



A.S.No.614 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :23.06.2025

Pronounced on :03.07.2025

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.614 of 2024

and

C.M.P.No.8388 of 2025

1.Mrs.M.Sheela,
W/o Mr.D.Murali,
No.9, Thiruneelakandar Street,
Kavangarai, Chennai 600 066.

2.Mr.M.Nagaraj,
S/o Late Mr.P.Munusamy,
No.167, Perumal Koil Street,
Guruvoyal Village,
Thiruvallur Taluk 60 2 024.

.. Appellants/Defendants 2 and 3

/versus/

1.R.Visalatchi,
W/oMr.Raman,
No.100, Pillaiyar Koil Street,
Avadi, Chennai 600 054.

.. Respondent/Plaintiff



A.S.No.614 of 2024

WEB COPY

2.Mrs.Muniammal(died)
W/o Mr.Jayavel,
No.485, Perumal Koil Street,
Chandrapuram, Nelvoyal Post,
Periyapalayam via,
Gummidipoondi Taluk,
Tiruvallur District 601 201.

3.Mrs.Sarasu,
W/o Late Mr.P.Munusamy,
No.167, Perumal Koil Street,
Guruvoyal Village,
Thiruvallur Taluk and District 602 024.

4.The Sub Registrar, Arani,
Having Office at Arani,
Thiruvallur District 601 101.

5.The Tahsildar,
Thiruvallur Taluk,
Having Office at Thiruvallur,
Thiruvallur District 602 001.

6.Mrs.C.Ravi,
W/o Chandran,
No.3/41, Anna Salai,
Kilkoridayar Village,
Karlappakkam Post,
Thiruvallur District 602 024.

7.J.Rajendran, S/o Jayavel,
No.36, Chandrapuram,
Mukkarambakkam Village and Post,



A.S.No.614 of 2024

WEB COPY

Gummidipoondi Taluk,
Tiruvallur 601 102.

8.M.Mariammal,
W/o Murugesan,
No.106, Perumal Koil Street,
Koiyambakkam Village,
Vathattur Post,
Tiruvallur District 602 024.

9.J.Ramakrishnan,
S/o Jayavel,
No.41, Chandrapuram,
Nelvoy Post, Gummidipoondi Taluk,
Tiruvallur District 601 102.

.. Respondents/Defendants 1, 4 to 6

(R2 died. R6 to R9, brought on record
LRs of the deceased 2nd respondent vide
Court Order dated 15.04.2025 made in
C.M.P.No.8380 of 2025(NSKJ)).

Prayer: Appeal Suit has been filed under Section 96 r/w Order XLI, Rule 1 and 2 of Civil Procedure Code praying to set aside the judgment and decree passed in O.S.No.365 of 2019 by the learned I Additional District Court Judge, Tiruvallur dated 07.11.2023.

For Appellants	:Mr.V.Ramamurthy
For Respondents	:Mr.P.Sunil for R1
	Mrs.R.Anitha,Spl.G.P. for R4 &R5
	No appearance for R3
	R2-died(steps taken)
	Steps not taken for R6 to R9



A.S.No.614 of 2024

WEB COPY

JUDGMENT

This Appeal Suit filed against the judgment and decree passed in the partition suit O.S.No. 365 of 2019.

2. The case of the plaintiff /Vatsala:

The plaintiff is the elder daughter of late Panchatcharam. The first defendant Muniammal is the younger daughter of Panchatcharam. P.Munusamy is the only son of Panchatcharam. The said Munusamy died and the defendants 2 to 4 are his daughter, son and wife respectively.

3. Panchatcharam died in the year 1970 leaving behind his wife, son and two daughters. The daughters got married after the demise of Panchatcharam. Even after marriage, the plaintiff used to visit the village and inspect the properties as co-owner. Ponnammal, the wife of Panchatcharam died in the year 2014. After the death of Panchatcharam, his only son Munusamy as Karta of the family was maintaining the ancestral properties on behalf of other members of the family. The properties were



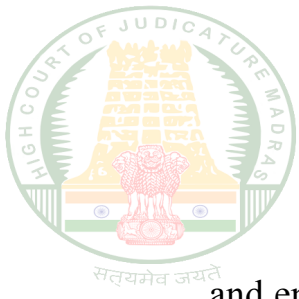
A.S.No.614 of 2024

WEB COPY

enjoyed by all the children of Panchatcharam as joint family property. The plaintiff requested her brother Munusamy for partition during his life time. He gave evasive reply and did not consider her request. After the death of Munusamy, she came to know about the collusive partition deed dated 02.03.2016 between her brother Munusamy and his children. Also, came to know that patta for the properties has also been mutated in their name. Being the daughter of Panchatcharam and the property is the ancestral property, the plaintiff is entitled for 1/3rd share in the property. The partition within the family of Munusamy for entire property excluding the other two legal heirs is null and void and not binding on the plaintiff.

