



A.S.No.483 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on :17.07.2025

Pronounced on:29.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.483 of 2022

and

C.M.P.No.17544 of 2022

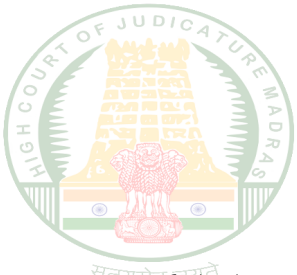
1.M.Anandhan,
Son of Mr.Munusamy,
No.7, Raghavan Garden,
Mylapore, Chennai 600 005.

2.Mrs.Shenbagavalli,
Wife of Mr.Anandhan,
No.7, Raghavan Garden,
Mylapore, Chennai 600 005.

3.A.Manivannan,
Son of Mr.Anandhan,
No.7, Raghavan Garden,
Mylapore, Chennai 600 005.

4.A.Madhan,
Son of Mr.Anandhan,
No.7, Raghavan Garden,
Mylapore Chennai 600 005.

5.A.Sridharan,
Son of Mr.Anandhan,
No.7, Raghavan Garden,
Mylapore Chennai 600 005.



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6.A.Ammu,
Daughter of Mr.Anandhan,
No.7, Raghavan Garden,
Mylapore Chennai 600 005.

..Appellants/Defendants 1-6

/versus/

1.Mr.M.Manoharan,
Son of Munusamy,
No.7, Raghavan Garden,
Mylapore, Chennai 600 005.

..1st Respondent/Plaintiff

K.Gowri(deceased)
No.6, Raghavan Garden,
Mylapore, Chennai 600 005.

2.K.Ravi,
Son of Kuttappan,
No.7, Raghavan Garden,
Mylapore, Chennai 600 005.

3.N.Janithi,
Wife of Natarasan,
No.7, Raghavan Garden,
Mylapore, Chennai 600 005.

4.K.Jayasri,
D/o Kuttuappan,
No.7, Raghavan Garden,
Mylapore, Chennai 600 005.

5.K.Suresh,
Son of Kuttuappan,
No.7, Raghavan Garden,



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Mylapore, Chennai 600 005.

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6.Kumari,
W/o Manoharan, late,
No.7, Raghavan Garden,
Mylapore, Chennai-05.

7.Rajinikanth,
S/o Manoharan Late,
No.7,Raghavan Garden,
Myalpore, Chennai-05.

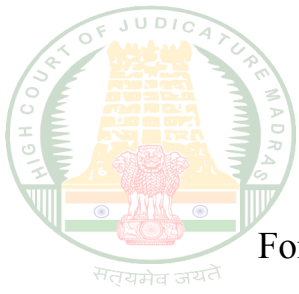
8.Sivachandran,
S/o Manoharan late,
No.7,Raghavan Garden,
Mylapore, Chennai05

9.Anitha Devi,
S/o Mancharan late,
No.7, Raghavan Garden,
Mylapore, Chennai-05.

..Respondents

(RR6 to 9 brought on record as LRs
of the deceased R1 viz., M.Manoharan vide
Court order dated 20.06.2025 made in
CMPs 7947, 7949 and 7950/2023 in
A.S.No.483/2022-GJJ)

Appeal Suit has been filed under Order 41, Rule 1 and Section 96 of C.P.C.,
to set aside the judgment and decree dated 23.07.2019 passed in O.S.No.2714 of
2019 on the file of the Hon'ble XVII Additional Judge, City Civil Court at
Chennai by allowing the appeal with costs.



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For Appellants :Mr.P.Manikannan

For Respondents :R1-died
R2 and R5 unclaimed
R3, R4 , R6 to R9 No appearance

JUDGMENT

Appeal against the judgment and decree of the trial Court passed in a suit for partition and to declare the settlement deed executed by one of the sharer in respect of entire suit property in favour of his children as null and void ignoring the right of the other sharers.

2. The plaintiff Manoharan is one of the two sons of Munusamy. The first defendant, Anandan is another son of Munusamy. The second defendant is wife of first defendant. The children of first defendant are defendants 3 to 6. The seventh defendant Gowri is the daughter of Munusamy. Pending suit, the seventh defendant Gowri died, her legal heirs were brought on record as Defendants 8 to 11.

3. The case of the plaintiff is that, his father Munusamy got the suit schedule property in the year 1965. He died in the year 1975. During his life time,



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he gave a portion of his property to his daughter Gowri, the seventh defendant at the time of her marriage and was retaining the portion measuring about 465 sqft of land and building on it. After the demise of the father, the plaintiff and his family live in the first floor. The first defendant is residing in the ground floor. When the plaintiff requested his brother, the first defendant, for division of the property, he was keep on evading. Later, the plaintiff came to know that, ignoring the share of the first defendant in the property, the first defendant under a registered document dated 03.02.2016 had settled the entire suit schedule property to his wife and children. Hence, to declare the said settlement deed as null and void. To divide the property into two equal part and allot one part to him or if not divisible to sell the property and give half of the proceeds.

