



A.S.No.194 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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Reserved on : 28.07.2025

Pronounced on: 08.08.2025

Coram:

**THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN**

Appeal Suit No.194 of 2022  
& C.M.P.No.7043 of 2022

1. Chinnathambi,  
Son of Ammasigounder,  
No.12, Chinnasamy Iyyer Street,  
Edappady Road, 11<sup>th</sup> Ward,  
Jalakandapuram, Mettur Taluk,  
Salem District.

2. Periyapillai  
W/o.Late Allimuthu,

3. Karthik,  
S/o.Late Allimuthu,

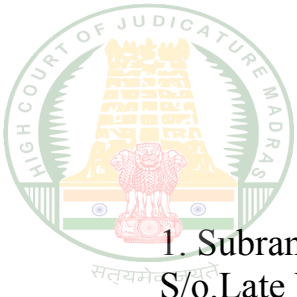
4. Priya  
Daughter of Late Allimuthu,

4<sup>th</sup> Appellant attained majority and her mother and next friend discharged from representation vide Court order dated 21.03.2022 made in C.M.P.No.4478 of 2022 in A.S.SR.No.84126 of 2020 (CVKJ).

Appellants 2 to 4 are residing at  
Kuppannagounder Street, Edappady Road,  
12<sup>th</sup> Ward, Jalakandapuram, Mettur Taluk,  
Salem District.

... Appellants/1, 3,4, 5<sup>th</sup> Plaintiffs

**/versus/**



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1. Subramani,  
S/o.Late Veeramuthu,

2. Varatharajan  
S/o.Late Veeramuthu,

3. Parameswaran,  
S/O.Late Veeramuthu,

1 to Respondents are residing at Door No.12-2-13/Old No.10A, Kuppannagounder Street, Edappady Road, 12<sup>th</sup> Ward, Jalakandapuram, Mettur Taluk, Salem District.

4. Valliammal,  
W/o.Late Palanisamy,

5. Kailasam,  
S/o.Late Palanisamy,

4<sup>th</sup> and 5<sup>th</sup> respondents are  
residing at Kuruvappan Valavu,  
Souripalayam, Chettimankurichi Village,  
Edappady Taluk, Salem District.

6. V.Jayaraman,  
S/o.Venkatachalam,  
Sorayanoor Kattu Valavu,  
Kuppamputhoo Post,  
Mettur Taluk,  
Salem District.

... Respondents/2 to 7<sup>th</sup> Defendants

**Prayer:-** Appeal Suit has been filed under Section 96 read of C.P.C., pleaded to allow the appeal by setting aside the decree and judgment of the lower Court, dated 14.07.2020, passed in O.S.No.43 of 2013, on the file of the Additional District (Fast Track) Court, Mettur, Salem District and pass decree in favour of the Appellants/Plaintiffs as prayed for with costs.

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For Appellant : Mr.R.Veeramani,  
for Mr.R.Chakkaravarthy.

For Respondents : Mr.R.Dhanasekar,  
for Mr.R.Thamaraiselvan, for R1 to R3

: No appearance, for R4 & R6

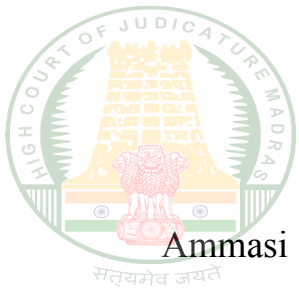
: Exparte (No such person), for R5

### **J U D G M E N T**

The suit for partition filed by Chinnathambi S/o.Ammasi Gounder and Allimuthu S/o.Makkayan. Pending suit, the second plaintiff, Allimuthu, died. His wife and two children were brought on record as plaintiffs 2 to 5.

2. The defendants 1 to 4 are the legal heirs of late Veeramuthu S/o.Ayyanna Gounder. The defendants 5 and 6 are the children of the Late.Palanisamy S/o.Ammasi Gounder.

