



A.S.(MD)No.135 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.07.2023

PRONOUNCED ON:27.07.2023

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

A.S.(MD)No.135 of 2015

Kunjan alias Kuzhandaivel Gounder (died)

: Appellant / Plaintiff

2.Ponnammal

3.Azhagammal

4.Palaniyammal

5.Shanmugavalli

6.Arumugam

7.Malliga

: Appellants 2 to 7

(Appellants 2 to 7 are brought on  
record as LRs of the deceased sole  
appellant vide order dated 18.11.2022  
made in C.M.P.(MD)No.9911 of 2022)

Vs.

Chinnu alias Renga Gounder

: Respondent/ Defendant

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree, dated 24.09.2014 made in O.S.No.11 of 2011, on the file of the Additional District Judge, Pudukkottai.



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For Appellants : Mr.P.Thiyagarajan

For Respondent :Mr.D.Ramesh Kumar

### **JUDGMENT**

The Appeal Suit is directed against the judgment and decree passed in O.S.No.11 of 2011, dated 24.09\, on the file of the Additional District Court, Pudukkottai.

2. The suit is for partition.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

4. Admittedly, the plaintiff and the defendant are brothers and sons of the deceased Chiththa Gounder. It is not in dispute that the suit properties are the ancestral and joint family properties of the deceased Chiththa Gounder.



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5. The case of the plaintiff is that the suit properties have been in joint possession and enjoyment of the plaintiff and the defendant, that there was no partition in respect of the suit properties and that the defendant, taking advantage of the mistakes occurred in patta, had been attempting to alienate the properties, that the plaintiff, after coming to know about the same, has sent a legal notice dated 03.09.2010, demanding partition and allotment of  $\frac{1}{2}$  share in the suit properties, that the defendant has sent a reply dated 13.09.2010 with false and untenable allegations and that since the defendant has not come forward to effect the partition, the plaintiff was constrained to file the above suit.

6. The defence of the defendant is that an oral partition was effected 20 years back in the presence of the village elders and as per the village custom, that the items 2 to 11 of the suit properties and the property situated in S.No.140/6B were allotted to the share of the defendant and the items 12 to 19 of the suit properties were allotted to the share of the plaintiff, that the 20<sup>th</sup> item of the suit properties and the well and the service connection therein were kept in joint possession and enjoyment of both parties, that both parties have been in separate possession and enjoyment of the properties allotted to them in the said



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oral partition, that the plaintiff has no right, title or interest in the properties allotted to the defendant and even if the plaintiff is having some rights, he has lost the same by ouster and that therefore the suit is liable to be dismissed.

7. The learned trial Judge, upon perusing the pleadings, has framed the following issues:

(i) Whether the plaintiff is entitled to get  $\frac{1}{2}$  share in the suit properties?

(ii) Whether there was an oral partition effected 20 years ago and that the defendant has been in separate possession and enjoyment of the items 2 to 11 of the suit properties allotted to him in the oral partition?

(iii) Whether 19 items of the suit properties were in separate possession of the parties to the suit?

(iv) What other reliefs, the plaintiff is entitled to?

8. During trial, the plaintiff has examined his son Arumugam as P.W.1 and one Kannappan as P.W.2 and exhibited 5 documents as Exs.A.1 to A.5. The respondent has examined himself as D.W.1 and one Raman as D.W.2 and exhibited 4 documents as Exs.B.1 to B.4. The



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learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned judgment dated 24.09.2014, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff has preferred the present Appeal Suit.

9. The learned Counsel for the appellant would submit that the learned trial Judge has committed an error in dismissing the suit, based on the patta granted by the revenue authorities, that though the defendant has pleaded oral partition, he has miserably failed to prove the same, that the defendant has neither pleaded nor adduced any evidence to prove the oral partition alleged by him, that the trial Court has failed to consider that patta cannot be issued by the revenue authorities based on oral partition and that the learned trial Judge, by only relying on the pattas produced by both parties, has given a finding that the defendant has proved that there was a oral partition between him and the plaintiff.

10. The learned Counsel for the defendant would submit that as per the village custom of the plaintiff and the defendant, the oral partition was effected in the presence of the village elders 20 years back, that the



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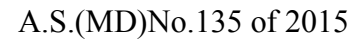
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items 2 to 11 of the suit properties were allotted to the defendant and the items 12 to 19 were allotted to the plaintiff and the 20th item was allotted to both parties, as there was a well and service connection, that the revenue records with respect to the suit properties were mutated in the names of the plaintiff and the defendant, that the revenue records under Exs.A.3 to A.5 and Exs.B.2 and B.3 reflected the names of the plaintiff and the defendant and it is not possible to mutate the revenue records without any partition, that the plaintiff has not taken any steps to prefer any appeal with regard to the changes made in the revenue records and that since the plaintiff has failed to prove his case, the suit came to be dismissed.

11. The points for determination are;

(1) Whether the trial Court erred in dismissing the suit for partition despite showing that the defendant who had pleaded oral partition, has miserably failed to prove the same and that the mutation of the revenue records alone is insufficient to infer any partition in the family?

(2) Whether the judgment and decree passed in O.S.No.11 of 2011, dated 24.09.2014 is liable to be set aside?