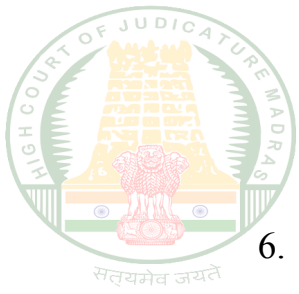
4. The defendants 1 to 6, in their written statement accepting the relationship and the right of Munusamy in the property, however contended that the property in S.No: 1031/1 measuring about 900 sq.ft was in possession of Munusamy. By way of partition in the year 1973, he, during his life time, gave land measuirng 445 sq.ft of land to Gowri. The first plaintiff received Rs.5000/- towards his share and released his right in the suit property to the first defendant.



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He also left the family and was leading a wayward life. Being the eldest son, the first defendant was taking care of the family and redeemed the property from mortgage. In the year 1976, the plaintiff came and told he is fully reformed and wanted to get married. Hence, the marriage of the plaintiff was performed by the first defendant spending Rs.2000/- and was also permitted his brother and wife to stay in the suit property as a permissive occupant.

5. The first defendant because the absolute owner of the property, after the family partition in the year 1976. He redeemed the property from distress sale paying Rs.5000/-. He improved the property spending more than Rs.15,00,000/-. The plaintiff never objected the construction. The tax for the property are paid by him. The electricity service connection stands in his name. He due to his ill-health settled the property in favour of his wife and children in the year 2016. The plaintiff, after relinquishment of his right as early as 1976, cannot claim share in the property, taking advantage of his permissive occupation in a portion of the suit property. The suit is filed as if he is in joint possession and enjoyment as a co-owner of the property.



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6. The Court below had framed the following issues based on the pleadings:-

1. Whether the plaintiff is entitled to get the relief of declaration against the first defendant?

2. Whether the plaintiff is entitled to get half share in the suit properties?

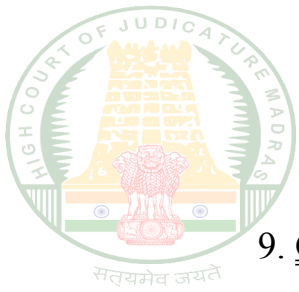
3. Whether the plaintiff has released his 1/3 share in the suit property by way of oral partition held on 1973 itself?

4. Whether the suit is hit by non-joinder of necessary parties?

5. To what relief?

7. For the plaintiff, one witness and eight exhibits relied. For defendants, one witness and three exhibits relied.

8. The Court below decreed the suit for partition holding the plaintiff is entitled for half share in the suit property. Also the settlement deed dated 03.02.2016 by first defendant declared as null and void. .



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9. Grounds of Appeal:

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The learned Counsel for the appellants submitted that, the judgement and decree of the Trial Court is erroneous and contrary to the evidence on record. Recognising the oral partition among the family members, in the year 1976 the trial Court has held by allotment of 445 sq.ft of land to the 7th defendant the sister Gowri, she is to be excluded from claiming share in the remaining portion but without assigning any reason, declined to believe the receipt of Rs.5,000/- by the plaintiff at the time of partition and release of his right to the first defendant for want of receipt. A contrary finding in respect of the plea of oral partition renders the trial Court judgement susceptible.

10. The oral partition is to be accepted or rejected in total. Partial acceptance and partial rejection is not justifiable. If the oral partition in the year 1976 is not believable, then the entire property held by Munusamy ought to have devolved on all his three children namely, first plaintiff and defendants 1 and 7. The allotment ought to be $\frac{1}{3}^{\text{rd}}$ each in respect of 900sq.ft and not for 645 sq.ft between the plaintiff and the defendant alone. The non-application of the Trial Court is patently seen by passing a preliminary decree for division of the suit



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property into two halves and allot one each to the plaintiff and first defendant, totally ignoring the right of the 7th defendant and the portion of the land held by the 7th defendant.

11. Further, the declaration decree holding the settlement deed dated 03.02.2016 is also bad for the reason that the one of beneficiary by name Sankar is not made a party to the suit. The decree of nullity passed behind his back is hit by non-joinder of necessary party.

