



A.S(MD) No.138 of 2013

WEB COPY

Dated: 15.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD) No.138 of 2013

and

C.M.P(MD) No.1 of 2013

1. Muthusamy
2. Perumal
3. Arumugam
4. Murugan

.. Appellants/Plaintiffs

.Vs.

1. Meenakshi Sundaram
2. Valliammal
3. S.Arumugam(Died)
4. Babaji Behera
5. Sushant Nayak
6. Gandhimathi
7. Nagalakshmi
8. Meenakshi
9. Revathi

..Respondent/Defendants

*(Respondents 6 to 9 are brought on record
as LR's of the deceased 3rd Respondent vide Court
order dated 28.11.2023 made in CMP(MD) No.
16141,16142 and 16143 of 2023)*

Prayer : This Appeal Suit has been filed under Section 96 of C.P.C., against the judgment and decree dated 08.01.2013 passed in O.S. No.17 of 2010 by the Principal District Judge, Thoothukudi and set aside the same.

For Appellants : Mr.S.Selva Aditya
for Mr.G.Prabhu Rajadurai

For Respondents : Mr.Shathurthiraja
for Mr.S.Kadarkarai



A.S(MD) No.138 of 2013

JUDGMENT

WEB COPY

This Appeal Suit has been filed as against the decree and judgment dated 08.01.2013, passed in O.S. No.17 of 2010, by the learned Principal District Judge, Thoothukudi, wherein the appellants herein have filed the suit for partition as against the respondents herein and the trial Court dismissed the suit.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Trial Court.

3. The gist of the plaint averments are as follows:

The first item of the property belongs to the father of plaintiffs and defendant 1 and 2 namely Subbaiah Pillai by self acquired properties. The second item of the suit property belongs to wife of Subbiah Pillai i.e., mother of plaintiffs and defendants 1 and 2 as ancestral property. The suit properties are the Hindu undivided joint family properties. The said Subbiah Pillai was enjoying the properties as Kartha and he was working as a Head Constable in the Police Department and thereafter he retired from service. Whiles in the year 1997, the said Subbaiah Pillai died intestate. After the demise of said Subbaiah Pillai, the first defendant was acting as



A.S(MD) No.138 of 2013

Kartha for the joint family properties and he purchased third item of the property from out of the income of the first and second scheduled properties and the said property was also under the common enjoyment. The mother of the plaintiffs and the defendants 1 and 2, namely, Ramalakshmi died intestate on 26.01.1996.

3.1.The second defendant was given in marriage and she was given 100 sovereigns of gold jewels and received cash of Rs.50,000/- and thereby she orally relinquished her right. Apart from that, the properties in S.F. No.977, measuring an extent of 0.81 acre in Keelasekkarakudi Village, Sekkarakudi East Street, S.F. No.109/106, measuring an extent of 5 cents land with two storied buildings, in Keelasekkarakudi Village, SF. No.792/12, 5, measuring an extent of 42 acres of punja land, Keelasekkarakudi S.F. No.228, measuring an extent of 2.40 acres of land were also given to the second defendant as Sreedhana properties. Since the properties are Hindu undivided Joint family properties, the plaintiffs and first defendant each are entitled to the 1/2th share over the suit properties. The first defendant has no children and he joined with other defendants and attempted to create encumbrance over the properties and thereby the plaintiffs demanded partition but the defendants refused for amicable partition. The second defendant has no right over the



A.S(MD) No.138 of 2013

properties, since she was given sreedhana properties as per customs and also she orally relinquished her right over the property. On 14.12.2019, the plaintiffs issued notice to the defendants. The first defendant receive the notice and the second and third defendants managed to return the same, therefore, the plaintiffs have filed the suit for partition.

4. The gist of the written statement are as follows:

The plaint has been lodged with ulterior motive and with a personal vendetta to settle scores with this defendants. The relationship of the parties are admitted. It is true that Sl. Nos.1 and 3 of the first scheduled properties belongs to Subbiah Pillai by self acquisition. In addition to those those properties, he also owned certain other properties and he died intestate in the year 1997. The properties are not Hindu joint family properties and Subbiah pillai was managing the properties as Kartha. It is false to state that the third scheduled properties was purchased from out of the income from the 1 and 2 scheduled properties and out of the earning of the plaintiffs and the plaintiffs and the defendants are in joint possession and enjoyment of the same. There is no Hindu joint family property as alleged by the plaintiff.



