



WEB COPY

A.S.No.298 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.11.2022

Pronounced on : 22.12.2022

CORAM

**THE HONOURABLE MS. JUSTICE V.M.VELUMANI
AND**

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

**A.S.No.298 of 2017
and
C.M.P.No.11229 of 2017**

Kathija Beevi @ Sellachi

... Plaintiff/Appellant

Vs.

1.Ahmed Shah @ Pichaiyappa

2.Saibudeen

3.Rajeena Behagam

4.Junaitha Begam

5.Shahul Ameen @ Chellappa

6.Jahabar Jalin

7.Janaki

8.Jayaraj

... Defendants/Respondents

PRAYER: Appeal filed under Section 96 of C.P.C, to set aside the judgment and decree passed in O.S.No.4 of 2014 dated 09.02.2017 on the file of the

<https://www.mhc.tn.gov.in/judis>



Court of Principal District Judge, Thiruvarur and decree the suit as prayed for by allowing this Appeal.

WEB COPY

For Appellant : Mr.S.Hariharan
for Mr.A.Muthukumar

For R-1 & R-4 to R-6 : Mr.S.Senthil

For R-7 : Mr.B.Satish Babu

For R-2, R-3 & R-8 : Ex-parte

JUDGMENT

SUNDER MOHAN, J.

The unsuccessful appellant in a suit for partition has challenged the dismissal of the suit in O.S.No.4 of 2014 on the file of the learned Principal District Judge, Thiruvarur in the above appeal.

2. The averments in the plaint are that the appellant/plaintiff is entitled to 1/6th share in the suit schedule properties. She is the daughter of one Mohamed Hussain, who died in the year 2003. Mohamed Hussain was survived by his children, namely, the first (son), second (son) and third (daughter) respondents. As per Muslim law, the sons are entitled to twice the share of the daughters. The first respondent and the second respondent together are entitled to 4/6th share in the suit schedule properties and the appellant and the third respondent



WEB COPY

were each entitled to 1/6th share in the suit schedule properties. The suit schedule properties consisted of 29 items of properties. In most of the properties, patta was issued in the name of the deceased, Mohamed Hussain, the father of the appellant/plaintiff and the respondents 1 to 3. The first respondent as the eldest son was taking care of the family properties and out of the income derived from the family properties, had purchased certain properties in his own name and in the name of his wife and children. These properties also belong to the family and hence, they are available for partition. The fourth respondent is the wife of the first respondent. The respondents 5 and 6 are the children of the fourth respondent. The 7th and 8th respondents are subsequent purchasers of the property of the fourth respondent. The appellant/plaintiff therefore prayed for partition of the suit schedule properties.

3. The respondents 1, 4 to 6 filed a written statement stating that it is true that the appellant is the daughter of Mohamed Hussain. Mohamed Hussain died on 21.12.2003. The appellant/plaintiff got married in the year 1972 and thereafter had nothing to do with the family or the properties. The suit schedule properties were either in the name of the first respondent or in the name of the fourth respondent, his wife and his children, the fifth and sixth respondents. Though the appellant/plaintiff claimed that in certain properties patta was issued in the name of Mohamed Hussain, the appellant/plaintiff had



WEB COPY

conveniently suppressed the fact that subsequently patta was issued in the name of the first respondent in all the properties pursuant to an oral gift by the father of the appellant/plaintiff. Subsequently, this oral gift was recorded on 07.03.1985. Some of the properties had been sold to the respondents 7 and 8. The appellant/plaintiff has not established as to how the properties still belong to the late Mohamed Hussain. That apart, the properties purchased in the name of the respondents 1, 4 to 6 cannot be treated as family properties as there is no concept of joint family property in Muslim law.

4. The seventh respondent filed a written statement reiterating the averments made by the respondents 1, 3 and 6 stating that they had purchased the property from the fourth respondent. It was self-acquired property of the fourth respondent and therefore, it is wrong to allege that it was the family property of late Mohamed Hussain. The Court fees paid under Section 37(2) of the Tamil Nadu Court fees and Suits Valuation Act is erroneous. The appellant/plaintiff cannot claim joint possession of the properties and ought not to have paid Court fees on that basis.



5. Before the Trial Court, the appellant/plaintiff examined herself as P.W.1 and marked Exhibits P1 to P10. The first respondent examined himself as D.W.1 and marked Exhibits B1 to B32.

