out in the Explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in Section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of Section 6, the intendment of the legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of Section 6(5) are required to be interpreted to cast a



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heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigour of very heavy burden of proof which meets the intendment of Explanation to Section 6(5). It has to be remembered that the courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under Section 6(5) had taken place.

136. The expression used in the Explanation to Section 6(5) “partition effected by a decree of a court” would mean giving of final effect to actual partition by passing the final decree, only then it can be said that a decree of a court effects partition. A preliminary decree declares share but does not effect the actual partition, that is effected by passing of a final decree; thus, statutory provisions are to be given full effect, whether partition is actually carried out as per the intendment of the Act is to be found out by the court. Even if partition is supported by a registered document it is necessary to prove that it



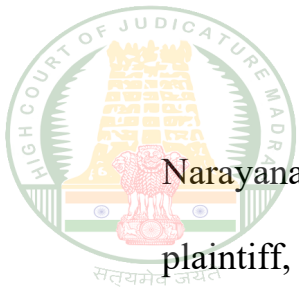
had been given effect to and acted upon and is not otherwise sham or invalid or carried out by a final decree of a court. In case partition, in fact, had been worked out finally in toto as if it would have been carried out in the same manner as if affected (sic effected) by a decree of a court, it can be recognised, not otherwise. A partition made by execution of deed duly registered under the Registration Act, 1908, also refers to completed event of partition not merely intendment to separate, is to be borne in mind while dealing with the special provisions of Section 6(5) conferring rights on a daughter. There is a clear legislative departure with respect to proof of partition which prevailed earlier; thus, the court may recognise the other mode of partition in exceptional cases based upon continuous evidence for a long time in the shape of public document not mere stray entries then only it would not be in consonance with the spirit of the provisions of Section 6(5) and its Explanation.

.....

137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”

By applying the ratio laid down in the above judgment, it is clear that in exceptional cases where plea of oral partition is supported by very cogent, impeachable public documents in support are available, such a plea may be entertained, not otherwise.

28. Ex.A1 is the Legal Notice dated 24.09.1996 issued by



Narayanaswami Naicker / first plaintiff / father, Arjuna Naicker / son / 2nd plaintiff, Murthy Naicker / son / 3rd plaintiff and Dhanapal Naicker / son / 4th

plaintiff to Puliendra Naicker / 1st defendant. In Ex.A1 it has been stated that they are members of joint family properties owing more than 40 acres of land in Thiruporur Village, Thandalam, Venganeri village with house sites. There was substantial ancestral nucleus. The members of the family were cultivating lands of 3rd parties for Waram. The family owned 100 sheeps, 10 cows and 4 buffaloes. Under Ex.A1, they called upon the 1st defendant to agree to an amicable division of the properties into 5 equal shares and allotment of 4 shares.

29. In response to Ex.A1, the 1st defendant issued a reply notice in Ex.A2 dated 17.11.1996 wherein it has been stated that there is no joint family or joint family properties. The family properties have already been divided by way of oral family parties in the presence of Panchayatdars. The oral partition is true, valid and acted upon. The sharers are in separate possession and enjoyment of the divided properties. It is also stated that the 1st defendant was owning and possessing separate and exclusive properties even before division. He has never acted as a Manager. He is not the eldest son of the family. It is also stated that there is no property description found in Ex.A1.

30. Ex.A3 is the Sale Deed in Doc.No.1452 of 1981 dated 30.07.1981 executed by Ratanchand Chowkar in favour of PW1/Dhanapal. Ex.A4 is the

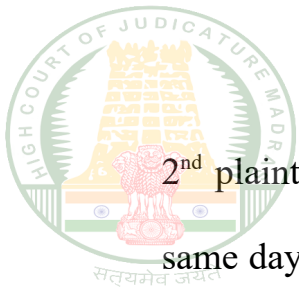


Sale Deed in Doc.No.2120 of 1981 dated 30.07.1981 executed by Keeranbai in favour of the 2nd plaintiff / Arjun Naicker.

