



A.S.No.233 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26-08-2025

CORAM

THE HONOURABLE MR JUSTICE M.JOTHIRAMAN

A.S.No.233 of 2019

Sooran
S/o.Late Krishnan,
Savulukottai Village, Kethureddipatti Post,
Papireddipatti Taluk, Dharmapuri District.

Appellant/Plaintiff

Vs

1.Kannan
S/o.Late Krishnan,
Savulukottai Village, Kethureddipatti Post,
Papireddipatti Taluk, Dharmapuri District.

2.Ragupathiammal (died)
S/o.Late Krishnan,
Savulukottai Village, Kethureddipatti Post,
Papireddipatti Taluk, Dharmapuri District.

Respondents/Defendants

(R2 died and her legal representatives viz. appellant and the first respondent are already on record as per the memorandum dated 16.06.2025 and the same is recorded vide order of this Court dated 16.06.2025 passed in A.S.No.233 of 2019)

First Appeal filed under Section 96 CPC r/w Order XLI Rule 1 CPC to
set aside the judgment and preliminary decree dated 12.02.2019 passed in
O.S.No.60 of 2014 on the file of the Principal District Court, Dharmapuri.



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For Appellant: Mr.A.B.Reehana Begum

For R1: Ms.R.Adithya Shri
for Mr.N.Manoharan

JUDGMENT

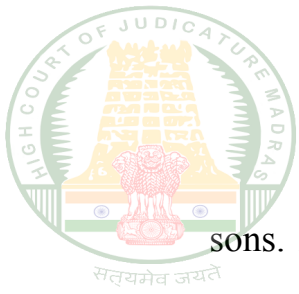
Unsuccessful plaintiff has preferred the present appeal challenging the judgment and decree dated 12.02.2019 passed in O.S.No.60 of 2014 on the file of the Principal District Court, Dharmapuri.

2. The parties are referred to as per rankings in the trial Court.

3. Suit is filed for partition and for separate possession. The trial Court dismissed the suit.

4. **The brief case of the plaintiff is as follows:**

The suit properties are the joint family properties of the plaintiff and defendants. One Punnar Gounder had five sons viz. Ramar, Kolandai, Krishnan, Chinnasamy and Sooran. During the lifetime of the said Punnar Gounder, he made an oral partition in respect of the suit properties to his



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sons. After his demise, his sons are in possession and enjoyment of their respective share in the properties allotted to them. The plaintiff and the first defendant are sons and second defendant is the wife of Krishnan, who is the son of Punnar Gounder, respectively. After the death of Krishnan, the plaintiff and the defendants were in joint possession and purchased some properties from joint family income. The plaintiff demanded the partition, but, the defendants did not come for amicable partition. Hence, the plaintiff sent a legal notice dated 24.03.2014. The defendants received the same, but, not came forward for partition. The plaintiff claims 4/9 share in the suit properties. Hence, the suit.

5. The brief case of the first defendant is as follows:

The suit properties are not joint family properties and oral partition was effected 35 years ago in 1984 between the parties and pattas were obtained for the respective shares. The first defendant purchased properties in S.No.255/7 and 255/8 in Mottankurichi Natham plots and 1.22 acres of land in Kethureddipatti Village out of his own income. The plaintiff obtained EB connection and family card in his name before 35 years ago. The second



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defendant is also living separately for the past 35 years. As per the partition already effected, the plaintiff has no right to file the suit for partition. The second defendant called absent and set *ex parte*.

6. On the basis of the above pleadings, the trial Court has framed the following issues:

- (1) Whether the suit properties are joint family properties?
- (2) The oral partition 35 years ago pleaded by the 1st defendant is true?
- (3) Whether the plaintiff is entitled to the relief of partition?
- (4) To what relief?

7. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1, Rajendiran was examined as PW2, Mani was examined as PW3 and Harinarayanan was examined as PW4 and Exs.A1 to A9 were marked. On the side of the defendants, first defendant examined as DW1 and Subramani was examined as DW2 and Exs.B1 to B9 were marked and Exs.X1 to X5 were marked through witnesses.

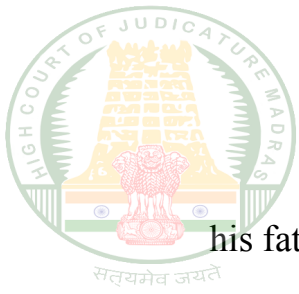


8. Findings of the trial Court:

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The plaintiff has not proved that the suit property is a joint family property and there is no evidence against the oral partition effected between the parties on the side of the plaintiff. Hence, dismissed the suit.