6. The Trial Court framed 10 issues and held in favour of the respondents/defendants in all the issues. The Trial Court found that the appellant/plaintiff had not established that the suit properties belong to her father, deceased Mohamed Hussain. On the other hand, the respondents had established that the suit properties which were originally in the name of Mohamed Hussain, father, were gifted in favour of the first respondent and the revenue records also got mutated in his name pursuant to oral gift which was evidenced in writing subsequently. The Trial Court also found that the properties in the name of the respondents 4, 5 and 6 cannot be said to be family property and acquired out of the income derived from the family property as the concept of family property is alien to Muslim law. The Trial Court therefore dismissed the suit and also found that the Court fee paid was not in accordance with law under Section 37(2) of the Tamil Nadu Court fees and Suits Valuation Act.

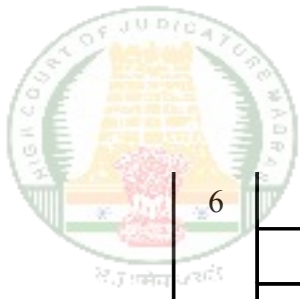
7. Mr.S.Hariharan, learned counsel for the appellant/plaintiff though had filed the appeal challenging the judgment of the Trial Court, restricted his



submissions only in respect of few items of the property in which the revenue records stood in the name of late Mohamed Hussain. The learned counsel filed a chart in which the details of few items of the property which stood in the name of late Mohamed Hussain are mentioned. He submitted that even if the judgment of the Trial Court that the concept of joint family property is alien to Muslim law were to be accepted, the properties that stood in the name of late Mohamed Hussain are available for partition. The following chart is as follows:

The particulars of the suit properties and their survey numbers, extent, classification etc.

S.No.	Suit Item	RS No.	Extent	Classification	Document	In favour of	Exhibits appellant Document	Page No in Doc. Set
1	1 & 2	156/5 [156/5A, 156/5B]	0.14.0 [0.06.25, 0.07.75]	Punjai	Natham Nilavari Thitta patta	Mohammed Hussain	Ex.A4	52
2	3	73/1M	0.00.99	Arasu Manai	"A" Register	Mohammed Hussain	Ex.A1 and Ex.A6	33 &
				Manai	Patta			54
3	7	127/1	0.26.5	Nanjai	Patta & 1397 Fasli Adangal	Mohammed Hussain	Ex.A1 and Ex.A5	36 &
	29	25/4	0.04.0	Punjai				53
	8	85/7A	0.07.5	Nanjai				
4	9	85/2	0.30.5	Nanjai	Patta & 1397 Fasli Adangal	Mohammed Hussain	Ex.A1 and Ex.A5	37 & 53
5	16	85/7B	0.31.5	Nanjai	1397 Fasli Adangal	Mohammed Hussain	Ex.A5	53



6	14	85/4	0.19.5	Nanjai	Patta	Isaq Rowthar	Ex.A1	40
	15	85/5	0.11.0					
	16	85/7B	0.10.5					
	17	86/4	0.31.5					
7	10	127/3	0.83 ½	Nanjai	Sale Deed	Mohammed Hussain	Ex.A7	55-56
	5	140/7	0.10					

b) The learned counsel further submitted that oral gifts made in favour of late Mohamed Hussain cannot be accepted as the other legal heirs of the respondents/defendants have not even been examined to establish the oral gift.

8. (a) Mr.S.Senthil, learned counsel for the respondents 1, 4 to 6 submitted that the judgment of the Trial Court is in accordance with law and the appellant/plaintiff had suppressed the fact that pursuant to gift made in favour of the first respondent, the revenue records stood in the name of the first respondent/first defendant even in respect of the properties which originally stood in the name of late Mohamed Hussian, the father of the appellant and the respondents/defendants 1 to 3.

(b). The learned counsel filed a chart, which is extracted as under:



