



WEB COPY

AS No. 634 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-07-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

AS No. 634 of 2026

&

C.M.P.No.16261 of 2026

K.S.Ramachandra Babu
S/o.Late K.N.Sathya Narayanan

..Appellant

Vs

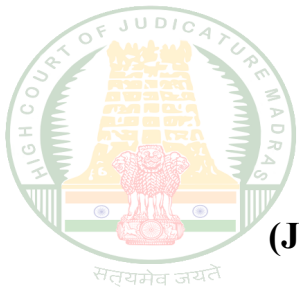
1. K.S.Rajesh
S/o.Late.K.N.Sathya Narayanan
2. K.S.Gajendra Babu
Son of Late K.N.Sathya Narayanan
3. K.S.Raj Kumar
Son of Late K.N.Sathya Narayanan
4. K.S.Vijaya Kumar
S/o.Late K.N.Sathya Narayanan

..Respondent(s)

Appeal suit filed under Section 96 of CPC as against the judgment and decree dated 03.04.2025 passed in O.S.No.8584 of 2022 by the XVI Additional City Civil Court at Chennai.

For Appellant(s):

Mr.K.Venkateswaran



JUDGMENT

(Judgment of the Court was delivered by N.Sathish Kumar J.)

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A challenge has been made to the preliminary decree dated 03.04.2025 passed in O.S.No.8584 of 2022 by the trial Court granting 1/5th share each and separate possession thereon to the plaintiffs.

2. Brief facts of the case is as follows:

The suit property was originally purchased by K.Sanjeevi Naidu by virtue of a sale deed dated 26.09.1923 executed by Kamaiah Naidu and Duraisamy Naidu. The said Sanjeevi Naidu is the grandfather of the plaintiffs. After the demise of Sanjeevi Naidu and his wife Janaki Ammal, the property devolved on Narasimhalu Naidu, Pushpavathy Ammal and K.N.Sathya Narayanan. The said Narasimhalu Naidu died on 04.05.1978 and Pushpavathy Ammal died on 15.01.1989. K.N.Sathya Narayanan died intestate on 10.02.2023 leaving behind his wife S.Saradhamma, plaintiffs and defendants and they are entitled to equal share in the suit property. It is the case of the plaintiffs that their mother also died on 16.10.2009 and being the legal heirs, they are entitled to 1/5th share in the suit schedule property. Despite repeated demands made by the plaintiffs for partition, the defendants have not come forward to partition the property, hence the suit.

3. Admitting the relationship, it is the contention of the defendants that after the demise of the father, their mother has allotted the property to each of the sons and they are in possession and enjoyment of the allotted portions. It is



further stated that none of the brothers came forward to meet out the cost of maintenance work in the suit property and it is the first defendant who had meted out the same and making the suit property in a usable condition. Hence, it is the contention of the first defendant that after the demise of the father, there was an oral partition and portions were allotted to each of the parties by their mother and therefore, the defendants pray for dismissal of the suit.

4. Based on the above pleadings following issues were framed:

"i). Whether the plaintiffs are entitled to partition as prayed for?

ii). Whether the plaintiffs are entitled to appointment of advocate commissioner to divide the plaint schedule property by way of final decree as prayed for?

iii). To what other reliefs?"

5. Before the trial Court, on the side of the plaintiffs, first plaintiff was examined as PW1 and Exs.A1 to A12 were marked. On the side of the defendants, first defendant was examined as DW1, but no exhibits were marked. The second defendant remained *ex parte*.

6. The trial Court, on appreciation of oral and documentary evidence, found that the oral partition pleaded by the first defendant has not been established and hence, granted a preliminary decree to divide the suit properties into 5 equal shares by metes and bounds and to allot 1/5th share to each of the plaintiffs and separate possession thereon. Challenging the same, the



unsuccessful defendant is before this Court.

7. The learned counsel appearing for the appellant/first defendant would vehemently submit that the properties were allotted to all the parties after the demise of their father by their mother and each of the parties are in possession of the portion of the property allotted to them. Therefore, the trial Court is not right in decreeing the suit granting the preliminary decree.

8. Now the point that arises for consideration in this appeal is "*whether the oral partition as pleaded by the defendants is true, valid and established in the manner known to law?*"

9. We have carefully considered the submissions made by the learned counsel for the appellant/1st defendant and also perused the materials placed before this Court.

10. The Court can very well go into the merits of the case even at the time of admission in terms of Order XLI Rule 11 of course with a reasoned order. Hence, we are disposing of the appeal at the admission stage itself.

11. The relationship of the parties is not in dispute. The main contention of the learned counsel for the appellant/first defendant is that after the death of their father, there was an oral partition between the parties. It is well settled that the initial onus is always on the party who asserts that there was an oral partition. The oral partition is not alien to Hindu Undivided Family, but the same has to be proved by way of a convincing evidence. For proving such oral partition the conduct of the parties also assume significance. Similarly, the



pleadings and evidence of the party who asserts oral partition and the party who denies such oral partition also relevant to determine the issue.

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12. It is the specific case of the first defendant that after the life time of their father and during the life time of their mother, the suit property was allotted to 1st and 2nd defendants and to the plaintiffs by their mother. Absolutely, there is no pleadings as to the nature of the oral partition and when the oral partition took place. To substantiate their case that there was oral partition between the parties and the parties acted upon based on such oral partition, at least some documents like mutation done in respect of individual names ought to have been filed by the defendants. Except the pleadings, no documentary evidence was produced to prove the oral partition. The evidence of DW1 in the cross-examination would clearly show that he is not in a position to say the nature of the properties allotted to each of the brothers. The evidence of DW1 clearly indicate that there was some arrangement made by the mother for convenient enjoyment of each of the sons. Therefore, merely parties for the sake of convenience enjoying certain portion of the property, it cannot be presumed that there was oral partition. The oral partition has to be pleaded and proved in a manner known to law. Further in the cross examination DW1 also admitted that he has no objection for dividing the property and allotting the respective shares to the parties. Therefore, when the first defendant himself has no objection for dividing the property and allotting respective shares to the



parties, the question of oral partition does not arise at all. Hence, the point is answered in favour of the plaintiffs.

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We do not find any merit in the appeal and the same is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(N.S.K.,J.) (M.J.R.,J.)
06-07-2026

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

gpa

To

1. XVI Additional City Civil Court
Chennai
2. The Section Officer
VR Section
Madras High Court



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**N.SATHISH KUMAR, J.
AND
M.JOTHIRAMAN, J.**

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(2/2)**