9. The learned counsel appearing for the appellant/plaintiff would submit that the first defendant has not pleaded in his written statement and in the proof affidavit as to how the oral partition took place and in whose presence oral partition was effected. When a claim of oral partition is made, the burden is onerous and ought to be discharged by letting in cogent evidence. The trial Court has rightly rejected the contention of the first defendant with regard to EB connection and revenue records in the name of the plaintiff and ought to have decreed the suit for partition. Merely living separately by the plaintiff and the second defendant does not exclude a co-owner from their right to joint possession. In the evidence of DW1/first defendant, he has stated that his father Krishnan died 40 years ago and after five years of his father's death *i.e.* before 35 years, the alleged oral partition was effected with his younger brother *i.e.* the plaintiff. On the contrary, the first defendant in his written statement and in his evidence, he has stated that

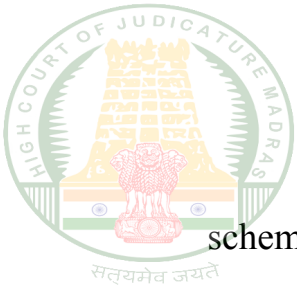


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his father died 40 years ago way back in the year 1974 at the time of death of Krishnan, the age of the first defendant and plaintiff was 12 years and 8 or 9 years, respectively. The first defendant in his evidence admits that no partition took place 35 years ago and the kists receipts in Ex.B7 were in his name, as he is the eldest member in the family. Further, he deposed that out of the income from his father's ancestral property, he and the plaintiff purchased the some properties. Further, he deposed that the suit properties are the joint family property of the parties to the suit. The trial Court failed to see the inconsistencies in the evidence of DW2, who is the brother of Krishnan and uncle of the plaintiff and first defendant with regard to oral partition and he also failed to identify the properties allotted to the parties to the suit through oral partition. The plaintiff has established his case through the evidence of PW4, Village Administrative Officer, who has given more clarity on some properties, which are still in the nature of joint family properties and some properties, which stands in the name of parties to the suit.

10. The learned counsel appearing for the appellant/plaintiff would further submit that the patta has been granted to the parties only under UDR



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scheme during the year 1984 on the basis of identification of possession and not on the basis of oral partition. Though, in his written statement, the first defendant claims that the properties purchased under Ex.B2 in suit item nos.15 to 26 are self-acquired properties, in his cross-examination, he admits that the properties are purchased from the income derived from the income from the joint family. Therefore, from the evidence of the first defendant, inference can be drawn that the property exhibited under Ex.B2 are not self-acquired property of the first defendant rather they are joint family properties.

11. *Per contra*, the learned counsel appearing for the respondent/first defendant would submit that the defendants have pleaded in their written statement that oral partition was effected between the legal heirs of Krishnan *i.e.* plaintiff and the defendants of the suit before 30 years ago. During the cross-examination, the plaintiff PW1 deposed that he had been living separately in a house constructed by him and he had obtained family card. The plaintiff and the defendants have been living separately since partition and in nowhere they are in joint possession of the suit properties. The plaintiff taking advance of the joint patta in item nos.7 to 12



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and item no.14 has proceeded to file the suit. Subsequent to the oral partition, the revenue records have been duly mutated. In this regard, PW4, VAO, chosen to produce all the pattas as Exs.X1 to X5. The first defendant have duly established the oral partition by satisfying the necessary ingredients. The initial burden of proof on the defendants have been fully discharged and any claim contrary to oral partition taken by the plaintiff has not been proved by him before the trial Court. Though the plaintiff had contended that the properties are still in joint possession, the same has not been proved by the plaintiff. Rather, the admission of the plaintiff that they are living separately in different houses, has only proceeded to support the stand of the defendants that they are in separate possession. The first defendant has pleaded in his written statement that suit items 15-25, 26 and 27 of the suit properties are self-acquired, in that, item nos.26 and 27 in the suit schedule properties have been duly bought by the first defendant under Exs.B3 and B4 registered sale deeds much after the oral partition of the suit properties. The first defendant has sufficiently proved that item nos.15 to 25, 26 and 27 of the suit properties are self-acquired properties. During the oral partition between the parties, certain properties in the plaint schedule were allotted to the second defendant. Therefore, the suit schedule item nos.1 to 6