WEB COPY

A.S.No.298 of 2017

COMPARATIVE CHART FILED ON BEHALF OF RESPONDENTS 1 & 4 TO 6

Suit Item	Survey No	Extent	Document	Name of the Owner	Remarks
1	156/5A	0.06.25 Hectare	i) Manavari Thoraya Patta in Form-4 marked as Ex.B-32 issued on 30.04.1995.	1st Defendant - Pichaiyappa	The Plaintiff relied upon Ex.A-4 Patta stood in the name of Mohamed Hussain issued in Fasli 1397 in the year 1989. But Ex.B-32 issued in the year 1995 in Natham Nilavari Thittam when Mohamed Hussain was alive. In this property the 1 st Defendant has constructed a House.
2	156/5B	0.07.75 Hectare	ii) Chitta in Patta No.466 marked as Ex.B-19 issued on 06.10.2015.		
			iii) Ex.B-26 Series - House Tax and Water tax receipts issued in favour of 1 st Defendant in respect of house in Door No.3/90.		
3	73/1M	0.00.99 Hectare	Ex.B-29 Chitta issued in the name of Selvarajan son of Govindarajan in Patta No.453.	Govindarajan S/o. Selvarajan	Though the Plaintiff relied Ex.A-1 and A-6 but as on 21.06.2016 this item of property was not in the name of Mohamed Hussain
4	140/7B	0.06.5 Hectare	Ex.A-1 Chitta in Patta No.1056 stood in the name of		The 7 th Defendant claimed that he has purchased these properties from the 4 th Defendant.
5	140/7C	0.14.5 Hectare	Junaitha Begum (4 th Defendant)		



WEB COPY

6	156/7C	0.04.0 Hectare	i) Sale deed marked as Ex.B-5 and B-7. ii) Ex.B-28 - Property Tax receipt iii) Ex.A-1 Chitta in Patta No.768 (In page No.35 of typed set)	4 th Defendant - Junaitha Begum	The 4 th Defendant purchased the property by way of two sale deeds registered as Doc.Nos.1174/1999 & 127/1991 on 15.07.1999 & 18.02.1991 respectively. In this property the 4 th Defendant constructed two shops and 4 houses in Door Nos. 3/93, 3/93-1, 3/93-2, 3/94, 3/94-1 and 3/94-2.
7	127/1	0.26.5 Hectare	Ex.B-31	1 st Defendant - Ahmed Shah @ Pichalyappa	Though the Plaintiff relied Ex.A-1 and A-5, chitta, stood in the name of Mohamed Hussain, but these properties were gifted by Mohamed Hussain to his son, the 1 st Defendant herein on 05.03.1984 and the same was confirmed by Mohamed Hussain in the presence of witnesses vide confirmation letter dated 07.03.1985.
8	85/7A	0.07.5 Hectare			
9	85/2	0.30.5 Hectare			

10	127/3C	0.32.5 Hectare	i) Sale deed Ex.B-2 ii) Chitta Ex.B-13 and B-22 iii) Adangal Ex.B-25	The 2 nd Defendant - Saibudeen	This property was purchased by the 2 nd Defendant from Maideen Beevi on 10.03.1971. Subsequently Chitta stands in the name of Ameenammal, W/o. Abdul Rahman in Patta No.69.
11	88/6	0.31.5 Hectare			
12	127/4A	0.95.0 Hectare	Sale deed Ex.B-4	4 th Defendant - Junaitha Begum	The 4 th Defendant purchased the property by way of sale deed registered as Doc.Nos.1297/1983 on 12.07.1983.
13	128/6A	0.24.5 Hectare			
14	85/4	0.19.5 Hectare	i) Chitta Ex.B-21 ii) Adangal Ex.B-25	Samsudeen	Though the Plaintiff relied Ex.A-1 and A-5, chitta, stood in the name of Mohamed Hussain, subsequently the Chitta and Adangal issued in the name of Samsudeen in Patta No.80.
15	85/5	0.11.0 Hectare			
16	85/7B	0.10.5 Hectare			
17	86/4	0.31.5 Hectare			
18	124/1J	0.10.5 Hectare	Sale deed Ex.B-5	4 th Defendant - Junaitha Begum	These properties were purchased by the 4 th Defendant from Rabisha Beevi on 12.07.1986 sale deed registered in Doc.No.500 of 1986.
19	124/1M	0.08.0 Hectare			
20	236/1B	1.53.0 Hectare			