A.S(MD) No.138 of 2013

4.1. The plaintiffs and the first defendant were working in different places and earned independently and lived separately. The plaintiffs are working in various places and residing in different places and they purchased properties in their names separately. In the year 1985, the first defendant purchased properties through document dated 04.10.1985 from Muniyandi Pillai. In the sale deed, the third plaintiff has attested as witnesses and on the same day, the third plaintiff purchased another property from the same vendor Muniyandi Pillai. Therefore, the defendants and the plaintiffs have been purchasing properties independently. The plaintiffs never shared their income with the first defendant at any time and there was no common properties among them after partition in the year 1977. Their father Subbaiah Pillai died leaving behind the plaintiffs and the defendants 1 and 2 and their mother Ramalakshmi as legal heirs, thereafter, the plaintiffs and the defendants orally partitioned the properties.

4.2.As per the oral partition, the plaintiffs and the defendants 1 and 2 are enjoying their respective shares separately and separate pattas were also granted to them and they are paying taxes to their respective shares and some of the properties were also sold by them. Rest of the partitioned properties are still under the possession and enjoyment of the plaintiff with separate pattas. On 16.10.1980, the



A.S(MD) No.138 of 2013

third plaintiff sold the house property measuring an extent of 8 1/4 cents in S.F.No. 705/1, which was acquired by him in the partition to Mrs.Seranthai Ammal under registered sale deed. The above said recital of the sale deed clearly proves the partition among the plaintiffs and the first defendant. The property described as Kulathu Punjai was divided among the five brothers and they respectively partitioned their shares and they were enjoyed them by paying land taxes, after the demise of their father they also got separate pattas for their lands. In the said Kulathua Punjai plaintiffs Nos.1, 3, 4 have sold their respective shares through sale deed dated 15.05.2002 to the second defendant.

4.3.The second plaintiff, Perumal sold his share in S.No.16/1-A3 of Kulathu Punjai through power agent dated 09.12.2008. The second plaintiff Perumal also acquired the land called Moolakadu measuring 71 ares in S.F. No.571 and obtained separate patta No. 1289 and he subsequently sold the said land to Mrs.Venkatalakshmi W/o.Subramanian through sale deed. The said Venkatalakshmi is the daughter of fourth plaintiff Murugan. The third plaintiff Arumugam acquired the land called Karpurani Kadu measuring 82 Acres in S.F. No. 151/1 as his share by partition and obtained separate patta number 193 in his individual name. The third plaintiff subsequently sold the said land through sale deed dated 28.09.2007 through



A.S(MD) No.138 of 2013

power agent. The first plaintiff got property of Meenakshipuram punjai measuring 1.94 acres in S.F. No.1348/1 was acquired by the first plaintiff through his father's share and got separate patta in patta No.70 and still enjoying the suit properties.

4.4.The fourth plaintiff Murugan acquired the land called Pillaikulathu Punjai measuring 80 cents in S.F. No.33/1B as his share from his father's property and obtained separate patta in patta number 1540 in his individual name and the same is still in his possession and enjoyment. Since the properties left by Subbaiah Pillai had already been partitioned between the parties, the plaintiffs are estopped from claiming partition once again. Some of the properties in A schedule were owned by Srimathy Ramalakshmi Ammal and said Ramalakshmi Ammal on 07.08.1985 executed a registered Will and bequeathed all her properties in favour of the second defendant. In the said Will also the partition among the plaintiff and the first defendant in respect of their father's property was also referred. In the said Will, the first defendant and the third plaintiff have signed as attestors. Therefore, the averment that the said Ramalakshmi Ammal died intestate is false. After the demise of Ramalakshmi Ammal, the second defendant got title over the properties and she is in absolute possession and enjoyment of the above said properties. The house belonging to the third defendant is



A.S(MD) No.138 of 2013

also included in Sl.No.5 in the second schedule and the same is owned by the third defendant, who is in possession and enjoyment of the property as absolute owner.

4.5.The first defendant also acquired several properties by purchasing independently from his own income and he also disposed of some of those properties. The properties listed at Sl.Nos.1,2,4,5,9 and 11 of third schedule are now owned by first defendant as absolute owner and the said properties are under his enjoyment without any hindrance. Sl.No.6 of the third schedule property were never owned by him. After oral partition the plaintiffs have sold some of the properties. The properties acquired by the first defendant are his own properties and he is absolute owner. The properties of Ramalakshmi Ammal has been enjoyed by her as absolute owner of the properties. The third defendant is not a necessary party to the suit and there is no existence of joint family and the common properties. The plaintiffs never shared their income with first defendant and there was no common fund at any time. Since the properties belong to their father had already been partitioned, there is no existence of Hindu joint family. The plaintiffs have suppressed the fact of existence of Will executed by Ramalakshmi Ammal and illegally included the properties in the suit. The plaintiffs have clandestinely failed to include the properties



A.S(MD) No.138 of 2013

allotted to them in oral partition and also the properties sold by them, thereby the suit is bad for partial partition. The suit is also barred by limitation since the plaintiffs have filed the 7997, therefore, the suit is liable to be dismissed.

