



A.S.No.299 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2025

DELIVERED ON:31.10.2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

A.S.No.299 of 2023
and CMP No.10975 of 2023

Velayammal

... Appellant

Vs

1.Lakshmi
2.Shanthi

.... Respondents

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code as against the judgment and decree dated 20.01.2023 made in O.S.No.53 of 2020 on the file of IV Additional District Court, Erode District at Bhavani.

For Appellant : Mr.N.Manoharan
For Respondents : Mr.D.Selvaraj
For Mr.J.Titus Enock

JUDGMENT

The unsuccessful plaintiff in a suit for partition and separate possession is the appellant. The plaint, in brief is as follows:



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(1) PLEADINGS:

PLAINT:

(a) The plaintiff is the daughter of Appachi Gounder and Pavalakkal. The plaintiff had a sibling, brother by name Manickam. The first defendant is the wife of said Manickam and the second defendant is the daughter of Manickam.

(b) According to the plaintiff, the grand father of the plaintiff viz., Palani Gounder had self acquired properties at Kalpavai Village and he died intestate leaving behind two sons viz., Appachi Gounder and Sengoda Gounder as his only legal heirs and after the demise of Palani Gounder, the said sons viz., Appachi Gounder and Sengoda Gounder have inherited the properties and they were in joint possession and enjoyment, without partition, each entitled to $\frac{1}{2}$ share.

(c) Appachi Gounder died leaving behind his wife Pavalakkal, son Manickam and daughter Velayammal, who is the plaintiff in the suit, as his legal heirs. The plaintiff claims that after the demise of Appachi Gounder, the above three viz., Pavalakkal, Manickam and Velayammal inherited Appachi



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Gounder's $\frac{1}{2}$ share and they were in joint possession and common enjoyment of the same along with Sengoda Gounder without any valid partition.

(d) It is the further case of the plaintiff that her brother Manicam left his home in June 1996 and was not heard for more than seven years and he has also been declared as dead in a civil suit and therefore, his legal heirs have been impleaded as defendants in the suit.

(e) The plaintiff is entitled to get $\frac{8}{24}$ shares in the property which has been in joint possession and enjoyment of the family without any valid partition and in the first week of March 2020, the plaintiff demanded the defendants to come forward for an amicable partition. However, the defendants kept postponing the same and thereafter, the plaintiff came to understand that during the life time of her brother Manickam and his father's brother viz., Sengoda Gounder, on 19.12.1973, there was a registered partition deed with respect to Palani Gounder's properties. The plaintiff alleges that the said partition deed is not binding upon the plaintiff and she has therefore issued a Notice on 23.06.2020, to which, the defendants did not choose to reply. In such circumstances, the plaintiff has filed the suit for



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partition and separate possession.

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(2) WRITTEN STATEMENT

The first defendant filed a written statement which was adopted by the second defendant. The said written statement, in brief, is as follows:-

The suit is not maintainable. The suit properties were self acquired properties of Palani Gounder and after demise of Palani Gounder, his sons, Appachi Gounder and Sengoda Gounder were in enjoyment of the properties. After the demise of Appachi Gounder, on 19.12.1973, the brother of the plaintiff viz., Manickam, who is the son of Appachi Gounder and brother of the plaintiff, entered into a Registered Partition Deed with Sengoda Gounder. The suit is bad for non-joinder of necessary parties, especially since the plaintiff chooses to ignore the partition deed dated 19.12.1973 and therefore it is contended by the defendants that the legal heirs of Sengoda Gounder were proper and necessary parties. Similarly, the properties that were allotted to Sengoda Gounder under the partition deed dated 19.12.1973 were also to be included in the partition suit and consequently the suit is also bad for partial partition.



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(3) Based on the pleadings, the trial Court framed the following issues:-

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- i) Whether the plaintiff is entitled for the relief of partition?
- ii) Whether the suit is bad for partial partition?
- iii) Whether the suit is bad for non-joinder of necessary parties?
- iv) Whether the suit is barred by limitation?
- v) To what relief?

(4) TRIAL

At trial, the plaintiff examined herself as P.W.1 and marked Exs.A.1 to A.8. On the side of the defendants, the 2nd defendant examined herself as D.W.1, however, no documents were marked on the side of the defendants.

(5) DECISION OF TRIAL COURT:

The trial court, finding that the suit was bad for partial partition and also non-joinder of proper and necessary parties and further holding that the claim itself was barred under Article 110 of Limitation Act 1963, dismissed the suit.