WEB COPY

21	126/2A	0.26.5 Hectare	(Sale deed Ex.B-1. i) Chitta Ex.B-15 and B-20 in Patta No.403. ii) Avengeal Ex.B-26 and B-25 in patta No.403. iii) Chitta Ex.A-1 in patta No.403 (in Page No.12 of the Typed set).	1 st Defendant – Ahmed Shah @ Pichaiyappa	The properties in Item Nos. 21 & 22 were purchased by the 1 st Defendant from Augustin and others on 15.06.2000 sale deed registered in Doc.No.853 of 2000.
22	126/2E	0.18.5 Hectare			
23	126/1F	0.40.0 Hectare			
24	86/3	0.62.0 Hectare	(Sale Deed Ex.B-9 i) Chitta Ex.B-17 in Patta No.000 ii) Chitta Ex.A-1 in patta No.000 (in Page No.13 of the Typed set).	5 th Defendant – Shahul Ameer @ Chellappa	The properties in Item Nos. 24 & 26 were purchased by the 5 th Defendant from Habibussamir on 20.06.1994 sale deed registered in Doc.No.984 of 1994.
25	89/3	0.09.0 Hectare			
26	89/5A	0.10.5 Hectare			
27	126/2D	0.65.5 Hectare	i) Sale deed in Ex.B9 ii) Chitta Ex.A-1 in patta No.029 (in Page No.14 of the Typed set).	6 th Defendant – Jahabar Jalin	This property was purchased by the 6 th Defendant from Augustin on 15.06.2000 sale deed registered in Doc.No.853 of 2000.
28	161/4C	0.07.0 Hectare			
29	25/4C	0.04.0 Hectare	Chitta Ex.B-24 and B-30	Venkataraman S/o. Govindasamy	Though the Plaintiff relied Ex.A-1 and A-5, Chitta, stood in the name of Mohamed Hussain, subsequently the Chitta stood in the name of Venkatesharam in Patta No.430.

(c). The documents relied upon by the respondents, namely, Ex.B32, Ex.B13, Ex.B19, Ex.B26, Ex.B29, Ex.B28, Ex.B31, Ex.B2, Ex.B4, Ex.B5, Ex.B8, Ex.B9, Ex.B24 and Ex.B30 would all show that the late Mohamed Hussain was not the owner of the suit schedule properties at the time of his death in the year 2003. The chart extracted above would clearly show that the respondents/defendants had established that the appellant/plaintiff as legal heir of late Mohamed Hussain had no right in the suit schedule properties and the properties were not available for partition. The Trial Court had considered all these aspects and ultimately found that the properties are not available for



sale/partition and the appellant/appellant has not shown as to how the judgment of the Trial Court is wrong.

9. We have considered the submissions made by the learned counsel on either side.

10. The points that arise for consideration in this appeal are as follows:

(i) Whether the suit schedule properties belong to late Mohamed Hussain?

(ii) Whether the concept of joint family property is available in Muslim law?

(iii) Whether the gift deed in favour of the first respondent herein has been established by the respondents herein?

11. **Issue No.(ii):**

We find that except for the few properties, namely, the items 1, 2, 3, 5, 7 to 10, 14 to 17 and 29, all other properties are in the individual names of either the first respondent/defendant or the respondents/defendants 4 to 6. Those properties are family properties according to the appellant herein. We may note that the concept of family property is alien to Muslim law. The Hon'ble Supreme Court and this Court had reiterated this position in a number of cases.

The Hon'ble Supreme Court in the case of *Ajambi v. Roshanbi*, reported in



(2017) 11 SCC 544 , held that the concept of joint family property is not available in Muslim law. The relevant portion of the said judgment is extracted hereunder:

“11. It is true that there is no concept of joint family in Muslims but it was open to late Shri Shaikaji to give his property to his children in a particular manner during his lifetime, which he rightly did, so as to avoid any dispute which could have arisen after his death. The arrangement so made was duly accepted by the family members and it was also acted upon. Only thereafter a formal record of the said fact was made by late Shaikaji in Ext. D-7.”

Further, this Court in a judgment reported in (1969) 82 LW 632 in the case of **Maimoon Bivi and another Vs. O.A. Khajee Mohideen and another**, had held as follows:

“As pointed out in Abdul Samad Khan Khiladar v. Bibi Jan there is no provision in Muhammadan Law that the acquisitions of the several members of a family are made for the benefit of the family jointly; and the principles and presumptions applicable to the case of a joint Hindu family are not applicable to a Muhammadan family.”

Therefore, the suit schedule properties which were purchased by the respondents in their individual names cannot be said to be joint family properties of the late Mohamed Hussain and therefore, no partition can be claimed in respect of those properties. They are,



WEB COPY

(i)**Item No.6**, which was purchased by the fourth respondent herein by sale deed marked as Ex.B6 and Ex.B7 in the year 1999. The property tax receipts are also in the name of the fourth respondent.

(ii)**Item Nos.10 and 11** were purchased by the second respondent herein on 10.03.1971. The sale deed is marked as Ex.B2. The Chitta Ex.B13 and Ex.B22 stands in the name of the second respondent. The Adangal Ex.B25 stands in the name of the second respondent.

(iii)**Item Nos.12 and 13** were purchased by the fourth respondent by virtue of sale deed in the year 1983 marked as Ex.B4.