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exclusively stand in the name of the second defendant after oral partition and patta has also mutated in her name in patta no.1035 in Ex.X1. Similarly, item nos.13 and 26 in S.No.131/12 stands in the name of second defendant in patta no.1299 in Ex.X3. Pending this appeal suit, the second defendant has passed away leaving the plaintiff and the first defendant has her only legal representatives and the plaintiff and the first defendant would each devolve $\frac{1}{2}$ share each in the properties, which stands in the name of the second defendant. The suit item nos.7-12 and 14 stands in the name of both the plaintiff and defendants. The plaintiff has taken advantage of the joint patta and has filed the suit claiming for partition, but, in contrary, he deposed that he has been living in a separate house. The first defendant has proved his case that oral partition has been effected between the parties and the parties are in possession of the same. The Court below is right in holding that the plaintiff has failed to prove joint possession and thereby, dismissing the suit for partition.

12. This Court has considered the submissions made on either side and perused the materials on record.



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13. The points for determination that arise in this appeal are 1) whether the oral partition took place between the parties before 35 years ago, as pleaded by the first defendant? 2) whether the suit properties are joint family properties; and 3) whether the plaintiff is entitled to the relief of partition.

14. It is not in dispute that one Ponnar Gounder had five sons *viz.* Ramar, Kolandai, Krishnan, Chinnasamy and Sooran and two daughters. The plaintiff and first defendant are the sons of Krishnan. The second defendant is the wife of the said Krishnan.

15. It is the specific case of the plaintiff that the suit properties are joint family properties as on the date of filing of the suit. Though the plaintiff and the first defendant are brothers and the second defendant is their mother and they were in possession and enjoyment of the properties. Out of the income of the said properties, some suit properties were purchased in the name of the defendants. Pending this appeal suit, the second defendant/mother has passed away leaving the plaintiff and the first



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defendant as the only legal heirs. A memorandum has been filed and the same has been admitted by both the parties to that effect.

16. It is the specific case of the first defendant that the suit properties are not joint family properties and the oral partition was effected 35 years ago in 1984 between the parties and pattas were obtained for their respective shares. Further, the first defendant purchased the properties in S.Nos.255/7 and 255/8 in Mottankurichi Natham plots and 1.22 acres in Kethureddipatti Village out of his own income. The plaintiff obtained EB connection and family card in his name 35 years ago. The first defendant is also living separately for the past 35 years, as partition had already been effected. The plaintiff has no right to file the suit for partition.

17. It is a settled proposition that when a claim of oral partition is made, the burden is on the party setting up the claim of oral partition and the burden is onerous and ought to be discharged by letting in cogent evidence. Merely living separately by the plaintiff and second defendant does not exclude the co-owner from their right to joint possession. The law presumes that all co-owners are in joint possession even if they are not physically present and actively managing the property. It is relevant to mention that a



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mere arrangement as to the possession of convenience of the parties is not partition by meets and bounds. Such amicable arrangement can never be operative and binding for all time to come and such arrangement does not destroy the joint character of the properties.

18. DW1/first defendant, in his evidence, stated that his father Krishnan died 40 years ago and after 5 years of his father's death, *i.e.* before 35 years ago, according to him, he alleged to have effected oral partition with his younger brother *i.e.* the plaitniff. It is pertinent to mention that as per the version of the first defendant in his written statement and evidence, the first defendant's father died 40 years way back in the year 1974 and at that time, his age was 12 years and the age of the plaintiff was around 8 or 9 years.

19. DW1, in his cross-examination admits that at the time of the death of his father, first defendant was aged about 12 years and the age of the plaintiff would be 8 or 9 years.

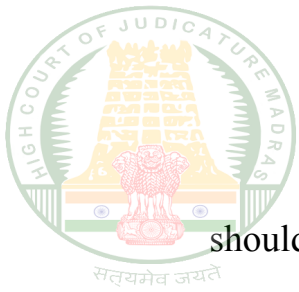
20. According to the first defendant, the alleged oral partition ought



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to have taken place 35 years prior to filing of the suit *i.e.* during the year 1979 and at that time, the age of the first defendant would be 17 years and the age of the plaintiff would be 14 years. Both the plaintiff and the first defendants are minors at the time of oral partition and hence, minors cannot independently effect for partition and hence, the plea of oral partition by the first defendant cannot be sustained.

