



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

A.S.No.296 of 2023

& CMP.No.10889 of 2023

Subetha Begum

... Appellant

Vs.

1.A.B.Mabup John

2.A.B.Gulbeer

3.A.B.Rameesh Babu

4.Noorjagan

5.G.Shafiulla

6.C.N.Balasubramaniam

7.Subbathal

... Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 19.12.2022 made in O.S.No.33 of 2019 on the file of the learned IV Additional District Judge, Bhavani, Erode District.

For Appellant : Mr.N.Ishtiaq Ahmed

For Respondents : Mr.J.Franklin for R1
Mr.D.Selvaraju for R2
No appearance for RR3 to 7



JUDGMENT

WEB COPY The plaintiff, aggrieved by the dismissal of the suit for partition in O.S.No.33 of 2019 before the IV Additional District Court, Bhavani, Erode District, is the appellant.

2.I have heard Mr.N.Ishtiaq Ahmed, learned counsel for the appellant and Mr.J.Franklin, learned counsel for the 1st respondent and Mr.D.Selvaraju, learned counsel for the 2nd respondent.

3.After hearing the counsel for the parties, I find that the main issue regarding, whether there was an oral partition amongst the family members during the lifetime of the father and it was 'acted upon' has not even been framed as an issue by trial Court. That appears to be the primordial defence taken by the contesting defendants to non-suit the claim of the plaintiff for partition.

4.Mr.D.Selvaraju, learned counsel for the 2nd respondent would bring to my notice that the suit has also been dismissed on the ground of non-



WEB COURT

joinder of necessary parties, namely other co-sharers as well as non-inclusion of properties, which were available for partition. He would also point out that the plaintiff, in the witness box, has categorically admitted that certain other properties were also available for partition. However, considering the fact that the issues have not been properly framed by the trial Court and the suit is one for partition, in order to protect the parties' interest and do justice for all the parties, I am inclined to remit the matter to the trial Court for a denovo trial, after framing an issue regarding the alleged oral partition pleaded by the defendants being true and whether it has been acted upon. In fact, all the counsel for the parties fairly agreed that the appeal requires to be remanded for denovo trial which sub serve the interest of all the parties.

5. Insofar as the inclusion of properties and non-joinder of necessary co-sharers, who are purchasers even prior to the suit, it is open to the plaintiff to seek impleadment of the parties and also amendment of the plaint to include the left out properties. The defendants, who have raised the plea that the suit is bad for partial partition shall provide the details of the



WEB CODE

left out properties, to enable the plaintiff to carryout necessary amendments to the plaint.

6.Mr.D.Selvaraju, learned counsel for the 2nd respondent fairly states that the actual and full description of properties have not been brought out and therefore, he seek liberty to enable any of the defendants to provide the details of the left out properties and also the details of the purchasers, who had acquired interest in the suit items even prior to the institution of the suit for partition, to enable the plaintiff to seek for suitable amendments to be made.

7.It is needless to state that on such amendment application being allowed, the same shall not be opposed by the defendants. However, the defendants shall have a right to file their additional written statement.

8.In fine, the Appeal Suit is allowed. The judgment and decree dated 19.12.2022 in O.S.No.33 of 2019 on the file of the learned IV Additional District Judge, Bhavani, Erode District, is set aside and the matter is remanded to the trial Court for denovo trial, with the following directions:



WEB COPY

(i) The matter shall be called before for the trial Court on 03.12.2025 and within a period of two weeks from the said date, any of the defendants are at liberty to furnish the details of the properties, with full description, as far as possible, to enable the plaintiff to include the same in the schedule of properties in the plaint.

(ii) Similarly, any of the defendants are at liberty to furnish the details of co-sharers, who have been left out and and were proper and necessary parties to the suit for partition on the date of institution of the sit, within the aforementioned period of two weeks.

(iii) The plaintiff shall file an application for amendment of the plaint to include the left out parties and description of the properties, within a period of two weeks thereafter.

(iv) The amendment application shall be formally taken on file, numbered and allowed and the plaintiff shall be called upon to carryout necessary amendments within a period of two weeks from the date of the amendment application being allowed.

(v) The defendants shall be given four weeks time to file their additional written statement, if any.



(vi) The trial Court shall frame issues, considering the pleadings on record, within a period of two weeks from the date of filing of the additional written statement being filed as indicated in clause (v) supra and the trial Court shall thereafter ensure that the trial commences without any delay and shall expedite trial and dispose of the suit, in any event, not later than 31.07.2026.

(vii) There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

14.10.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No

Internet : Yes / No

rkp

To

The IV Additional District Court, Bhavani, Erode District.



WEB COPY



P.B. BALAJI,J.

rkp

A.S.No.296 of 2023
& CMP.No.10889 of 2023

14.10.2025