(iv)Likewise, **Item Nos.18 to 20** were purchased by the fourth respondent herein on 12.07.1986 by virtue of sale deed marked as Ex.B5.

(v)**Item Nos.21 to 23** were purchased by the first respondent herein by virtue of Ex.B1 sale deed on 16.06.2000. The Chitta and Adangal stands in the name of the first respondent.

(vi)**Item Nos.24 to 26** were purchased by the fifth respondent herein, who is the son of the first respondent, by sale deed dated 20.06.1994 marked as Ex.B8.

(vii)**Item No.27** of the suit schedule properties was purchased by the sixth respondent on 16.06.2000 by virtue of sale deed marked as Ex.B9. Since

all the above properties were purchased in the individual names of either the



first respondent or the fourth, fifth and sixth respondents, they cannot be said to be family properties and hence, they are not available for partition. Issue No.(ii) is accordingly answered in favour the respondents.

12. Issue No.(i) and (iii):

(a) As stated earlier, the learned counsel for the appellant/plaintiff mainly confined his submissions in respect of suit schedule properties in which patta was originally issued in the name of late Mohamed Hussain. According to him, Exhibits A1, A4, A5, A6 and A7 established that late Mohamed Hussain held the properties, namely, the suit schedule properties in Item Nos.1 to 5, 7 to 10, 14 to 17 and 29. The chart prepared by the learned counsel for the respondents extracted above would show that all these items of suit properties were subsequently transferred in the name of the first respondent herein. **Item Nos.1 and 2** of the suit schedule properties were in the name of the first respondent by virtue of patta issued on 30.04.1995 in Exhibit B32. The house tax and water tax receipts were also issued in the name of the first respondent, Exhibit B26. The Chitta was also issued in the name of the first respondent on 06.10.2015. Likewise, the Chitta for suit schedule properties in **Item No.3** was issued in the name of Govinda Rajan and it was not available for partition. With regard to the suit schedule properties in **Item Nos.4 and 5**, the patta stood in the name of



the fourth respondent herein and subsequently sold to the seventh respondent.

Similarly, **Item No.6** stood in the name of the fourth respondent as per Exhibit A1. She purchased the property by virtue of two sale deeds which were marked as Exhibits B6 and B7. This property cannot be said to be the property of late Mohamed Hussain. Likewise, **Item Nos.7 to 9** were gifted to the first respondent herein by late Mohamed Hussain by an oral gift, which was made on 05.03.1984 and was confirmed by a letter dated 07.03.1985, Exhibit B31. We find that the said gift was acted upon as could be seen from the transfer of revenue records in the name of the first respondent herein. The revenue records were marked by the respondents and the appellant/plaintiff has not been able to produce records contrary to the said documents. In respect of **Item Nos.14 to 17**, the properties stood in the name of the second respondent herein and the Chitta (Ex.B21) and Adangal (Ex.B25) stood in his name. Therefore, we find that even in respect of properties which originally stood in the name of late Mohamed Hussain, the revenue records were subsequently transferred to either the first respondent or the second respondent herein.

(b) The appellant has also included certain properties which are not in the name of either the appellant's father or in the name of the respondents. **Item Nos.3, 14 to 17 and 29** are in the names of third parties. This also establishes that the appellant/plaintiff had not come up with a clear case as to the nature of



properties available for partition. Further, we may note one other aspect which is that the other respondents, who are the legal heirs of late Mohamed Hussain, have not challenged the gift in favour of the first respondent herein.

(c) Therefore, we are of the view that the respondents have established the oral gift in favour of the first respondent and the suit schedule properties which originally stood in the name of late Mohamed Hussain were transferred subsequently in the name of the first respondent. Therefore, the issues (i) and (iii) are answered in favour of the respondents.

13. For the above reasons, we are of the view that the appellant/plaintiff has not established that the suit schedule properties belonged to late Mohamed Hussain at the time of his death and were therefore available for partition. The judgment of the Trial Court is in accordance with law and does not call for any interference and hence, the Appeal Suit in A.S.No.298 of 2017 is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

[V.M.V., J.] [S.M., J.]
22.12.2022

Index : Yes/No
Speaking/Non-Speaking Order
Lm



To
The Principal District Court,
Thiruvarur.

WEB COPY

A.S.No.298 of 2





WEB COPY

A.S.No.298 of 2



V.M.VELUMANI, J.
and
SUNDER MOHAN, J.

Lm/dk

**Pre-Delivery Judgment in
A.S.No.298 of 2017
and C.M.P.No.11229 of 2017**

22.12.2022