21. DW1 deposed that the oral partition took place in the presence of his maternal uncle Ponraj, his aunt's son Kutty @ Ramasamy, his paternal aunt's son Subramani, is paternal uncle's son Pachaiappan, Chinrass and Chinnu. Only the maternal uncle Ponraj is the eldest person and all other were younger or equal to the first defendant and no elder member of the family was present at the time of oral partition and it creates cloud on the plea of oral partition. While, DW1, in his evidence, has stated that he was aged about 27 years at the time of oral partition, in his written statement, he has stated that oral partition was effected 35 years ago. The statement as to the age of the first defendant postulates contradictory stand taken before the Court of law, which does not have any cogency and the same cannot be sustained. Another aspect is that when DW1 claiming oral partition, he



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should know as to what are all the properties allotted to the parties during partition, but, in his evidence, he deposed that he does not know what are all the properties allotted to the parties, but, on the other hand, DW1, is very particular in deposing in his evidence with regard to the properties, in which, he is in possession *viz.* S.Nos.126, 128 and 134. DW1, in his evidence deposed that at one point he admits that no partition has taken place before 35 years ago and kists receipts in Ex.B7 are in his name, as he is the eldest in the family. Further, he deposed that out of the income from his father's ancestral property, he and the plaintiff purchased the property and further deposed that the suit properties are not joint family properties of the parties.

22. DW2, who is the brother of Krishnan and uncle of the plaintiff and first defendant deposed about oral partition. DW2, in his evidence has failed to identify the properties allotted to the parties to the suit through oral partition. According to the first defendant, subsequent to the oral partition, pattas had been obtained in the names of the parties to the suit independently and all other mutations in the revenue records have been effected in the name of the parties.



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23. *Per contra*, according to the plaintiff, patta has been granted to the parties of the suit only under UDR scheme during the year 1984 on the basis of the identification of possession and not on the basis of the oral partition. In his written statement, according to the first defendant, the properties purchased under Ex.B2 *i.e.* suit item nos.15 to 26 are self-acquired properties, whereas, in his cross-examination, he clearly admits that the properties are purchased from the income derived from the joint family properties in his name, since being the elder son of the family.

24. From the evidence of DW1, an inference can be drawn that the properties exhibited under Ex.B2 are not self-acquired properties of first defendant, rather, they are joint family properties. Though the first defendant contended that he had purchased those properties with his own income and also from the earnings of his children, through his statement, it can be presumed that the children of the first defendant were aged about 15 and 10 years. They were minors at the time of purchase of the properties, which were exhibited under Ex.B2 *i.e.* suit schedule items 15 to 26. The question of earning is suspicious and the pleadings with regard to their contributions for the purchase of the properties under Ex.B2 creates doubt.



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25. From the evidence of DW1, it reveals that the properties in item nos.1 to 14 are the joint family properties and further DW1 also admits that the properties purchased under Ex.B2 *i.e.* suit schedule item nos.15 to 26 in his name, as he was the eldest person in his family. It is pertinent to mention that the best person, who has to speak about the alleged partition took place before 35 years ago is the mother/second defendant. Admittedly, the mother/second defendant in the suit before the trial Court was set *ex parte*. Even though the first defendant did not come forward to bring the second defendant/mother as a witness on his side.

26. Separate patta, separate possession, demarcation by ridges, subdivisions, separate dealings *etc.*, are some of the elements that may be recognized to prove oral partition. In the absence of proof of such elements, mere payment of kist alone is not sufficient to prove oral partition.

27. It is settled law that mere separate enjoyment for convenience cannot be equated to partition in the eyes of the law. It does not mean joint ownership has been put to an end and in its place ownership in severalty or



in specie has come into existence. Separate enjoyment for the sake of convenience is one thing and partition is another in the eye of law. There has to be some further evidence in support of partition. A Division bench of this Court in ***P.Kaliappa Gounder vs Muthusamy Mudaliar***, reported in **1985 (98) LW 773**, explained the concept of partition and it would be worthwhile to refer to the same at this juncture. Relevant extract is hereunder:

