



WEB COPY

A.S. No.557 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2025

CORAM

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

A.S. No.557 of 2022

1. Kanchana
2. Kavitha

... Appellants/ Defendants

-VS-

Damodaaan

... Respondent/ Plaintiff

Prayer: This appeal filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 17.08.2022 passed in O.S.No.11 of 2019 on the file of the Principle District Judge, Thiruvannamalai.

For Appellants : Mr. A. Sivaji

For Respondent : Mr. K. Govi Ganesan



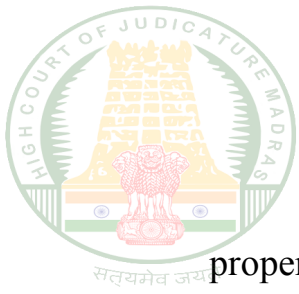
JUDGMENT

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The suit for partition allowed by the Trial Court is under challenge in this appeal suit, instituted by the defendants.

The brief facts of this case as pleaded by the plaintiff is as follows:

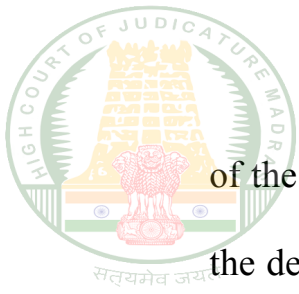
2. The suit property belongs to one Kannu Naidu, who had two sons by name Dhamodaran and Ramu @ Raman. During his lifetime, Kannu Naidu and his two sons entered into oral partition in respect of family properties except the suit property, where the residential building of the family is constructed. Thereafter, the suit property being in joint enjoyment of the two sons of Kannu Naidu. After the demise of Ramu @ Raman, dispute aroused when the plaintiff refused to relinquish his half share in the suit property to and in favour of the defendants, who are the wife and daughter of Ramu @ Raman. To deprive the share in the suit property, the first defendant has created a release deed in favour of her daughter, who is the second defendant, hence the present suit for partition.



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3. The defendants contested the suit on the ground that the properties left by Kannu Naidu, inherited by his two sons namely the plaintiff and the husband of the first defendant under an unregistered partition deed dated 03.02.1981, wherein the "A" schedule property was allotted to Kannu Naidu, the "B" schedule property was allotted to Ramu @ Raman and "C" schedule property was allotted to Dhamodaran/ plaintiff. From the date of partition, the respective properties are in possession and enjoyment of these two branches and in so far as the suit property is concerned, it was allotted to Ramu @ Raman, who died interstate on 21.06.2010 living behind his wife, the first defendant and his daughter, the second defendant. The first defendant had relinquished her right in the property to and in favour of her daughter through a registered Release Deed dated 08.02.2012. The suit property already allotted to Ramu @ Raman under the partition deed, the revenue records also been mutated subsequently. Therefore, the plaintiff has no right to claim share in the suit property, more so, more than 10 years lapsed after the demise of Ramu @ Raman, therefore being a vexatious suit, it has to be dismissed.

4. Before the Trial Court, two witnesses were examined on behalf



of the plaintiff and 8 exhibits were marked as Exs.A2 to A8. On the side of the defendants, two witness were examined and 11 exhibits were marked as Exs.B1 to B11.

5. Based on the pleadings, the following issues were framed by the Trial Court.

1. *Whether the plaintiff is entitled to the relief of preliminary decree of partition as prayed for?*

3. *To what other relief?*

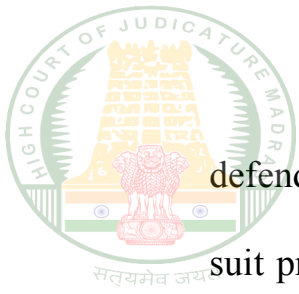
6. The defence taken by the defendants is that the properties of Kannu Naidu were divided by way of partition in the year 1981, which includes the suit schedule property. On examination of Ex.B9, the unregistered partition deed dated 03.02.1981, it is found to be incorrect that except the suit property, other properties alone were divided among the sharers and not the suit property. As far as the suit property is concerned, the evidence of the second defendant, examined as D.W.1 states that the suit property was also subsequently divided by way of a Koorchit not been corroborated or proved, hence the Trial Court allowed the suit for partition as prayed.



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7. In the appeal preferred by the defendants, it is contended that under Ex.B9, division among the sharers effected in the year 1981 and thereafter, there is continuous and uninterrupted possession of the suit property by the defendants to the exclusion of others. Further, the learned counsel appearing for the appellants/ defendants contended that the Trial Court has not properly framed the issues and all the contentious matters have not been framed as issues. The Court below did not properly appreciated the recitals found in Ex.B1, the release deed dated 08.02.2012 executed by the first defendant in favour of the second defendant.

8. Per contra, the learned counsel appearing for the respondent/ plaintiff states that the documents relied by the defendants, proves the partition of other properties except the suit property. The defendants were in the suit property but not in exclusion of the right and enjoyment of the plaintiff. The brother of the plaintiff i.e., Ramu @ Raman died on 21.06.2010 and only thereafter, the attempt by the defendants to grab the property in entirety was made by creating a release deed dated 08.02.2012, which is marked as Ex.B1, to show as if the first defendant and the second



defendant alone are the owners of the suit property. While the patta of the suit property stands in the name of Kannu Naidu and the mutation was not done with the consent of the legal heirs of Kannu Naidu, the right of the plaintiff cannot be ousted.

9. This Court on examining the oral as well as the documentary evidence, satisfied that as far as the suit schedule property is concerned, it does not form part of Ex.B9, the partition deed dated 03.02.1981. No doubt the plaintiff has left the village and residing in Chennai, whereas the plaintiff's brother family, who are the defendants were residing in the suit property. The property inherited from Kannu Naidu, the ouster of one sharer in favour of another sharer must either be by consent or by conduct. The evidence of the defendants does not establish ouster, contrarily the patta of the suit property still stands in the name of Kannu Naidu, the karta of the family. If the Ex.B.9, the partition deed dated 03.02.1981 includes the suit property, the necessary mutation of record might have been happened much earlier. The sons of Kannu Naidu namely Dhamodaran and Ramu @ Raman had dealt with other properties allotted to them under the partition deed but left the suit property untouched. While the plaintiff had shifted his family



to Chennai, the defendants being in occupation of the suit property not ousting the plaintiff by implied consent and implied permission, hence the Trial Court has rightly allowed the suit declaring the right of the plaintiff in the suit property in so far his half share and declared subsequent transfer of property by way of release deed by the first defendant in favour of the second defendant not binding on the plaintiff in so far as his half share, this Court finds no error in the judgment and decree of the Trial Court, hence finds no merits in this appeal.

10. Accordingly, this appeal is dismissed the judgment and decree of the Trial Court in O.S.No.11 of 2019 dated 17.08.2022 stands confirmed. Consequently, connected civil miscellaneous petition, if any stands closed. There shall be no order as to costs.

30-06-2025

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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Dr. G. JAYACHANDRAN, J.,

stn

To

1. The Principle District Judge,
Thiruvannamalai.
2. The Section Officer,
VR Section,
High Court of Madras.

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