5. Based on the above said pleadings and hearing both sides, the trial Court has framed the following issues:

i) Whether the plaint schedule properties are in the joint possession and enjoyment of the plaintiffs and defendants?

ii) Whether the plaintiffs are estopped from claiming partition?

iii) Whether the suit is bad for including properties of third parties?

iv) Whether the suit is bad for misjoinder of parties?

v) Whether the suit is bad for partial partition ?

vi) Whether the plaintiffs are entitled to get 4/5th share in respect of plaint scheduled property?

vii) Whether the plaintiffs are entitled to get any other reliefs?



A.S(MD) No.138 of 2013

WEB COPY

6. In order to prove the case before the trial Court, on the side of the plaintiffs, they have examined P.W.1 and marked documents Ex.A.1 to A3. On the side of the defendants D.W.1 and D.W.2 were examined and exhibits B.1 to B.50 were marked.

7. The trial Court after considering the evidence adduced on both sides dismissed the suit. As against the decree and judgment, the plaintiffs have filed the present appeal on various grounds:

Grounds of appeal

i) The judgment and decree of the is vitiated by law and errors of jurisdiction.

ii) The trial Court ought to have decreed the suit for partition as the defendants themselves admitted in their written statement that the properties described in the 1st and 2nd scheduled were belonged to their father and mother. Hence the appellants are also entitled to their parents share.

iii) The trial Court erred in law in not deciding anything about the third schedule property though it is particularly pleaded by the appellants that it were purchased out of the profit of 1st and 2nd schedule properties and the joint family funds which were



A.S(MD) No.138 of 2013

particularly objected by the first defendant and stated to be purchased out of his own funds.

iv) The Trial Court ought to have properly perused the documents filed by the defendants as exhibits which were not related to scheduled properties and cannot be taken into consideration to decide the defendants contention of earlier oral partition.

v) The Trial Court ought to have taken away by the exhibits produced by the defendants as all these documents were dealt with different survey numbers and not related to this present case.

vi) The Trial Court ought to have considered the case of the appellants that though it is admitted by P.W.3 that some of the properties not included in the schedule to the plaint were originally acquired by the appellants on his individual capacity and more particularly not acquired by any partition and only by long possession of those lands. Besides that, it is also clearly disagreed by P.W.3 in his cross that there was no partition held after the demise of their father in 1977. Hence the appellants claims of partition with regard to scheduled properties were genuine and bonafide claim.

vii) The Trial Court ought to have considered the submission of P.W.3 in his cross examination that the properties given in the schedule are under joint possessoin and were not underwent for



A.S(MD) No.138 of 2013

partition even though the plaintiff and the first defendant were resided in different roof.

8. The learned counsel appearing for the appellant would contend that the suit properties are Hindu undivided joint family properties of the plaintiffs and defendants 1 and 2. Originally the first item of the property belongs to Subbiaah Pillai, who is the father of the plaintiff and the defendants 1 and 2 and the second schedule property belongs to the mother of the plaintiffs and the defendants 1 and 2. The third schedule of the property was purchased by the first defendant in his name out of the income from the plaintiff first and second schedule properties. The father of the plaintiff and the defendants 1 and 2 died intestate in the year 1977. Thereafter the mother of the plaintiff and the defendants 1 and 2 died in the year 1997 and thereafter the second defendant was given in marriage with sufficient sreedhana and thereby she relinquished her rights orally, therefore, the plaintiffs and the first defendant are equally entitled to the suit properties. In order to prove the case of the plaintiffs the third plaintiff was examined as P.W.1 and marked exhibits A1 to A3 and on the side of the defendants D.W.1 and D.W.2 were examined and exhibits B.1 to B.50 were marked. The trial Court failed to consider the evidence of the plaintiffs' side to prove



A.S(MD) No.138 of 2013

that the properties are the joint family properties and the trial Court failed to consider all the above said aspects and only given weightage to the defendant side evidence. The trial Court failed to consider that the defendants have failed to prove the alleged oral partition, thereby the judgement and decree passed by the trial Court are liable to be set aside.