“7. Before we do the analysis of factual materials, we would like to recapitulate the concept of 'partition' of a joint family. The joint ownership of a thing is the right of two or more persons to possess and use it to the exclusion of others; and the thing, with regard to which there is the joint ownership, is called 'the joint property'. In this joint property, the joint owners do not own anything in specie and every joint owner has got right, title and interest over every piece and parcel of the joint property, subject to the qualification that the quantum of his share in the whole property stands defined in theory and not on ground. Though joint owners may be content with owning lands in common, yet subsequently one joint owner or some joint owners may conceive the idea of owning the property referable to his or their share for himself or for themselves to the exclusion of the other or the others. This is the reason which motivates the move to get joint property partitioned. The legal term 'partition' is applied to the division of lands or properties belonging to joint

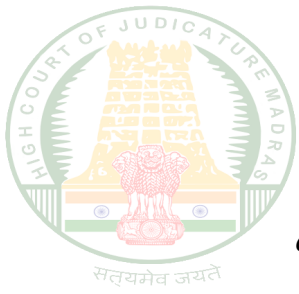


owners and the allotments amongst them of the parts referable to their shares so as to put an end to community ownership or joint ownership. Mayne says:

“In England ownership as a rule is single, independent and unrestricted. In India on the contrary, joint ownership is the rule and will be presumed to exist until the contrary is proved.”

While individual property appears to be the rule in the West, corporate property appears to be the rule in the East. Though passage of time and change of notions have shaken up this concept both in theory and in practice, yet, in our country and in particular in rural areas, joint ownership is allowed to persist by sufferance of custom and convenience until the bone of contention crops up.

8. Partition is the intentional severance of the joint ownership by an unequivocal expression of an intention to bring out severance in the eye of law and further implementing it by actual division by metes and bounds. What was held in common as a single property gets converted into a holding in severalty and in specie. Joint ownership turns into ownership in severalty and in specie. It is true that 'partition' is not a transfer. But there must be the element of conversion of the joint ownership into ownership in severalty and in specie. Therefore, the essence of partition is that the joint ownership is put an end to and the joint owners come to hold the property in severalty and each in his own individual right. In this country, it is common that not only



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coparceners of a joint Hindu family but also individuals join or continue together to own property in common. If this common ownership is to be put an end to not only in theory but also in practice, there must be primarily severance of the joint ownership in the eye of law, followed up by actual physical division. We make it clear that in the present case, we are not concerned with the concept of a bare unequivocal expression of an intention to separate to bring about a division in status in a joint Hindu family. It is not unusual for parties holding properties jointly or in common to have separate enjoyment of portions for the sake of sheer convenience. But such separate enjoyment of convenience cannot be equated to partition in the eye of law and in fact, so as to say that the joint ownership has been put an end to and in its place ownership in severalty or in specie has come into existence. Separate enjoyment for the sake of convenience is one thing and partition in the eye of law is another. The latter carries with it the legal incidents of mutating the joint ownership. The latter has to pass through and satisfy a more rigorous test in law and on facts.”

28. As evident from the above narrative, in this case, though pleaded, the theory of oral partition is not satisfactorily proved by the first defendant. Exs.B3 and B4 sale deeds dated 07.04.2011 and 31.12.2009,



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respectively, stand in the name of the first defendant pertains to the suit schedule item nos.26 and 27. The above properties were bought by the first defendant through the registered sale deeds much after the oral partition of the other properties. This shows that the properties in suit item nos.26 and 27 duly bought out of the income of the first defendant and his family alone. Moreover, the plaintiff also admits to this effect. Therefore, the suit item nos.26 and 27 are the self-acquired properties of the first defendant. The plaintiff has no right to claim any share in the suit item nos.26 and 27. Therefore, the plaintiff is entitled to $\frac{1}{2}$ share in the suit schedule properties, except the properties purchased under the sale deeds in Exs.B3 and B4 dated 07.04.2011 and 31.12.2009, respectively.

29. In light of the above discussions, this Court is of the considered opinion that dismissal of the suit in entirety is unsustainable in law and there are merits in this appeal. Therefore, this Court inclined to set aside the judgment and decree passed by the Court below. The points are answered accordingly.



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30. In the result, the First Appeal is allowed in part. No costs. The

decree passed by the Court below is modified as follows :

“The plaintiff is entitled to ½ share in the suit schedule properties, except the properties covered under the sale deeds in Exs.B3 and B4 dated 07.04.2011 and 31.12.2009, respectively, in Survey Nos.255/7, 255/8 and 162/7. A preliminary decree is passed to that effect.”

26.08.2025

nsd
Index:Yes
Speaking/Non-speaking order
Internet:Yes; Neutral Citation:Yes

To
The Principal District Judge,
Dharmapuri.



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nsd

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