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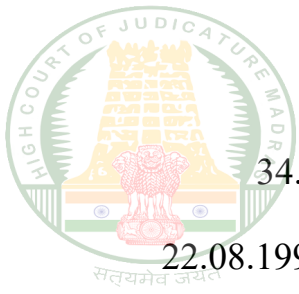
31. Exs.A3 and A4 were came to be marked during the course of cross examination of DW1 / Dhakshinamoorthy. DW1 is the son of the 1st defendant. DW1, in his cross examination, admits that Suit Item Nos.33, 35, 37, 40 and 44 were purchased under Ex.A3- Sale Deed dated 30.07.1981. DW1 also admits that Suit item Nos.27, 31, 33, 35, 37, 38, 41 and 42 were purchased in the name of the 2nd plaintiff under Ex.A4 dated 30.07.1981. DW1 also admits that his father signed as one of the witness in Ex.A4. DW1 also admitted that Exs.A3 and A4 and Ex.B23 came into existence after the alleged oral partition.

32. Ex.B23 is the Sale Deed dated 30.07.1981 executive by R.Rajendra Chowkar and another in favour of the 1st defendant / Puliyendar Naicker. A perusal of Ex.B23 shows that 6 Acres 42 cents purchased by the 1st defendant. DW1 categorically admits that the Sale Deed under Ex.B23 dated 30.07.1981 stands in the name of the 1st defendant i.e., his father Puliyendra Naicker, which is the suit items 32, 34, 36, 30 and 43. DW1 also confirmed the same in his cross examination. From the evidence of DW1, sale deeds in Exs.A3, A4 and Ex.B23, it is clear that either parties have purchased the properties in their names. It is to be noted that as per Exs.A3, A4 and B23, the 4th plaintiff / DW1,



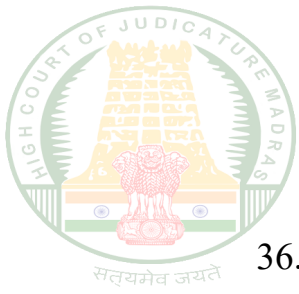
2nd plaintiff and 1st defendant have purchased the properties mentioned therein same day on 31.07.1981. Further, the 1st defendant has also signed as a witness in Ex.A4.

33. DW1, in his proof affidavit, has stated that in the Tamil month of Thai 1981, there was a oral partition effected in the presence of panchayatdars, but in his cross examination, he could not say who are all the panchayatdars participated in the said oral partition. Since he was minor at that time and only his father i.e., 1st defendant alone gave all these details. DW1 deposed that his father has allotted 12 acres of lands in Venganeri village. He did not know what are all the properties allotted to the grandfather / 1st plaintiff and also what are all the properties allotted to the 2nd plaintiff. He also deposed that 3rd plaintiff was also allotted 8 acres of land in Tandalam village. He does not know what are all the properties allotted to the 4th plaintiff. He admits that Ex.B11 – Sale deed dated 01.12.2005 stands in the name of the 4th plaintiff and the property covered under Ex.B11 is not a Suit Schedule Property. He also admits that Ex.B22 – Sale Deed registered in the year 2004 and the property covered under Ex.B22 is not a suit schedule property. From the evidence of DW1, it is clear that he could not say properly, what are all the properties were allotted to their family members in the alleged oral partition and who are all the panchayatdars participated in the oral partition held between the family members.



34. Ex.B18 is the Settlement Deed in Doc.No.2280 of 1995 dated 22.08.1995 executed by Puliyendra Naicker in favour of his daughter Roja, wherein it has been stated that the properties mentioned therein belong to him and he had obtained separate patta in his name and he has executed settlement deeds out of love and affection. With regard to the properties situated in No.113, Vengaleri village, S.No.39 1 Acre of land.