4. Case of the first defendants:

The suit is not maintainable. The plaintiff, after her marriage at the age of 21 years, was living separately with her family. She is not a member of Panchatcharam family, after her marriage. She never in joint enjoyment of the suit property. She has no right in the property. Her brother Munusamy after the death of the father had become the absolute owner of the property



A.S.No.614 of 2024

WEB COPY

and enjoying it. The partition among his family members in the year 2016 is valid. She had not claimed any share in the property. The partition claim of her sister, several years after her marriage is vexatious and unreasonable.

5. Case of the defendants 2 to 4:

The suit is ill conceived and without any cause of action. The plaintiff after her marriage had last right in the ancestral property, since she was not in joint possession of the property. Munusamy, being the sole male heir of Panchacharam, after the demise of Panchatcharam in the year 1970, the ancestral property devolved on Munusamy. He was enjoying the property exclusively without any hindrance. During his life time, Munusamy along with his children entered into a partition and got the partition deed registered at SRO, Arani on 02.03.2016. This partition was duly acted and records are mutated. Munusamy and his legal heirs alone are entitled for the suit property. The properties were never in common enjoyment with the plaintiff. After her marriage, at the age of 21 years, the plaintiff left the family of Panchatcharam.



A.S.No.614 of 2024

WEB COPY

6. After the demise of Panchatcharam his son Munusamy enjoying the property as his absolute property, it was under his cultivation and the patta for the property stands in the name of Munusamy. The revenue records were mutated as per law and it is valid. The partition deed dated 02.03.2016 is absolutely valid.

7. The trial Court framed the following Issues:-

1. Whether the plaintiff has no right to claim partition?
2. Whether the suit is barred by limitation?
3. Whether the partition deed dated 02.03.2016 is true and valid?
4. Whether the plaintiff is entitled for partition and separate possession?
5. If so, what share is the plaintiff entitled to?
6. To what other relief is the plaintiff entitled to?



A.S.No.614 of 2024

WEB COPY

8. The plaintiff to prove her claim examined her as PW-1 and marked 7 documents. On the side of the defendants, the first defendant and 4th defendant were examined as DW-1 and DW-2. 8 documents were marked on the side of the defendants. The Trial Court allowed the suit. Hence, the appeal by the daughter and son of Munusamy.

9. According to the Learned Counsel for the appellants, the suit for declaration that the partition deed dated 02.03.2016 as null and void is filed only on 18.03.2019 i.e beyond the period of 3 years limitation prescribed under the law. The suit for partition by one of the female heir of Hindu Male in respect of the ancestral properties is filed about 49 years after the death of her father and about 44 years after her marriage. There is no proof of joint enjoyment for all these years. Whiles, by wrongly applying the dictum laid by the Supreme Court in *Vineeta Sharma vs Rakesh Sharma and others reported in [CDJ 2020 SC 658]*, the trial Court has allowed the suit which is without cause of action and hopelessly barred by limitation.



A.S.No.614 of 2024

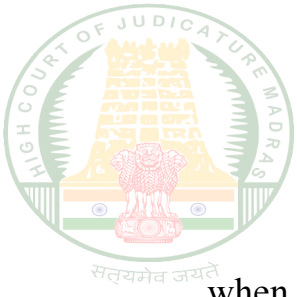
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10. The point for determination:

Whether the suit for partition filed 49 years after the death of the Kartha, is maintainable in the absence of proof for joint enjoyment?

11. The trial Court considering the fact that the properties are admitted to be the ancestral properties devolved from Panchatcharam and in the absence of division before 20th December 2004 either by a decree of Court or a valid disposition or alienation, the plaintiff born to Panchatcharam entitle for a share. Relying on the dictum of *Vineeta Sharma case*, the trial Court has arrived at the said conclusion.

12. The Court Below had miserably failed to take note of the fact about mutation of revenue records like, patta Ex.B-2 to Ex.B-5 and the land tax return Ex.B-1 and Ex.B-7 kist receipt, which prove the fact that the properties were in exclusive enjoyment of Munusamy for a period beyond 12 years. The plaintiff could only say that she used to inspect the property



A.S.No.614 of 2024

WEB COPY

when she visits the village. No evidence is placed by her, how she was jointly enjoying the properties after her marriage. In her cross examination, she had deposed that she got married 50 years ago. Since then she is living with her family at Avadi in her husband house. She used to visit the suit village for attending function in her brother's family. She admits that she was never given any share from the yield in the suit properties. Admittedly, she was not living jointly with the defendants, she has no evidence for joint living or joint enjoyment. Her own admission clearly proves that her brother was enjoying the property exclusively.

13. The partition suit whether on the strength of amended Section 6 of the Hindu Succession Act, 1956 or otherwise, ought to be filed within the period of limitation prescribed under Article 110 of the Limitation Act, 1963. Undoubtedly, the amendment to the Hindu Law of succession is to protect the rights of the daughters as co-parcener in the joint family property. However, if the status of co-parcener is servered by conduct or contract, partition as co-parcener cannot be claimed. Likewise, the coparcener who claims partition first has to establish the status of jointness.

10/25



A.S.No.614 of 2024

WEB COPY

In *Vineeta Sharma case*, the Hon'ble Supreme Court has interpreted the amended Section 6 of the Hindu Succession Act and answered the reference as under:-

“129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.