3. The case of the plaintiffs, in the pre-amended plaint, was that the suit schedule property belongs to Ayyamperumal Gounder, who died intestate, leaving behind his four sons, namely Ayyanna Gounder, Marappa Gounder,

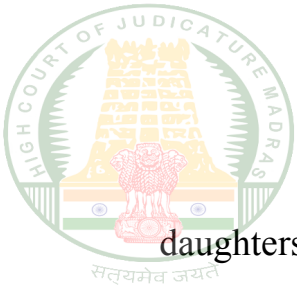


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Ammasi Gounder and Veerappa Gounder. Out of his four sons, Marappa Gounder died issueless. Among the other three sons, the plaintiffs and the defendants are the only surviving legal heirs entitled to inherit the property of Ayyamperumal Gounder. The property is in joint possession and enjoyment of all the parties. Since the legal heirs of Veeramuthu, who are defendants 1 to 4, are not willing to divide the properties and give share to others, but trying to share the properties among themselves, the plaintiffs had filed the suit for partition to divide the suit schedule property into 240 equal shares by metes and bounds and allot 40 shares to the first plaintiff and 60 shares to the second plaintiff.

4. The third defendant filed written statement, which has been adopted by defendant 2 and 4. As per their written statement, the suit for partition is false, vexatious and unsustainable in law and on facts. The nature of the property wrongly described as undivided ancestral property and as if the parties are in joint possession and enjoyment of the suit properties.

5. Ayyamperumal, through whom the plaintiffs claim right, had 5



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daughters along with the four sons mentioned in the plaint. The plaintiffs have

intentionally not disclosed the details about the female issues of Ayyamperumal.

Ammasi Gounder had two sons and one daughter. They are Palanisamy, Chinnathambi (first plaintiff) and Saraswathi. In the plaint, it is falsely stated that

Saraswathi died intestate, leaving behind her only son Jayaraman (7<sup>th</sup> defendant).

In fact, Saraswathi had two more sons apart from Jayaraman. They have been

excluded in the suit for partition. Ayyamperumal had other properties apart from

the suit property. Without disclosing those properties and without including those

properties, the suit is filed for partition only in respect of one property, which is

agricultural land already subjected to partition between Ayyanna Gounder and

Makkayan. In the said oral partition, the suit property was allotted to Veeramuthu

S/o.Ayyanna Gounder, the grandson of Ayyamperumal Gounder. The house

property was allotted to Makkayan. Since then, the suit schedule property is with

Veeramuthu. After the demise of Veeramuthu in the year 2004, the defendants 1 to

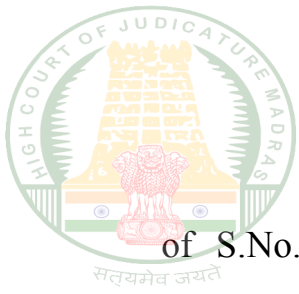
4 entered into partition on 05.08.2007 in respect of the property allotted to

Veeramuthu and enjoying it peacefully. After the partition, the lands were

subdivided and the revenue records got mutated accordingly. After partition and

sub-division, the second defendant is in possession and enjoyment of land in

S.No.46/1C and S.No.46/1H. The third defendant is in possession and enjoyment



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of S.No.46/1B and S.No.46/1G. The fourth defendant is in possession and enjoyment of S.No.46/1A and S.No.46/1F.

6. The suit property is Punja agricultural land measuring a total extent of 4.22 acres. An open well, a pumpset with 5HP electric motor and service connection, one borewell, three thatched huts, one terrace house and one Mangalore tiled house, besides yielding coconut trees, palm trees and tamarind trees, are located in the suit property which were developed by Veeramuthu and his legal heirs, the defendant 1 to 4.

7. These facts are well within the knowledge of the plaintiffs. However, the vexatious suit for partition has been filed with wrong description of the property, even without disclosing when Ayyamperumal died. As if, the suit property was enjoyed jointly and the plaintiffs 1 and 2 are entitled to get 40/240 and 60/240 shares respectively in the suit property, suit for partition is filed. Without including all the legal heirs of Ayyamperumal and their descendants and without all the properties left by Ayyamperumal.

8. The trial Court, based on the pleadings framed the following



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issues:-

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1. Whether the suit properties are ancestral property of plaintiffs and defendants?

2. Whether the partition deed dated 05.08.2007 is valid and binding on the plaintiffs?

3. Whether the 1<sup>st</sup> plaintiff is having 2/12 (40/240) shares in the suit property ?

4. Whether the 2<sup>nd</sup> plaintiff is having 3/12 (60/240) shares in the suit property ?

5. Whether the plaintiffs are entitled for preliminary decree for partition and separate possession ?

6. Whether the suit is bad for non-joinder of parties?

7. Whether the suit is bad for seeking partial partition ?

8. What other relief the plaintiffs are entitled to ?

9. After the commencement of trial and the examination of three witnesses on the side of the plaintiffs, an application was filed by the plaintiffs to amend the suit schedule property with more precision, by mentioning sub-division and include the amenities in the land. Though, the trial Court dismissed the application, it was allowed by the Court of Revision. Thus, the suit schedule got amended.