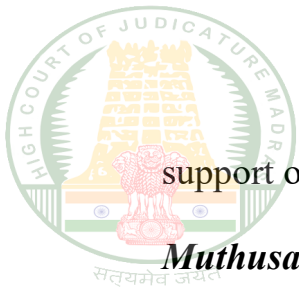
35. Similarly, Ex.B19 is the Settlement Deed in Doc.No.2279 of 1995 dated 22.08.1995 executed by the 1st defendant in favour of his sons Dhakshinamoorthy, Jothi, Nandakumar and Dhasarathan, who are the defendants 2 to 5. The recitals shows that the 1st defendant already executed settlement deed in favour of his daughter to an extent of 1 acre and the remaining 12 acres 69 cents has been settled in favour of his sons. The recitals further shows that the properties mentioned therein were purchased by Puliyendran and his brothers Arjuna Naicker, Moorthy and Dhanabal while were residing in a joint family and they have purchased the property jointly. The properties mentioned in the settlement deed and other properties were also purchased by them. The recitals also shows that they have been orally partitioned in the presence of panchayadars. In pursuance of the said oral partition, the 1st defendant obtained Patta No.23 situated in Vengaleri village. The recitals shows that Arjuna Naicker is the elder brother and Moorthy and Dhanabal younger brothers jointly purchased the properties.



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36. It is relevant to note that there is no specific recital found in Ex.B18 with regard to the alleged oral partition took place in the Tamil month of Thai 1981 between the family members, whereas Ex.B19 shows that there was oral partition in the presence of Panchayatdars. However, there is no specific date, month and year mentioned and also not at all mentioned who are all the panchayatdars present at the time of oral partition effected between family members. Similarly, reply notice under Ex.A2 also, there is no mention about the date, month, year and the place where the alleged oral partition took place. However, only in the written statement filed by the 1st defendant, it has been mentioned that the alleged oral partition took place in the presence of panchayatdars in the Tamil month of Thai 1981. It is also relevant to note that the name of the panchayatdars, who are all participated in the alleged oral partition not mentioned. As per recitals found in Ex.B19, it is clear that the 1st defendant and the plaintiffs 2 to 4 used to purchase the properties as the joint family members for the benefit of joint family.

37. It is settled law that mere separate enjoyment for convenience cannot be equated to partition in the eyes of law. It does not mean joint ownership has been put to an end and in its place ownership in severalty or in specie has come into existence. Separate enjoyment for the sake of convenience is one thing and partition is another in the eyes of law. There has to be some further evidence in



support of partition. A Division bench of this Court in ***P.Kaliappa Gounder -vs- Muthusamy Mudaliar***, reported in ***1985 (98) LW 773*** explained the concept of partition and it would be worthwhile to refer to the same at this juncture.

Relevant extract is hereunder:

"7. Before we do the analysis of factual materials, we would like to recapitulate the concept of 'partition' of a joint family. The joint ownership of a thing is the right of two or more persons to possess and use it to the exclusion of others; and the thing, with regard to which there is the joint ownership, is called 'the joint property'. In this joint property, the joint owners do not own anything in specie and every joint owner has got right, title and interest over every piece and parcel of the joint property, subject to the qualification that the quantum of his share in the whole property stands defined in theory and not on ground. Though joint owners may be content with owning lands in common, yet subsequently one joint owner or some joint owners may conceive the idea of owning the property referable to his or their share for himself or for themselves to the exclusion of the other or the others. This is the reason which motivates the move to get joint property partitioned. The legal term 'partition' is applied to the division of lands or properties belonging to joint owners and the allotments amongst them of the parts referable to their shares so as to put an end to community ownership or joint ownership. Mayne says:

"In England ownership as a rule is single, independent and unrestricted. In India on the contrary, joint ownership is the rule and will be presumed to exist until the contrary is proved."