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6. As against the dismissal of the suit, the plaintiff is before this Court by way of the above first appeal.

7. Mr.N.Manoharan, learned counsel for the appellant would firstly submit that the suit has not been filed in respect of the entire properties of Palani Gounder, but, only limited to the properties that were allotted to Appachi Gounder. In such circumstances, the learned counsel would contend that the trial Court clearly fell in error in holding that the suit was bad for partial partition and non-joinder of proper and necessary parties. Mr.N.Manoharan, learned counsel would contend that even though the plaintiff disowns the registered partition deed dated 19.12.1973, however, the conduct of the plaintiff in seeking partition in respect of only the property allotted to her father Appachi Gounder, clearly implies that the plaintiff had given up her case that there was no valid partition between the sons of Palani Gounder viz., Appachi Gounder and Sengoda Gounder. In such circumstances, the trial Court clearly erred in holding that for non-impleading the legal heirs of Sengoda Gounder and also not adding the properties that were allotted to Sengoda Gounder under the partition deed dated 19.12.1973, the suit has to fail.



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8. It is also the contention of Mr.N.Manoharan, learned counsel for the appellant that the issue of limitation cannot be put against the plaintiff when even according to the defendants, ancestral properties were at the hands of Appachi Gounder and therefore, the plaintiff was entitled to inherit a share in the said ancestral properties of her grand father and there can be no limitation put against the plaintiff for instituting a suit for partition. In support of his contention, Mr.N.Manoharan, learned counsel for the appellant would place reliance on the following decisions:-

- (i) Vidya Devi vs Prem Prakash (1995 4 SCC 496)***
- (ii) J.Mahalakshmi vs M.Gurunathan (2021 4 CTC 142)***
- (iii) Mangala Uraon vs Hazari Uraon (AIR 2021 CHH 39)***
- (iv) Vasanthal vs Ramu (2022 5 MLJ 28)***
- (v) Balamani vs S.Balasundaram (2009 3 CTC 760)***
- (vi) R.Mahalakshmi vs A.V.Anantharaman (2009 9 SCC 52)***
- (vii) S.Satnam Singh vs Surender aur (2009 2 SCC 562)***

9. Per contra, Mr.D.Selvaraju, learned counsel appearing for the respondents would submit that the trial Court has rightly dismissed the suit on all three grounds viz., (i) for partition partition, (ii) non-jointer of proper



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and necessary parties i.e., the legal heirs of Sengoda Gounder and (iii) limitation. He would however state that the trial Court has rendered an erroneous finding that admittedly the suit property is the self acquired properties of Palani Gounder. Pointing out to the specific pleadings available before the trial Court and also the evidence of P.W.1 and D.W.1, Mr.D.Selvaraju, learned counsel would contend that there was no admission made by the defendants that the properties were the self acquired properties of Palani Gounder. On the contrary, it has been their specific case that the properties were ancestral property at the hands of Appachi Gounder and Sengoda Gounder and only under such circumstances, Manickam, the brother of the plaintiff alone, had rightly entered into the partition deed with his maternal uncle Sengoda Gounder on 19.12.1973. Mr.D.Selvaraju, learned counsel, therefore, contends that it is a case where Section 8 of Hindu Succession Act will not apply, especially when father Appachi Gounder himself died prior to coming into force of Hindu Succession Act, 1956.

10. In this regard, learned counsel for the respondents also refers to the oral evidence and admissions of P.W.1 that her father died 65 years back. He would also invite my attention to the admissions of P.W.1 regarding her



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knowledge of 1973 partition deed and also subsequent sale made by her paternal uncle Sengoda Gounder pursuant to the partition deed, in respect of a portion of the property allotted to his share. Learned counsel would contend that the said alienation by Sengoda Gounder was not questioned by the plaintiff at any point of time.

