



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 26.11.2025

Judgment pronounced on : 13.02.2026

CORAM

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

A.S. No.391 of 2023
and CMP. Nos. 13732 & 13733 of 2023

1.Ravikumar
2.Vasanthakumar
3.Sakunthala

..Appellants

Vs.

1.N.R.Pachamuthu
2.Jagathambal

..Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree of the 1st Additional District Court, Namakkal passed on 14.03.2023 in O.S. No.231 of 2019.

For Appellants : Mr.S.Kalyanaraman, for
Ms.G.Ramya

For Respondents : Mr.C.Jagadish

JUDGMENT

The plaintiffs, aggrieved by dismissal of O.S. No.231 of 2019, on the file of the 1st Additional District Court, Namakkal, are the appellants.



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2. I have heard Mr.S.Kalyanaraman, for Ms.G.Ramya, learned counsel for the appellants and Mr.C.Jagadish, learned counsel for the respondents.

3. PLEADINGS:-

(a) Complaint in brief:-

The Plaintiffs 1 and 2 are brothers and the third plaintiff is their mother. The father of the plaintiffs 1 and 2 and the husband of the third plaintiff, late Sivalingam and the first defendant have entered into a partition on 15.02.1993. The said partition deed was never acted upon. The plaintiffs 1 and 2 were minors on the date of execution of the said partition deed. They are not bound by the said partition deed, which has come to their knowledge only now. The said partition deed cannot infringe upon the rights of the plaintiffs 1 and 2. On the date of the partition deed, both the plaintiffs 1 and 2 were already born and they were proper and necessary parties to the partition deed. Their father Sivalingam, was educated and he took up employment and was not therefore, having the time to look into the agricultural operations. Taking advantage of the same, the first defendant has misled the said Sivalingam into executing the partition deed by taking fertile lands into his shares and allotting dry lands to the said Sivalingam. Sivalingam was under the impression that his elder brother, the first defendant would not



cheat him and believed him blindly and signed the partition deed without even reading its contents. Therefore, he never questioned the partition deed during his lifetime. The third plaintiff is a retired Government Servant and when the plaintiffs attempted to cultivate the lands, the defendants have resisted the same, citing the registered partition deed. The defendants have also refused to release water for irrigating purposes from the Well. The Panchayat held to settle the disputes, where also the defendants refused to come forward for any amicable settlement. The plaintiffs therefore issued a lawyer's notice on 20.12.2018 and thereafter, since there was no response from the defendants, the plaintiffs are constrained to file the suit challenging the partition deed, dated 15.02.1993 and consequently, seek partition and separate possession.

(b) Written Statement in brief:-

The plaintiffs have no right in the suit property. It is the burden of the plaintiffs to establish that the properties are the ancestral properties and hence, the plaintiffs 1 and 2 are coparceners by birth. The father and husband of the plaintiffs is not an illiterate person. He is well educated and was also employed. The averments that the said Sivalingam believed the first defendant and blindly signed the document is stoutly denied. The said Sivalingam was fully aware of the contents of the partition deed and he executed it only after understanding the implications of the division. After the said



partition, the said Sivalingam never demanded for re-partition as claimed by the plaintiffs. There was no Panchayat as claimed by the plaintiffs. In fact, after the partition, Sivalingam had even leased out the lands which were allotted to his share to various persons and therefore, the partition deed was acted upon and it is false to contend that the partition was never acted upon. The division was effected taking into consideration the lay of the properties as well as their fertility alone and the partition was in a fair and equitable manner. The plaintiffs are not entitled to challenge the partition deed belatedly.

(c) ISSUES:-

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

- (1) தாவா சொத்துக்கள் பூர்வீக சொத்துக்கள் என்று வாதிகள் கூறியிருப்பது சரியா?
- (2) ஏற்கனவே 15.02,1993-ல் பாகப்பிரிவினை செய்யப்பட்டுவிட்டதால் காலவரையறை தோஷத்தால் வழக்கு பாதிக்கப்பட்டுள்ளது என்று 1ம் பிரதிவாதி கூறியிருப்பது சரியா?
- (3) தாவா சொத்துக்களில் வாதிகளுக்கு பாகம் கிடைக்கத்தக்கதா?
- (4) வாதிகள் கோரியுள்ள முதல்நிலைத் தீர்ப்பாணை பரிகாரம் வாதிகளுக்கு கிடைக்கத்தக்கதா?
- (5) வாதிகள் கோரியுள்ள விளம்புகை பரிகாரம் வாதிகளுக்கு கிடைக்கத்தக்கதா?
- (6) வாதிகளுக்கு கிடைக்கக்கூடிய வேறு பரிகாரம் என்ன?