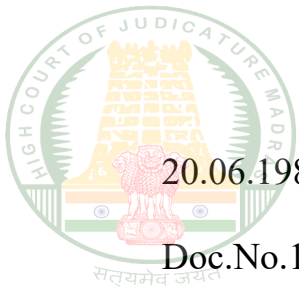
While individual property appears to be the rule in the West, corporate property appears to be the rule in the East. Though passage of time and change of notions have shaken up this concept both in theory and in practice, yet, in our country and in particular in rural areas, joint ownership is allowed to persist by sufferance of custom and convenience until the bone of contention crops up.

8.Partition is the intentional severance of the joint ownership by an unequivocal expression of an intention to bring out severance in the eye of law and further implementing it by actual division by metes and bounds. What was held in common as a single property gets converted into a holding in severalty and in specie. Joint ownership turns into ownership in severalty and in specie. It is true that 'partition' is not a transfer. But there must be the element of conversion of the joint ownership into ownership in severalty and in specie. Therefore, the



essence of partition is that the joint ownership is put an end to and the joint owners come to hold the property in severalty and each in his own individual right. In this country, it is common that not only coparceners of a joint Hindu family but also individuals join or continue together to own property in common. If this common ownership is to be put an end to not only in theory but also in practice, there must be primarily severance of the joint ownership in the eye of law, followed up by actual physical division. We make it clear that in the present case, we are not concerned with the concept of a bare unequivocal expression of an intention to separate to bring about a division in status in a joint Hindu family. It is not unusual for parties holding properties jointly or in common to have separate enjoyment of portions for the sake of sheer convenience. But such separate enjoyment of convenience cannot be equated to partition in the eye of law and in fact, so as to say that the joint ownership has been put an end to and in its place ownership in severalty or in specie has come into existence. Separate enjoyment for the sake of convenience is one thing and partition in the eye of law is another. The latter carries with it the legal incidents of mutating the joint ownership. The latter has to pass through and satisfy a more rigorous test in law and on facts."

38. By applying the ratio laid down by the above judgment in the case on hand, DW1 is not a party to the alleged oral partition and only his father alone is the party to the oral partition. Though DW1 claimed oral partition and enjoyment of the properties of their respective sharers, they have not shown any evidence substantiating the said plea. DW1 also admits that the properties covered under Exs.B1 to B14 are not Suit Schedule Properties. It is to be noted that Ex.B14 is the Sale Deed dated 27.04.1980 stands in the name of the 4th plaintiff. Ex.B5 is the Sale Deed in Doc.No.1534 of 1989 dated 20.06.1989, stands in the name of the 4th plaintiff. Ex.B6 is the Sale Deed in Doc.No.2646 of 1996 dated 29.09.1996, wherein the 4th plaintiff / Dhanapal sold the property to one M.Rathnamma. Ex.B8 is the Sale Deed in Doc.No.1533 of 1989 dated



20.06.1989 stands in the name of the 2nd plaintiff. Ex.B9 is the Lease Deed in Doc.No.1224 of 2001 dated 06.06.2001 executed between the 2nd plaintiff and M/s.Geetha Timber Trades, represented by its Managing partner. Ex.B10 is the Sale Deed in Doc.No.2502 of 1998 dated 23.09.1998 stands in the name of the 1st defendant. Ex.B11 is the Sale Deed in Doc.No.8037 of 2005 dated 01.12.2005 stands in the name of the 4th plaintiff's wife M/s.D.Lakshmi. Ex.B12 is the Sale Deed in Doc.No.8040 of 2005 dated 01.12.2005 stands in the name of the 4th plaintiff's son Suresh. Ex.B13 is the Settlement Deed in Doc.No.2048 of 2013 dated 19.02.2013 executed by 4th plaintiff's son D.Suresh, in favour of his wife M.Kavitha. Ex.B20 is the Sale Deed in Doc.No.1935 of 1986 dated 29.08.1986 stands in the name of the 1st defendant / Puliyendra Naicker executed by C.G.Nataraja Mudaliyaar.