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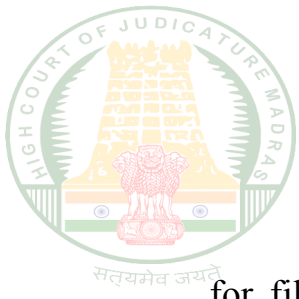


A.S.No.614 of 2024

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”

14. The question of limitation for seeking partition is independent of Section 6 of the Hindu Succession Act, 1956. In a partition suit, the general rule is possession by one co-owner is presumed to be the possession of all co-owners, unless ouster or exclusion is proved. As far as the right of daughters in the ancestral property, the right is recognised only from 09.09.2005. Therefore, the married daughter had been out of the joint family before 09.09.2005. Hence, for reckoning limitation, on 09.09.2005 the date on which her right of succession is blossomed, is to be taken as the starting of limitation to claim share. It is also necessary for her to prove the joint possession. In the absence of proof for joint possession, the limitation

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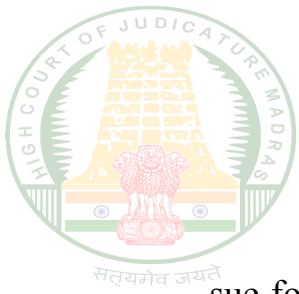
A.S.No.614 of 2024

WEB COPY

for filing suit for partition commences from the date when the amended provision of Section 6 came into force.

15. According to the plaintiff, during the life time of her brother Munusamy, she claimed share but he evaded to give share. For that statement, no evidence is placed. Only after the demise of Munusamy, the suit for partition is filed on 18.03.2019. The counsel for the appellants submitted that the limitation for partition suit has to be reckoned from the date of death of the father. This Court is not in agreement with this submission, since, the right to claim partition by daughters in the coparcenary property itself accrued only from 09.09.2005. Therefore, limitation cannot be set prior to that date. However, after 09.09.2005 the limitation will start unless the daughters are able to prove joint possession. In such case, the limitation shall commence from the date of exclusion.

16. Therefore, in view of this Court, since the plaintiff could not able to place evidence in support of joint possession, after her marriage 50 years ago, her knowledge of exclusion is much earlier, nonetheless, her right to

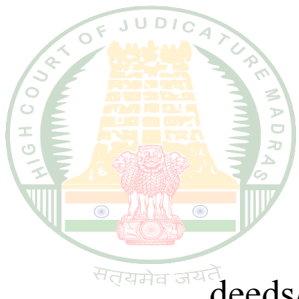


A.S.No.614 of 2024

WEB COPY

sue for partition accrue only on 09.09.2005. Therefore, the suit for partition ought to have been filed within 12 years. Unfortunately, in this case, the suit is laid on 18.03.2019 (i.e) 14 years after the exclusion.

17. No doubt, it is a settled principle of law that presumption of joint possession of all the co-owners is a rebuttable presumption. Admittedly, in this case, the plaintiff was never in joint possession after her marriage, which was solemnised about 50 years ago. She admits that she was never given share in the yield derived from the properties. Evidence also shows that her father died in the year 1970 and thereafter, the property been enjoyed by his son Munusamy in exclusion of other legal heirs of Panchatcharam. This is specifically admitted by first defendant who is the younger daughter of Panchatachram. As a result, the relief of partition is not only stale due to limitation prescribed under Article 110 of the Limitation Act, 1956, even the relief to declare the partition deed dated 02.03.2016 i.e also hit by limitation, in view of Article 58 of the Limitation Act, 1956 which prescribes three years period, to seek relief of declaration in respect o



A.S.No.614 of 2024

deeds/documents.
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18. As found in the plaint averment, the cause of action for the suit arose on 02.03.2016, when the brother of the plaintiff (Munusamy) colluded with his son and daughter to create the partition deed. Therefore, the suit to declare the said partition deed as null and void, should have been filed on or before 01.02.2019. Whereas the suit is filed only on 18.03.2019 after expiry of the limitation period.

19. Hence, viewed from any angle, the relief sought in the suit is hopelessly barred by limitation. Therefore, the judgement and decree passed by the Trial Court in O.S.No.365 of 2019 dated 07.11.2023 is to be set aside. Accordingly, **the Appeal Suit is allowed.** Consequently, the suit in O.S.No.365 of 2019 stands dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

.07.2025



A.S.No.614 of 2024

WEB COPY

Index : Yes
Neutral citation : Yes/No
Speaking/non-speaking order
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To

- 1.The I Additional District Court, Thiruvallur.
- 2.The Sub Registrar, Arani, Having Office at Arani,
Thiruvallur District 601 101.
- 3.The Tahsildar, Thiruvallur Taluk, Having Office at Thiruvallur,
Thiruvallur District 602 001.
- 4.The Section Officer, V.R.Section, High Court, Madras.

Dr. G.JAYACHANDRAN, J.,

16/25



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A.S.No.614 of 2024

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delivery Judgment made in
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and
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03.07.2025