9. The learned counsel appearing for the respondents would contend that there is no joint family property as alleged by the plaintiffs and it is true that the first schedule property belongs to the father of the first defendant and the plaintiff through self acquisition and he died intestate and after his demise the properties were partitioned in the year 1997. After partition, the respective shares were enjoyed by the plaintiffs and the first defendant separately. In the year 1997, the mother of the plaintiff and the first defendant died. Before her death, she executed the Will in the year 1995 in favour of the second defendant. In the said Will also, the partition of the properties of Subbiah Pillai was referred and in the said Will the first defendant and third defendant are attesting witnesses and they very well know about the contents of the Will. By suppressing the above said facts, they have filed the suit. After the oral partition between the parties, the respective parties have sold their



A.S(MD) No.138 of 2013

respective shares on various dates and some of the properties were not included and thereby the trial Court after considering all these aspects correctly dismissed the suit, thereby the present appeal is liable to be dismissed.

10. This Court heard both sides and perused the records and upon hearing both sides and perusing the records including the judgment of the trial Court, the points for determination in this appeal are as follows:

i) Whether the suit scheduled properties are Hindu undivided joint family properties of the plaintiffs and the defendants 1 and 2?

ii) Whether the third schedule properties were purchased from and out of the income of the first and second scheduled properties?

iii) Whether the mother of the plaintiffs and the defendants 1 and 2 executed the Will dated 08.07.1995 in favour of the second defendant?

iv) Whether there was oral partition between the parties in respect of the properties of Subbaiah Pillai?

v) Whether the suit is bad for partial partition?

vi) Whether the suit is bad by limitation?



A.S(MD) No.138 of 2013

vii) Whether the plaintiffs are in joint possession and enjoyment of the properties along with the defendants 1 and 2.

viii) Whether the plaintiffs are entitled to 4/5th share over the plaint scheduled properties?

ix) Whether the appeal is liable to be allowed or not?

x) To what relief the parties are entitled to?

Point Nos. 1, 2 and 4:

11. In this case there is no dispute in respect of relationship of the parties. The plaintiffs and the defendants 1 and 2 are children of Subbaiah Pillai and Ramalakshmi Ammal. It is admitted fact that the first schedule property belongs to Subbaiah Pillai. According to the plaintiffs, the second item of the suit properties belongs to the mother of the plaintiffs and the defendants 1 and 2 and the same is also not denied by the defendants. Further, the contention of the plaintiffs is that the third item of the property was purchased by the first defendant out of the income derived from the first and second schedule properties. The defendants admitted the facts that first and second item of the properties belong to the parents of the plaintiffs and the defendants 1 and 2, but the defendants denied the purchase of properties of third item of the property through the income of the 1 and 2 scheduled properties. Further, according to the first defendant after the demise of Subbaiah Pillai, the properties of



A.S(MD) No.138 of 2013

Subbaiah Pillai were partitioned by the plaintiffs and the first defendant is having separate possession and enjoyment over their respective and they have been in separate possession and enjoyment over their respective shares.

12. In order to prove the case of the plaintiffs, they have examined P.W.1 and marked exhibits A1 to A3. Ex.A1 is the legal notice, Ex.A2 is the acknowledgment and A3 is returned postal cover. Apart from that, no documents were filed. The plaintiffs themselves pleaded that the third schedule properties were purchased by the first defendant in his name through the income of the 1st and 2nd scheduled properties. Whiles the burden of proof lies on the plaintiffs to prove their contentions, in order to prove the same, they have not adduced sufficient evidence. More over the defendants in the written statement categorically stated about the partition in the year 1977 and after partition the respective shares the parties have been sold by them separately. In this context, it is relevant to refer to the evidence of the P.W.1 and she in her evidence stated that after the demise of his father, the properties were not partitioned between them, however, separate pattas were granted and separate taxes have been paid and he also admitted that on 16.10.1980, he sold the properties in S.No.705/1 measuring



A.S(MD) No.138 of 2013

an extent of 8 ¼ cents and in that deed he mentioned that he sold the properties derived as share from his father and also he admitted that the Kulathu Punjai land was partitioned between five brothers and also they got separate pattas through Exs.B.3 to B5. Separate tax have been paid. Further he admitted that on 15.02.2002 he sold the properties of Kulathu Punjai to the second defendant. Similarly the second defendant also sold his properties of 89 cents through sale deed dated 09.12.2008. For the above said property he also got separate pattas. For the past 21 years, he had been enjoying the properties separately and then he sold the property.