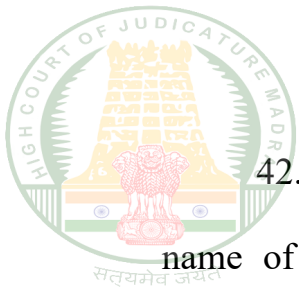
39. Ex.B22 is the Sale Deed dated 18.10.2004 in Doc.No.4575 of 2004 executed by the 1st defendant / Puliyendra Naicker and the 3rd plaintiff / N.Moorthy in favour of one Chandra. A perusal of Ex.B22 would reveal that after filing of the Suit, in the year 2004 the 1st defendant and the 3rd defendant have jointly executed Sale Deed in respect of S.No.109/1 (New S.No.271/9) in Tiruporur Village in favour of M/s.V.Chandra. Though the defendants claim that already oral partition took place between the parties, however Ex.B22 came to be executed jointly by the defendants 1 and 3 in favour of 3rd parties on 18.10.2004. Similarly, Ex.B21 dated 22.12.1975 in Doc.No.175/1976 stand in



the name of the defendants 1 and 3, which clearly shows that the parties have purchased properties jointly and also they have sold properties jointly even after filing of the suit in favour of 3rd parties.

40. It is seen from the records that the properties mentioned in Exs.B14, B5 to B13, B20, B22 are not relating to suit schedule properties. Ex.B24 is the patta, which stands in the name of sons and daughter of the 1st defendant i.e., the defendants 2 to 5 in Patta No.29 relates to suit schedule properties in Item Nos.31 to 34, 36 to 44. Ex.B24 came into existence in pursuance of Ex.B19 – Settlement Deed dated 23.08.1995 executed by the 1st defendant in favour of his sons.

41. Though the defendants contended that after the alleged oral partition, revenue records were mutated in their respective sharers, Ex.B18 is the Settlement Deed dated 23.08.1995 executed by the 1st defendant in favour of his daughter Roja with regard to Item No.35. Ex.B17 is the patta, which stands in the name of the 1st defendant with regard to Suit Item No.35. It is to be noted that after the settlement deed executed by the 1st defendant under Ex.B18, patta still stands in the name of the 1st defendant, which is evident under Ex.B17. There is no change in the patta with regard to Suit Item No.35 executed by the 1st defendant in favour of his daughter Roja.



42. Ex.B27 = Ex.P28 is Patta No.1576 dated 27.11.2014 stands in the name of the 2nd plaintiff, which does not comes under the Suit Schedule Property. Similarly, Ex.B29 is Patta No.915 dated 02.12.2014 stands in the name of the 2nd plaintiff, which do not contain any suit schedule property. Ex.B30 is Patta No.1 dated 19.11.2014 stands in the name of the 2nd defendant with regard to Suit Schedule Properties specified in Item Nos.23, 24, 26 to 30. Ex.B32 = Ex.B33 is patta No.305 dated 27.11.2014 stands in the name of the 4th plaintiff with regard to Suit Schedule Properties specified in Item Nos.16, 17 and 18. Ex.B31 is the Patta dated 19.11.2014 stands in the name of the 2nd plaintiff. Ex.B35 = Ex.P34 is Patta No.295 dated 27.11.2014 stands in the name of the 4th plaintiff and the properties specified therein are not related to the suit schedule properties.

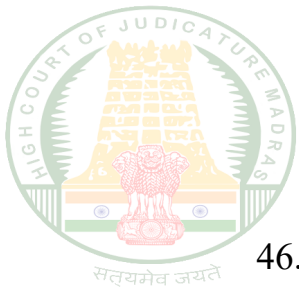
43. The defendants have also let in house tax receipts in Exs.B37 to B39 which stands in the name of the defendants 1 to 4. The defendants have not filed any such house tax receipts which stands in the name of the plaintiffs. The pattas and house tax receipts relied on by the defendants do not prove separate possession and enjoyment. Separate patta, separate possession, demarcation by ridges, sub-divisions, separate dealings etc., are some of the elements that may be recognized to prove oral partition.