Thereafter, the following additional issues 7 and 8 were framed:-

(7) வாதிகள் செலுத்தியிருக்கும் நீதிமன்ற முத்திரைக் கட்டணம் சரியானதா?

(8) 15.02.1993ம் தேதியிட்ட பாகப்பிரிவினை ஆவணமானது 1ம் பிரதிவாதியான பச்சமுத்து என்பவரால் 1, 2 வாதிகளின் தந்தையும் 3ம் வாதியின் கணவருமான சிவலிங்கத்தை ஏமாற்றி மோசடியாக பெறப்பட்டது என்று வாதிகள் கூறியிருப்பது சரியா?

(d) TRIAL:-

The second plaintiff examined himself as P.W.1 and one Jegannathan was examined as P.W.2 and Ex.A1 to Ex.A8 were marked on the side of the plaintiffs. On the side of the defendants, the first defendant was examined himself as D.W.1 and one Varadharaju, was examined as D.W.2 and Ex.B1 to Ex.B5 were marked.

(e) The decision of the Trial Court:-

The Trial Court finding that the plaintiffs were not entitled to challenge the partition deed dismissed the suit in toto. However, the Trial Court granted an injunction that the plaintiffs were entitled for an injunction that the defendants should not interfere with their right to water from the well and borewell in Schedule B of the partition deed dated 15.02.1993.



4.Arguments of the learned counsel for the appellants:-

The learned counsel for the appellants Mr.S.Kalayanaraman, would contend that the partition deed was not acted upon and further, it was unfair and inequitable. The first defendant had taken advantage of the trust that his brother, late Sivalingam had on him by bringing about a lopsided and favourable partition deed, catering to the interest of the defendants alone. He would take me through the sketch to show that though there was a road dividing the total extent of lands available for partition, the partition has been gone about in a very unfair and inequitable manner, causing serious prejudice to the plaintiffs. He would also take me through the written statement, where the defendants have admitted that the portion allotted to the defendants were fertile and the portion on Eastern side allotted to Sivalingam was not fertile. He would also state that the plaintiffs who were minors, have not even been added as co-nominee parties to the deed of partition and in such circumstances, the plaintiffs were certainly entitled to challenge the partition deed. He would also bring to my notice Ex.A5, pre-suit notice to which no reply has also given by the plaintiffs. Referring to the evidence of P.W.2, Mr.Kalayanaraman, learned counsel would contend that the lessees were also finding it extremely difficult to cultivate lands on account of inadequate supply of water and that was the reason why, on multiple occasions, late Sivalingam was forced to lease out the properties to successive lessees, who were not able to cultivate the lands effectively.



The learned counsel would also refer to the cross examination of P.W.1 and point out that the first defendant has categorically admitted to the fact that the partition is unfair and unequal.

5. As regards the suit being barred by limitation, Mr.Kalyanaraman, learned counsel would contend that the plaintiffs 1 and 2 were minors and therefore, only upon coming to know of the partition deed they have immediately filed the suit. He would further states that the plaintiffs only want fair distribution, so that the plaintiffs will be in a position to independently enjoyed the lands to be allotted to them. The learned counsel would therefore pray for the appeal being allowed.

6. Arguments of the learned counsel for the respondents:-

Per contra, Mr.C.Jagadish, learned counsel for the respondents would submit that the plaintiffs 1 and 2, despite being minors on the date of the alleged partition, have not chosen to file the suit within three years, from the date of their attaining majority. In any event, he would contend that the minors are not proper and necessary parties as the suit property was not ancestral properties. He would also state that Sivalingam himself was alive until 2007 and at no point of time, he made any complaint or had any grievance with regard to the manner in which the partition has been effected in the year 1993 and



in such circumstances, the suit is hopelessly barred by limitation. He would also invite my attention to the cross examination of P.W.1 and point out that P.W.1 was aware of the partition deed. Relying on Article 60 of the Limitation Act, 1963 Mr.Jagadish, learned counsel would state that the suit is barred and the Trial Court has rightly dismissed the suit.

7. Insofar as unfair distribution, Mr.Jagadish, learned counsel would contend that both Sivalingam and the first defendant were given properties on either side of the road and therefore, there has been a fair distribution of the joint property and the allegations made by the plaintiffs are baseless and wholly unsustainable. He would pray for the suit being dismissed.

8. I have carefully considered the submissions advanced by the learned counsel for the parties. The following points are framed for consideration.