13. Further, P.W.1 admitted in his cross examination that the second defendant acquired the property in Mullakadu through partition and he got separate patta. The said property was sold by second defendant through one Venkatalakshmi through Ex.P.7. the said Venkatalakshmi is none other than the daughter of the fourth plaintiff. Further he sold the property in S.F. No. 1251/1,1251/2,1251/3 and 1251/4 through sale deed dated 28.09.2007 - Ex.P.10. Similarly, the first defendant was allotted share in S.F. No.1345/1 to an extent of 1394 acre and the same was under the enjoyment of the first defendan, the said property was not included in this plaint, similarly the fourth defendant was allotted



A.S(MD) No.138 of 2013

S.F. No.33/1B, 80 cents. Moreover, P.W.1 in his evidence categorically admitted that in the previous suit in O.S. No.71 of 2009, while deposing before the Court, he stated that the properties of his father was orally partitioned between the legal heirs. Therefore from the above said evidence it is clear that after the demise of the father of the plaintiffs and the defendants 1 and 2, the properties were partitioned and enjoyed by the parties separately and they sold their respective shares of the properties.. Therefore, the theory of oral partition pleaded by the defendants have been probablized.

14. The plaintiffs have not produced any documents to show that there was income derived from the 1st and 2nd schedule of properties and 1st and 2nd items of the properties were only under the enjoyment of the first defendant as Kartha of the joint family and he purchased the third scheduled properties in his name. The plaintiffs have not adduced any evidence in respect of existence of joint family and the properties belongs to the joint family and they are in joint possession and enjoyment of the properties and the third schedule properties through income of the first and second schedule property. Further Exs.B.1 and B.2 sale deeds in favour of the third plaintiff and the first defendant also clearly show that they purchased the properties separately in their names. This also shows



A.S(MD) No.138 of 2013

that the properties were separate properties of the parties. Per

contra, P.W.1 himself admitted that they alienated the properties in respect of their shares and all the plaintiffs enjoyed their shares separately. Therefore the plaintiffs failed to prove that the properties are joint family properties of the plaintiffs and the defendants 1 and 2 and the defendants have probalilized that the first scheduled property was partitioned after the demise of the father of the plaintiff and the defendants 1 and 2. The defendants have produced sale deeds executed by the plaintiff in respect of properties of their father and in those documents they clearly stated about the separate enjoyment of the properties. Moreover, the revenue records were also mutated in their separate names and separate pattas were given and taxes was also paid separately. The D.W.1 also categorically deposed about the nature of properties and thereby the plaintiffs have failed to prove that the properties are the joint family properties of the plaintiffs and the defendants 1 and 2 and the third schedule of the properties were purchased from out of the income of the 1 and 2 schedule of properties and the defendants proved their contention that the properties of the father of the plaintiffs and the defendant 1 and 2 were orally partitioned between them. Thus, the points 1,2 and 4 are answered.



A.S(MD) No.138 of 2013

Point No.3

WEB COPY

15. According to the defendants, the mother of the plaintiffs and the defendants 1 and 2 Ramalakshmi Ammal executed Will dated 08.07.1995 in favour of the second defendant and the said Will has been marked as Ex.B.4. The said Ramalakshmi Ammal died on 09.07.1998 and death certificate of Ramalakshmi Ammal was also marked. After the demise of Ramalakshmi Ammal the Will came into effect. The plaintiffs also admitted that the properties belonged to Ramalakshmi Ammal. D.W.1 and D.W.2 have categorically deposed about the attestation and execution of Will. D.W.1 is the attesting witness of the Will and he deposed about the execution / attestation of the Will. The plaintiff also has not specifically denied the Will, however, attesting witness D.W.1 has deposed about the execution and attestation of Will, thereby, the Will has been proved by the defendants. As per Will, the second defendant is entitled to the second scheduled properties. Even P.W.1 in his evidence did not deny the execution of Will and he only stated that he don't know about the Will. In this context, it is relevant to refer the evidence of P.W.1,

“என் தாயார் 07.08.1998 அன்று நல்ல மனநிலையில் யாதொரு தூண்துடுத்தலும் இல்லாமல் ஒரு உயில் ஆவணம் 2ம் பிரதிவாதிக்கு எழுதி வைத்தார் என்றால் எனக்கு தெரியாது. அந்த உயிலில் நானும் 2ம் பிரதிவாதியும் சாட்சி கையொப்பம் போட்டுள்ளோம் என்றால் சரியல்ல” P.W.3 is none other than one



A.S(MD) No.138 of 2013

of the attesting witness and he denied his attestation. However, he admitted that the patta stands in the name of D.W.2 and he has not paid any tax to the property. Therefore, the defendants proved the Will dated 08.07.1995, executed by Ramalakshmi Ammal through sufficient evidence. Thus, point no. 3 is answered.