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**10.** The third defendant, after the amendment of plaint, had filed additional written statement stating that the plaint was not amended as per the order passed in the revision petition. Hence, due to the failure to amend the pleadings as per the order, the suit is liable to be dismissed under Order VI Rule 18 of C.P.C.

**11.** P.W1 to P.W3 were examined on the side of plaintiffs and D.W1 and D.W2 were examined on the side of defendants. Ex.A1 to Ex.A20 and Ex.B1 to Ex.B14 were the documents relied on either side.

**12.** The trial Court accepting the ease of the dependants 1 to 4 dismissed the suit on the ground of partial partition and non-joinder of necessary parties. Aggrieved by the same, the present appeal is filed by the plaintiffs.

**13.** The learned counsel for the appellants submitted that the partition deed, marked as Ex.B2, alleged to be executed between the family members of the deceased Veeramuthu in respect of the joint family property held by other members of the joint family also ought not to have been relied by the trial Court to believe the plea of oral partition between Veeramuthu and his brother Makkayan.

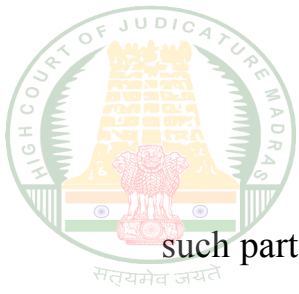


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Particularly, when the patta stands in the joint names of other family members.

There is no documentary proof to show that the suit property measuring 4 acres 22 cents was allotted to Veeramuthu Gounder. While so, the Trial Court relying upon Ex.B2, the unregistered partition deed, without sufficient stamp duty, dismissed the suit for partition.

**14.** The learned counsel appearing for the Appellant further submitted that, when the parties have admitted that the suit properties are the ancestral properties devolved from Ayyamperumal Gounder, in the absence of documentary proof about the earlier partition, the trial ought not to have dismissed the suit stating that the suit property had already been subjected to oral partition and given effect. Even assuming that there was an oral partition, the said partition was only among the two sons of Ayyamperumal and the other two sons were not parties to the partition. Hence, the suit for partition filed by the omitted legal heirs of Ayyamperumal who were not parties to the parties to the partition is sustainable. Similarly, the trial court ought not to have dismissed the suit for non-joinder of necessary parties and for partial partition. The house property is excluded from the suit for partition because the sons of Ayyamperumal had orally divided the residential house and acted upon. However, in respect of the agricultural land, no



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such partition effected and the property continues to remain in joint possession and enjoyment of the family members.

**15.** In contra, the learned counsel appearing for the contesting respondents submitted that in the year 1968 itself, the entire property left by Ayyamperumal Gounder was divided among their sons. Ayyanna Gounder was allotted the landed property and has been dealing with the property independently. In the year 1984, Chinnathambi, the first plaintiff who is the son of Ammasi Gounder, sold the property which was allotted to his father under the partition. Ex.B1, Ex.B13 and Ex.B14 are proof for the division of the properties among the family members and evidence to disprove the case of the appellants' claim that the properties of Ayyamperumal were enjoyed jointly without any division.

**16.** If the plaintiffs wants to ignore the earlier partition for any reason, they ought to have included all the properties left by Ayyamperumal Gounder. Which includes the properties given to them and later sold by them. They cannot exclude the properties which was allotted to them in the partition and claim share in the property allotted to Ayyanna Gounder branch. Also they should have included all the legal heirs of Ayyamperumal Gounder and their descendants in the



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suit for partition. The non-inclusion of necessary parties deserves dismissal of the

suit.

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17.

**Point for determination:-**

*Whether the dismissal of the suit for partition on the ground of non-joinder of necessary parties and partial partition is sustainable in law and facts?*

18. The fact that the suit property was originally held by Ayyamperumal Gounder and that the contesting parties are his descendants, is a fact admitted. It is also admitted by the plaintiffs that Ayyamperumal had four sons and five daughters. Out of his four sons, two sons, Marappa Gounder and Veerappa Gounder died issueless.