### Points 1 and 2:

13. No doubt, a partition can be oral, but a party who pleads oral partition is duty bound to establish the same by convincing evidence. In reply notice under Ex.A.2, in response to the legal notice issued by the plaintiff under Ex.A.1, the defendant has specifically stated that by keeping some of the properties referred in Ex.A.1 notice (suit properties), in common, they have entered into a oral partition 20 years back as per the village custom for their livelihood and that items 2 to 11 of the



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properties were allotted to the defendant and the remaining properties items 1, 12 to 20 were kept in joint possession of the plaintiff and the defendant. In the written statement also, the defendant has stated that by keeping some of the properties in common, had entered into a oral partition 20 years back with respect to some properties for livelihood, as per the village custom. But subsequently, he had taken a stand that in the said oral partition, he was allotted with items 2 to 11 of the suit properties and the property in S.No.140/6B and the plaintiff was allotted with items 12 to 19 of the suit properties and that both of them have been in separate possession and enjoyment of the properties allotted to them.

14. As already pointed out, the defendant in the reply notice has nowhere stated that items 12 to 19 of the suit properties were allotted to the share of the plaintiff in the oral partition alleged by him. Moreover, he has also not referred about the property situated in S.No.140/6B in the reply notice. No doubt, the defendant has filed a chief examination affidavit reiterating the contentions raised in the written statement. But in the cross-examination, he would say that after the death of their father Chiththa Gounder, the suit properties came to be owned by himself and the plaintiff, that both of them partitioned the properties 40 years back,



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that he does not know the month and year, in which the oral partition was effected and that the plaintiff is having 1/2 share and he is having 1/2 share in the suit properties.

15. As already pointed out, though the defendant has alleged that the oral partition had taken place 20 years back in the reply notice and in the written statement and also in the chief examination affidavit, he had taken a new stand that the said oral partition had taken place 40 years back. As rightly pointed out by the learned Counsel for the plaintiff, the defendant has nowhere whispered as to when, where and before whom, the alleged oral partition had taken place.

16. The defendant in his cross-examination would say that after the lapse of 18 years from oral partition, they had entered into a written partition deed, that the said document is available in his home and that he has not produced the same before the Court. It is pertinent to note that the defendant has not taken such a stand either in the reply notice or in the written statement or in his chief-examination affidavit. As rightly contended by the learned Counsel for the plaintiff, the admission of the defendant in his cross-examination that they have entered into a written



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partition document assumes importance and despite the specific admission that the said document was very much available in his house, he has not offered any reason or explanation for non-production of the same before the trial Court or before this Court.

17. No doubt, as rightly pointed out by the learned Counsel for the defendant, Ex.B.2 – patta bearing No.485 and Ex.B.3- adangal stand in the name of the defendant. The plaintiff has also produced patta under Exs.A.3 to A.5 and wherein Ex.A.3 – patta bearing No.485 stands in the name of Chinnu @ Kunjan Gounder, S/o Chiththa Gounder. As rightly pointed out by the learned Counsel for the plaintiff, the plaintiff's name is Kunjan @ Kuzhandaivel Gounder, whereas the defendant name is Chinnu @ Renga Gounder. But in Ex.A.3, alias names of both parties was mentioned as a one person as patta holder. No doubt, Ex.A.4 – patta bearing No.311 stands in the name of the plaintiff and Ex.A.5- patta bearing No.141 stands in the names of three persons viz., Chinnu, Renga Gounder and Kuzhandaivel Gounder, all are shown to be the sons of Chiththa Gounder. Admittedly, Chiththa Gounder had two sons. But Ex.A.5 patta was issued as if he had three sons. Though the defendant has alleged that the revenue records were mutated as per the oral



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partition, he has nowhere stated as to when and on what basis, such a request was made to the revenue authorities. It is also not known as to how and on what basis, pattas were issued in favour of the parties to the lis, by effecting the changes to the entries made earlier by the revenue authorities. Admittedly, the defendant has not produced the copy of the request made to the revenue authorities and the orders passed by the revenue authorities therein. Despite a specific denial made by the plaintiff with regard to the oral partition, the defendant has not taken any steps to send for the records from the revenue authorities to prove the basis, on which mutation of revenue records were made.

18. As already pointed out, according to the defendant, he was allotted with items 2 to 11 of the suit properties and the properties in S.No.140/6B and the total extent comes to 2.30.50 hectares, whereas the plaintiff was allotted with items 12 to 19 of the suit properties and the total extent comes to 0.80.50 hectares. Considering the total extent of the properties allotted to the plaintiff and the defendant, it is clearly evident that there was a huge difference between the extent allotted to them. But, the defendant has nowhere whispered about the value of the properties allotted to the parties nor taken any steps to prove the value of



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the properties before the trial Court. It is not the specific case of the defendant that the properties allotted to him and the plaintiff are all equal in value.

19. No doubt, the defendant has taken a half-hearted stand that the plaintiff has lost his right in the properties allegedly allotted to the defendant in the oral partition by ouster. He has neither raised necessary pleadings nor adduced any evidence in this regard. Considering the above, this Court has no hesitation to hold that the defendant has miserably failed to prove the oral partition and the allotment of properties as alleged by him. Consequently, this Court concludes that the plaintiff is entitled to get 1/2 share in the suit properties. But the trial Court, without considering the material aspects of the case, by relying only on the pattas, has decided the issues wrongly. Considering the other facts and circumstances of the case and also the relationship between the parties, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

20. In the result, the Appeal Suit is allowed and the judgment and decree passed in O.S.No.11 of 2011, dated 24.09.2014, on the file of the



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Additional District Court, Pudukkottai is set aside and a preliminary decree is passed declaring that the plaintiff is entitled to get 1/2 share in the suit properties. The parties are directed to bear their own costs.

**27.07.2023**

NCC : Yes : No

Index : Yes : No

Internet : Yes : No

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To

1. The Additional District Court, Pudukkottai.

2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

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PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.135 of 2015

**27.07.2023**