(i) Whether the suit for declaration and consequential partition is barred by the provisions of the Limitation Act, 1963?

(ii) In the event of Point No.1, being answered in favour of the appellants, whether the plaintiffs are entitled to succeed in declaring the partition deed of the year 1993, Ex.A.4 as not binding and null



and void, on the ground that it was brought about by fraud and the partition has also been unfair and unequal?

9. Point No.(i) & (ii): The execution of the partition deed in Ex.A4 is not in dispute. It is only in the case of the plaintiffs that the late Sivalingam, father of plaintiffs 1 and 2 and husband of the third plaintiff was concentrating on his education and employment and therefore, did not devote any time for learning agricultural skills. He was relying on his elder brother, the first defendant and had full faith in him. Taking advantage of the said faith that the brother Sivalingam had on him, according to the plaintiffs, the defendants has brought about partition deed which out and out in favour of the first defendant. It is contended by the plaintiffs 1 & 2 that they were minors in the year 1993 and only after coming to know about the partition, after attaining the age of majority, they have immediately filed the suit, to declare the partition deed as not binding on them and for a consequential preliminary decree be passed besides relief of permanent injunction.

10. As rightly contended by the learned counsel for the respondents, Sivalingam having been a signatory and executant to the partition deed in Ex.A4, dated 15.02.1993, never questioned the partition deed till his demise in the year 2007. In fact, it has come



a share in the properties allotted to their father, Sivalingam and cannot challenge the partition deed itself. Admittedly, the properties have been purchased only in the year 1986 and there is no evidence to establish that the properties were purchased out of joint family nucleus that was available in surplus. More importantly, the father of plaintiffs 1 and 2, Sivalingam, having entered into the partition deed has chosen to lease out the portions allotted to him under the said partition deed. This clearly indicates that the partition deed was acted upon. If really, as contended by the plaintiffs, the partition was inequitable or unfair, late. Sivalingam would not have remained a spectator himself and would have challenged the partition deed especially when it is contended by the plaintiffs that the said Sivalingam executed the partition deed on the belief that his brother, the first defendant would not cheat him. The fact that admittedly, Sivalingam never questioned the partition deed and on the contrary, he only enjoyed the properties in terms of the division under the said partition deed clearly estop his legal heirs viz., the plaintiffs from challenging the partition deed, that too belatedly.

12. The learned counsel for the respondents Mr.C.Jagadish would also rely on the judgment in *S.A. No.145 of 2018 in the case of Krishnakumar Vs. Athayee (Deceased) and others, dated 22.03.2024*, where I have held that the father as Kartha and Manager of the joint family was competent to divide the family property during his lifetime and



the only obligation would be that he would have to give his sons in equal shares and that consent of the sons is not necessary for exercise of power to divide the family property.

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The Hon'ble Supreme Court in *S.M.Jakati and another Vs. S.M.Borkar and others*, reported in *AIR 1959 SC 282*, has also held that the sale of property by the father would bind even the minor, since the estate was effectively represented. In view of the above, challenge to the partition deed cannot be sustained. The suit is also barred by limitation having not been filed within a period of three years from the date of the partition deed itself. Even insofar as the partition being unfair or inequitable, it is settled law that the partition need not be equal and it is for the parties to the partition deed to agree upon any mode of division which may even result in some inequality to one or the other parties. This is not a ground to invalidate the partition deed itself. In the facts of the present case, late Sivalingam himself accepted the share allotted to him and also acted upon it and never questioned the same, till his demise in the year 2007 and this would also go show that Sivalingam was satisfied with the allotment made in his favour.

13. In fact, the very cause of action for the suit appears to be only arising out of the disruption of water supply to the property of the plaintiffs and nothing else. In this regard, P.W.1 has admitted that the pipelines running through the first defendant lands are fixed three feet below the soil and running of the tractor will not affect or damage the



pipelines. The Trial Court has also granted the relief of permanent injunction to ensure that the water supply to the plaintiffs' lands are not interfered with or disturbed. Therefore, the Trial Court has taken care of the interest of the plaintiffs, even though the suit came to be dismissed on other grounds. I do not see any infirmity or perversity in the findings arrived at by the Trial Court warranting interference in this Appeal. Consequently, points formulated above are answered against the appellants.

14. In fine, the First Appeal is dismissed. Consequently, connected Miscellaneous Petitions are also dismissed. No costs.

13.02.2026

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

1. The 1st Additional District Court, Namakkal.
2. The Section Officer,
V.R. Section, High Court of Madras.



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P.B.BALAJI.J,

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Pre-delivery judgment made in
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