Point No.5.

16.The defendants have taken a plea that some of the properties were not included and some of the properties were sold by the respective parties and those properties were also not included in the suit. In this context, it is relevant to refer to the evidence of P.W.1, where he admitted that Meenakshipuram Punjai S.F.No. 1345/1 an extent of one acre 94 cents was allotted to the first defendant and he got separate patta. The said property belonged to his father, but the said property was not included in the suit and the properties already sold by the respective parties are not included in the suit and thereby, the suit is also bad for partial partition. The purchasers of the said properties were not included and without their presence the suit cannot be decided effectively. Thus, this point is answered.



A.S(MD) No.138 of 2013

Point No.6

WEB COPY

17.The plaintiffs have filed suit for partition in the year 2010. According to the defendants 1 and 2, there was partition in the year 1977 itself but the plaintiffs have sold the properties,in the year 2002 onwards but there is no document in respect of the exact date of partition and thereby there is no clear cut evidence. This Court already in previous points decided that already oral partition was effected between the parties and there is no exact date and year of partition. Further, a perusal of Exs.B.1 and 2, revealed that in the year 1985 itself, the properties were purchased by the third plaintiff and first defendant separately and thereby the partition could be before those sale deeds. The suit is filed in the year 2010 after lapse of 25 years. Already this Court decided that the properties were enjoyed separately by the parties after the demise of their father , thereby the suit is also barred by limitation. Thus point no.6 is answered.

Point No.7

18. The plaintiffs have filed the suit for partition, alleging that the properties are Hindu undivided joint family properties and they are in joint possession along with the defendants. This Court also already decided in the preivous points that the existence of joint



A.S(MD) No.138 of 2013

family properties are not proved by the plaintiffs by producing sufficient documents. Per contra, the evidences shows that the properties were partitioned between the parties and they are in separate possession of their respective share of properties. Therefore, the plaintiffs failed to prove that they are in common and joint possession along with defendants. Thus, the point no.7 answered.

Point No.8

19. This Court already discussed in previous points that the properties are not joint family properties and the third scheduled properties are not purchased through the income of the joint family nucleus and the second item of the properties were bequeathed through Will in favour of the second defendant and the properties of the father of the plaintiff and the defendants namely Subbaiah Pillai were already partitioned between the parties and the suit is barred for non joinder of necessary parties and partial partition. The suit is also barred by limitation, thereby the plaintiffs are not entitled to the relief of partition over the suit properties. Thus, the point No.8 is answered.

Point No.9

20. In this case the plaintiffs have filed a suit for partition and the trial Court had dismissed the suit by holding that the plaintiffs



A.S(MD) No.138 of 2013

failed to prove their case and the defendants have proved that the scheduled properties are not joint family properties; already partition was effected between the parties; the second schedule properties belonged to Ramalakshmi Ammal and she executed a Will in favour of the second defendant and the third scheduled properties were not purchased through the income from the first and second schedule properties and the suit is barred for partial partition and non joinder of necessary parties. The trial court after elaborate discussion about the evidences adduced by both the parties and documents marked by the parties correctly came to conclusion that the plaintiffs are not entitled to the relief of partition. Further, this Court also in the previous points decided that the plaintiffs have failed to prove their case, thereby, the judgment and decree passed by the trial Court are well reasoned and warrants no interference and thereby, the appeal is liable to be dismissed.

Point No.10

21.In view of the discussions made in the previous points that the appellants are not entitled to partition and also not entitled any relief through this appeal, thereby the appeal is liable to be dismissed.



A.S(MD) No.138 of 2013

WEB COPY

22.In the result,the appeal suit is dismissed and the judgment and decree passed by the trial Court in O.S. No.17 of 2010 on the Principal District Judge, Thoothukudi dated 08.01.2023 are hereby confirmed. Considering the nature of suit and relationship of the parties, there shall be no order as to costs.

15.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
aav

To:

1. The Principal District Judge, Thoothukudi
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S(MD) No.138 of 2013

P. DHANABAL,J.

aav

A.S(MD) No.138 of 2013

15.03.2024