44. In the case on hand, though the defendants have placed certain sale



deeds and pattas as defendants' exhibits, which are not connected to schedule mentioned properties and also placed certain sale deeds and pattas which are connected to the schedule mentioned properties. There is no evidence available on record to show that sub divisions, demarcations and separate dealings etc. In the absence of such proof of elements, mere payment of house tax receipts, patta relating to certain properties alone are not sufficient to prove the oral partition.

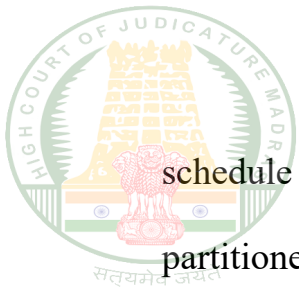
45. It is to be noted that the initial burden of proof lies on the plaintiffs discharged through Exs.A3, A4, B23, B21 and B22 that the properties were purchased jointly by parties and also sold certain properties jointly. From the admission made by DW1 and from the inconsistent plea taken by the defendants in Ex.A2 – Reply Notice, Written Statement, Exs.B18 and B19 – Settlement Deeds executed by the 1st defendant, it is clear that the suit schedule properties are joint family properties of the plaintiffs and the defendants. The burden shifts on the side of the defendants to establish that the case that oral partition has taken place in the Tamil Month of Thai 1981. DW1 himself has categorically admitted that he could not say what are all the properties specifically allotted to each of the parties. Neither any independent witness or nor any panchayatdars, who participated in the alleged oral partition, were examined by the defendants. Therefore, the defendants failed to prove their case.



46. It is relevant to note that the appellant's side vehemently contended that though some of the joint family properties, which are available for partition not included in the Suit Schedule and the decree would be invalid on the ground of partial partition. In such circumstances, further suit has to be filed either at the instance of the plaintiffs or the defendants to include the items available for partition.

47. It is pertinent to mention that in a suit for partition, an application for amendment of plaint can be filed under Order 6 Rule 17 CPC, at the instance of either party. It is also relevant to refer to the judgment of the Hon'ble Supreme Court in ***Shub Karan Bubna alias Shub Karan Prasad Bubna v. Sita Saran Bubna reported in 2009 (12) Scale 259*** wherein it has been held that a decree in partition suit enures to the benefit of the co-owners and it is sometimes said that there is really no judgment-debtor in a partition suit. By applying the ratio laid down in the aforesaid judgment in the case on hand, there is no application filed on either side under Order 6 Rule 17 CPC to amend the plaint. The appellant has chosen to file a memo listing out the properties which are omitted from the plaint. Filing such a memo cannot be treated as a substitute for seeking amendment of the plaint under Order 6 Rule 17 CPC.

48. This Court is of the view that the plaintiffs have proved that the suit



schedule properties are joint family properties and the properties have not been partitioned in the manner known to law. The Settlement Deed executed by the 1st defendant in favour of sons and daughter under Exs.B18 and B19 are valid to the extent of 1st defendant share alone and binding on the parties to that extent and not in entirety. In view of the above discussions, there is no reason warrants to interfere with the judgment and decree of the Court below. There is no merit in this appeal and the same is liable to be dismissed. ***Point Nos.2 to 5 are ordered accordingly.***

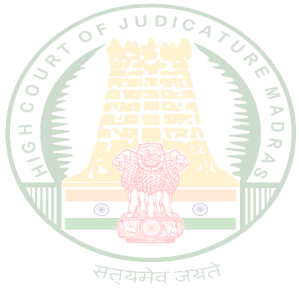
49. In the light of the above discussions and reasoning, ***this Appeal Suit stands dismissed***, confirming the judgment and decree dated 21.03.2016 in O.S.No.243 of 2005 passed by the learned Additional District Court, Chengalpattu. No costs.

17-07-2026

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

Jvm

To
1. The Additional District Court,
Chengalpattu.



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AS No. 500 of 2



M.JOTHIRAMAN J.

Jvm

AS No. 500 of 2016

17-07-2026