19. The first plaintiff is the grandson of Ayyamperumal Gounder, born to his son Ammasi Gounder. The second plaintiff is the great grandson of Ayyamperumal Gounder, born to Makkayan, S/o.Ayyanna Gounder, who is another son of Ayyamperumal Gounder. The plaintiffs rely on oral evidence and Ex.A1, the patta, which stands in the joint names of Veeramuthu Gounder

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S/o.Annamalai Gounder and Palanisamy S/o.Ammasai Gounder. That apart, they rely on the mortgage deeds Ex.A19, of the year 1934 and Ex.A20 of the year 1941.

**20.** On the side of the defendants 1 to 4, the sale deed executed by Makkaya Gounder dated 28.01.1963, marked as Ex.B14, the sale deed executed by Periyathayee, wife of Veeramuthu, dated 13/06/1962, marked as Ex.B13 and the sale deed dated 08/08/1984, marked as Ex.B1, besides the revenue records like patta, Kist receipts and house tax receipts are relied to prove earlier partition.

**21.** The plaintiffs have specifically claimed that the suit property is in their joint possession and enjoyment along with the defendants. However, while describing the suit property, initially they have only mentioned the Patta No.695, Survey Number 46/1 and extend measuring 4 Acres and 22 cents. It was only after the written statement pointing that the plaintiffs have not described the property properly, they have noted the sub-division of the property. They have taken out an application to amend the property description. This amendment was done in the middle of the trial, after the examination of three witnesses. This clearly indicates that the plaintiffs were never in joint possession and enjoyment of the suit property and they have not even aware of the physical features of the



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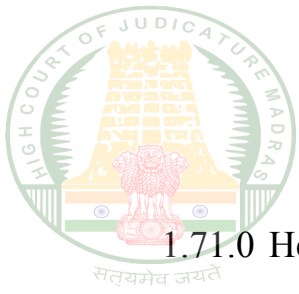
property in which, they claim share.

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**22.** P.W.1 is the 1<sup>st</sup> plaintiff/Chinnathambi. In his proof affidavit, he stated that Ayyanna Gounder had two sons, namely, Veeramuthu and Makkayan. Makkayan had two sons, namely, Allimuthu and Sithaiyan and he further states that Sithaiyan died issueless. In the cross-examination, he had admitted that Ayyamperumal Gounder had four houses in Jalakandapuram and each of his four sons were allotted one house each. The house allotted to Ammasi Gounder was sold to Periyathayee. He also admitted that he was not in possession of the suit property since 1962. He was driven out from the suit property. Regarding the daughters of Ayyamperual, he denies any information about them but at the same time, admits that he and his sister Saraswathi were brought up by their paternal aunty (Sisters of his father). He further admits that he is not aware of the physical features of the suit property and it is more than 20 years since he visited the suit property. Also P.W.2, Venkatachalam, who is the brother-in-law of P.W.1, in the cross examination had admitted that Ayyamperumal Gounder had properties other than the suit properties.

**23.** Ex.A1, which is patta No.695 is in respect of S.No.46/1 measuring

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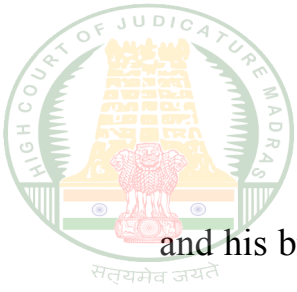
1.71.0 Hectares, issued in the names of Veeramuthu Son of Annamalai Gounder

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and Palanisamy Son of Ammasi Gounder. Ex.A2 is a notice under Section 9(2) of the Survey and Boundaries Act, which is also in the name of Veeramuthu Son of Annamalai Gounder and Palanisamy Son of Ammasi. Ex.A3, a letter allegedly written by the 1<sup>st</sup> plaintiff, indicates that the 1<sup>st</sup> plaintiff/Chinnathambi had requested the Tahsildar to include his name in the Patta No.695. It is to be noted that Ex.A1 patta stands in the joint name of Palanisamy (Son of Ammasi) and Veeramuthu (Son of Annamalai Gounder). Chinnathambi claims to be another son of Ammasi Gounder. However, the kist receipts are in the names of Palanisamy or Chinnathambi, mentioning Patta number. Nothing said about the Palanisamy in the plaint. The title documents relied on behalf of the plaintiffs are much prior to 1962 and they do not throw much light except to indicate that apart from the suit property, Ayyamperumal and his brothers were enjoying other properties also jointly and the sons of Ayyamperumal Gounder had creating encumbrance by mortgaging the suit properties and other properties for availing loans individually. Which is an indication that the properties were not held jointly by the sons of Ayyamperumal Gounder.