11. As regards, Mr.N.Manoharan's contention that D.W.1 has categorically admitted that it is the self acquired properties of Palani Gounder, he would submit that both the witnesses P.W.1 and D.W.1 were not having any legal knowledge and under clear misconception, they have stated the properties to be ancestral properties/separate property and therefore, he contends that such isolated portions of evidence cannot be termed as admissions and put against the respondents in order to entitle the plaintiff to the relief of partition, when the specific case of the respondents has been that it is ancestral properties to which brother Manickam alone became entitled to the property in 1955, on the demise of his father Appachi Gounder and Mr.D.Selvaraj, learned counsel for the respondents also relies on the decisions of the the Hon'ble Supreme Court in *Ravinder Kumar Sharma Vs. State of Assam and others*, reported in (1999) 7 SCC 435 and *Banarsi and*



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others Vs. Ram Phal, reported in (2003) 9 SCC 606. The above decisions have been relied on for the proposition that since only a person aggrieved by a decree is entitled to file an appeal, if a party to the lis is adversely affected by any findings, then he can, without preferring an appeal or taking a cross objection, still challenge the adverse findings passed against him. Therefore, the learned counsel for the respondents pray for dismissal of the suit.

12. On considering the arguments advanced by the learned counsel for the parties, the following points arise for consideration in the present first appeal:

1) Whether the plaintiff/appellant is entitled to any share in the suit property?

2) If so, whether the suit for partition is bad on the ground of partial partition and non-joinder of proper and necessary parties?

3) Whether the suit is barred by limitation?

13. **POINT No. 1:**

The plaintiff claims that the suit properties are the self acquired properties of her grand father Palani Gounder. According to the plaint,



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Palani Gounder had two sons viz., Appachi Gounder and Sengoda Gounder and they inherited the properties of Palani Gounder and they were in joint possession and enjoyment of the properties.

14. According to the plaintiff she came to know about the partition deed dated 19.12.1973 only after March 2020 when the defendants did not come forward for an amicable partition. This is the foundation of the claim for partition.

15. The defendants have resisted the claim for partition contending that the suit properties were not the self acquired properties of Palani Gounder and they being ancestral properties, the only surviving male member, Manickam alone was entitled to share in the properties and he had entered into a registered partition deed with his paternal uncle Sengoda Gounder on 19.12.1973 and ever since, the brother of the plaintiff Manickam alone has been in separate possession and enjoyment of the property, in his own right, including mutation of revenue records. It is the contention of the defendants that both State Amendment Act 1 of 1990 as well as Central Amendment by Act 39 of 2005 will not entitle the daughter viz., the plaintiff



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to claim partition. The defendants also contend that the plaintiff has no share in the suit properties.

16. In order to decide whether the suit properties at the hands of the sons of Palani Gounder were the self acquired properties of their father Palani Gounder or ancestral properties, the pleadings available do not lend any assistance to come to any irrefutable conclusion. The plaintiff merely pleads that properties are the self acquired properties of Palani Gounder. The defendants deny that they are self acquired properties of Palani Gounder.

17. Even though there are lot of inconsistencies in the oral evidence on both sides, the plaintiff at one place, claiming that it is the ancestral property and similarly, the defendants also admitting that it is self acquired property, I do not find that these inconsistencies would amount to valid admissions regarding the nature and character of the suit properties. It is for the plaintiff who comes to court, claiming the relief of partition, to establish that the suit properties are ancestral properties at the hands of Appachi Gounder and Sengoda Gounder and subsequent to the death of her father



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Appachi Gounder, the plaintiff would become entitled to a share and that she is also entitled to ignore the partition deed dated 19.12.1973.

18. At this juncture, it would also be relevant to note that P.W.1 admits that her father Appachi Gounder died more than 65 years back which is prior to the commencement of Hindu Succession Act, 1956. There is no evidence as to when Palani Gounder purchased the suit property and as to whether the acquisition was out of his self acquired funds. The evidence available before the trial court does not aid the Court to come to a conclusion in this regard. However, considering that the father of the plaintiff Appachi Gounder himself died in 1955 and there can be no doubt that his father Palani Gounder would have purchased the property much earlier to that date, can only lead to a presumption that the properties were only the ancestral properties to be dealt with under Section 6 of Hindu Succession Act, 1956 and not Section 8 of Hindu Succession Act. The plaintiff has not brought any evidence on record to establish that the properties were self acquired properties of Palani Gounder to stake a claim by way of partition in the suit property.



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19. Even otherwise, under Section 6 of the Hindu Succession Act, 1956, though a daughter has been made as co-parcener by birth in her own right in the same manner as a son, Section 6(5) does not entitle such a daughter to seek partition, when a partition has already been effected before 20.12.2004. The Explanation to Section 6(5) is also satisfied in the present case since the partition deed dated 19.12.1973 is a registered partition deed.