**24.** Ex.B1 is the sale deed executed by the 1<sup>st</sup> plaintiff/Chinnathambi

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and his brother, Palanisamy on behalf of themselves and their minor sons, wherein they have sold a portion of house property which they have got from their ancestors. The purchaser of the property is none other than the 1<sup>st</sup> defendant, who is wife of Veeramuthu. This lends support to the case of the defendants that there was partition among the family members in respect of the ancestral property and after division, the respective parties have taken possession of their respective share and acted upon it. The subsequent division of the property among the family members of Veeramuthu and the mutation of revenue records lend further strength to the case of the defendants.

25. Apparently, the suit for partition is only in respect of a single property of Ayyamperumal, which is claimed to be allotted to the share of Veeramuthu in the oral partition. The plaint does not even disclose about the other properties, particularly the residential house in which the 1<sup>st</sup> plaintiff and his brother Palanisamy had a share and later alienated under Ex.B1 of the year 1984. Ex.B13 is the sale deed dated 13.06.1962, executed by Ayyanna Gounder and his son of Makkayan who on his behalf and on behalf of his minor son Sithaiyan, sold the property, in favour of Periyathayee, describing the property as ancestral.



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**26.** Yet another document which is marked as Ex.B14 was also executed by Ayyanna Gounder and Marappan in favour of Makkaya. This also in respect of the share in the house property. Thus, the other properties of Ayyamperumal Gounder, were given to Ayyanna Gounder and later they were sold by Ayyanna Gounder and his son under different sale deeds. Even without disclosing these facts, the suit been filed as if, Ayyamperumal Gounder had left only the suit property and only the parties to the suit were entitled to inherit. Both these pleadings are found to be false. Hence, the trial Court has rightly held that, even after specific plea in the written statement of 1<sup>st</sup> and 4<sup>th</sup> defendants that Ayyamperumal Gounder had left behind five female heirs apart from four male heirs. The plaintiffs have not taken any steps to implead them. In fact, in the cross examination of P.W.1, he had admitted that they were taken care by the sister of his father i.e., daughter of Ayyamperumal Gounder but had feign ignorance about their names and other details.

**27.** D.W.1 had disclosed the identity of the female heirs of the deceased Ayyamperumal Gounder. It is a convenient suppression of facts by the plaintiffs in spite of his sister Saraswathi being married to one of the grandson of Ayyamperumal Gounder born to his daughter. Likewise, under Ex.B1, Ex.B13



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and Ex.B20, the properties allotted to Ayyanna Gounder have been alienated by Ayyanna Gounder and his sons, this shows the partition between the legal heirs of Ayyamperumal Gounder has been given effect and acted upon. Since the oral partition pleaded by the defendants has been proved by conduct of the plaintiffs and other sharers, if at all the plaintiffs question the oral partition and claim that it is not valid, properties which were allotted to the branch of Ayyanna Gounder ought to have been included in the suit property for partition. The exclusion of those properties badly affects the suits for partition, Since the law is well settled in this regard.

28. Suit for partial partition without explaining the omission of other properties is bad and unsustainable. The Hon'ble Supreme Court of India in ***Kenchegowda (Since deceased) by Legal representatives vs. Siddegowda @ Motegowda***, reported in ***JT 1994 (4) SC 125***, has clearly held that in a suit for partition, all the properties which are available for partition should be included. The plaintiffs cannot omit certain properties at his wish and seek partition only for a portion of the property. This judgment has been followed by Courts consistently. The omission of property available for partition is fatal to the case in hand. In this case, the omission was pointed out in the written statement itself. Despite the

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disclosure, the plaintiffs have Neither included the omitted parties nor given

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**29.** This Court, on perusal of the record, finds the trial Court had dismiss the suit for partition on dual ground, first for, partial partition and next for non-joinder of necessary parties. The reasons are found correct from the records and pleadings. Hence, the appeal is liable to be dismissed as devoid merits.

**30.** Accordingly, this *Appeal Suit is dismissed.* With costs.  
Consequently, connected Miscellaneous Petition is closed.

08.08.2025

Index :Yes.  
Neutral citation :Yes/No.  
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To,  
1. The Additional District (Fast Track) Court, Mettur, Salem District  
2. The Section Officer, V.R.Section, High Court, Madras.



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**Dr.G.JAYACHANDRAN,J.**

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Pre-delivery judgment made in  
Appeal Suit No.194 of 2022

08.08.2025