20. In such circumstances, the suit properties that devolved on Appachi Gounder after demise of his father Palani Gounder prior to the commencement of Hindu Succession Act, 1956 would only be governed by Section 6 of the Hindu Succession Act and the amendment by way of Act 39 of 2005 also does not entitle the plaintiff to make a claim for partition. Therefore, I am unable to countenance the argument of Mr.N.Manoharan that the brother of the plaintiff viz., Manickam took the property as “KARTHA” of the undivided family and that the plaintiff, being a co-parcener is entitled under Section 8 of the Hindu Succession Act, 1956. **In view of the above, Point No.1 is answered against the appellant.**



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POINT No:2

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21. Though the plaintiff has chosen to attack the registered Partition Deed dated 19.12.1973 by implied conduct in not seeking partition in respect of the property allotted to her paternal uncle Sengoda Gounder but restricting it to the property which fell to the share of her brother Manickam alone would clearly imply that the plaintiff had admitted the partition between her brother Manickam and her paternal uncle Sengoda Gounder and therefore, in such circumstances, the trial court clearly fell in error in holding that the suit for partition is bad for on the grounds of partial partition as well as non-joinder of proper and necessary parties i.e., properties allotted to the share of Sengoda Gounder. **Therefore, Point No.2 is answered in favour of the plaintiff.**

POINT No.3:

22. Though the learned counsel for the appellant has relied on the decisions of Hon'ble Supreme Court in the case of *Vidya Devi vs Prem Praash* reported in *1995 4 SCC 496*, *J.Mahalakshmi vs M.Gurunathan*



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(2021 4 CTC 142) and Mangala Uraon vs Hazari Uraon (AIR 2021 CHH

39) for considering that the suit is not barred by limitation, there is no quarrel with regard to the settled principle that the Legislature has not prescribed any period of limitation for filing a suit for partition. However, Article 113 of the Limitation Act, 1963 has been held to be applicable to a suit for partition and a partition action has to be brought within three years from the time when a right to sue accrues.

23. I do not have any difficulty in accepting the argument of Mr.N.Manoharan that there is no limitation for filing a suit for partition. However, when the right is asserted by the other parties and there is an infringement or threat to the right of the plaintiff, then, the date, on which, such infringement or threat is issued, would start ticking the clock of limitation even under Article 113 of the Limitation.

24. In the present case, there is contradiction in the evidence of P.W.1/the plaintiff with regard to the date of knowledge of partition deed dated 19.12.1973. In the plaint, the plaintiff claims that she came to know about the partition deed only in March 2020, when the defendants evaded



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her claim for partition. However, in her cross examination, the plaintiff states that in 1973, her paternal uncle Sengoda Gounder and her brother Manickam have entered into a registered partition deed and that she never claimed any right for partition from 1973 till the demise of her brother, Manickam. She also admits that her father died before 1955 and that for the first time, she made a claim in the year 2020, alleging that she came to know only in the first week of March 2020 when the defendants refuse to accede to her request for partition. However, in her cross examination, she admits that she was aware of the partition deed even when her brother Manickam was alive and to a specific question whether after coming to know about the partition deed, she asked her brother Manickam as to why she was left out in the partition, she states that she did not ask her brother Manickam, which implies that even during the life time of Manickam, the plaintiff was aware of the partition deed dated 19.12.1973. Therefore, even during the life time of Manickam, it is clear that the plaintiff/appellant was aware of the partition deed dated 19.12.1973 entered into between Manickam and her paternal uncle Sengoda Gounder.



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25. In such circumstances, the suit ought to have been filed within the period of three years even in terms of Article 113 of Limitation Act. Even under Section 27 of the Limitation Act, the claim of the plaintiff/appellant stands extinguished and when she never made a claim at any point of time after the death of her father and till 2020 and in the interregnum period, as a sole inheritor, her brother has taken the property exclusively, after partition with his paternal uncle Sengoda Gounder way back in the year 1973, the plaintiff is clearly estopped from claiming any right in the suit properties. In the light of the above, **Point No.3 is answered against the appellant and the suit is held to be barred by Law of Limitation.**

26. For all the above reasons, there is no merit in the appeal and the appeal stands dismissed. However, considering the relationship between the parties, there shall be no order as to costs.

31.10.2025

Index:Yes/No
Speaking order/Non-speaking order
sr



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To

The IV Additional District Court, Erode at Bhavani

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P.B.BALAJI,J.,

sr

Pre-Delivery Judgment in A.S.No.299 of 2023

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