12. The defendants through Ex.B-1 to Ex.B-3 had proved the possession and improvement to the property from out of his fund. The plaintiff had miserably failed to adduce evidence to show that he, as a joint owner, had contributed to its improvement or maintenance. In fact, PW-1, who is the wife of the plaintiff, in her cross examination, admits that she knows nothing about the redemption of the property from mortgage with one Thirunavukarasu. She has no evidence to show her husband contributed for the construction of the first floor. There is not even an averment in the plaint that the building in the suit property was constructed with the contribution of the plaintiff. Without pleadings and contrary to Ex.B-3, the



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trial Court has erred concluding the plaintiff has ½ share in the suit property.

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13. The learned Counsel for the appellants as sum up submitted that, the trial Court judgement is to be set aside for non joinder of necessary party and for not including the portion of the land in possession of the 7th defendant which is also admittedly the property in possession of Munusamy and for declaring share in the suit property only to the male heirs of Munusamy excluding and ignoring the female heir.

14. Point for determination:

Is the judgment impugned suffers non- appreciation of evidence and non application of law on joinder of necessary party and partial partition ?

15. The parties in dispute admits that the property originally held by Munusamy and the plaintiff, first defendant and 7th defendant are the children Munusamy. Strangely, none of them mounted the witness box to give evidence on oath. The spouses of the plaintiff and first defendant were examined as PW-1 and DW-1. They both conveniently feigned ignorance of questions, which are vital for



16. Ex.A-1 which is the registered settlement deed dated 03.02.2016, executed by the first defendant in favour of his wife and 5 children. As pointed out by the learned counsel for the appellants, not all the beneficiaries under the settlement deed Ex.A-1 are parties in the suit. No explanation or reason in the pleadings or in the evidence given for omitting Sankar Son of Anandan, one of the settlee.

17. Ex.A2 is the marriage invitation of the plaintiff dated 11.06.1976. In this invitation, the name of the bride is scored leaving the word 'Kumari'. (means spinster in tamil). The bride's father name is not mentioned. Before the printed word 'Kumari', the letter "S" added in pen. PW-1 claiming as wife of the plaintiff had mounted the witness box. She had deposed that she got married to the plaintiff after the marriage of 7th defendant and even before her marriage, a portion of the land was given to the 7th defendant. She has no knowledge about the oral partition or her husband releasing his right in the property after receiving Rs.5,000/-. The material alteration in the wedding invitation Ex.A2 gains significant in view of the



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specific denial by the defendant in the written statement that the plaintiff left the home and was leading a wayward life.

18. Ex.A-3 to Ex.A-6 are electricity consumption card, family card, voter ID and Aadhar card to show, the plaintiff is residing at No.7, Raghavan Garden, Mylapore. Ex.A-8 is the gift deed dated 02.02.1965 in favour of Munusamy in respect of 465 sq.ft thereabout of land in Dr.Natesan Road, Krishnampet executed by M/s N.K.Ahamed, a partnership firm. The recital of the conveyance cum gift deed reveals that, Munusamy, who had put up hut and occupying a larger extent of land owned by the donor, had agreed to vacate the land occupied by him and as alternate, the piece of land measuring 465 sq.ft is given to Munusamy. Thus, from the documents of the plaintiff, the extent of property which Munusamy got through the gift deed Ex.A-8, is only 465 sq.ft thereabout.

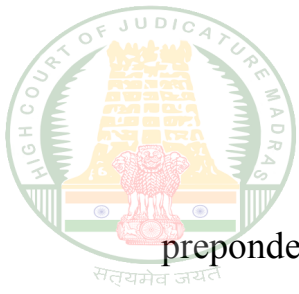
19. Ex.B-1 is the communication from the Tamil Nadu Adi-Dravida Housing and Development Corporation (TAHDCO) dated 16.07.1981 informing the Assistant Engineer, TNEB to provide electricity service to the 47 dwelling units in Raghavan Garden. This proceedings was issued based on the application



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by Anandan on completion of the construction. The receipt of TNEB enclosed along with Ex.B-1 and Ex.B-2 shows that Anandan had paid Rs.180 towards cost of the installation work and had deposited a sum of Rs.40/- towards security deposit on 08.12.1981. The demand for security deposit, stamped receipts for payment of the amount and issuance of consumption card are proved through Ex.B-2 series. All these documents are in the name of M.Anandan resident of No.7, Raghavan Garden. Bunch of bills for purchase of building materials during the month of July 1996 onwards is marked as Ex.B3 series. In which some bills are in the name of Anandan with address as purchaser and in few only his name is found. In many of the bills, the purchaser name is not mentioned.

20. DW-1 had deposed that, the 7th defendant, Gowri. got married in the year 1964 and living in the back portion of the suit land, this may not be correct because Munusamy got 465 sq.ft of land as gift under Ex.A-8, only on 02.02.1965. The reason for donating this piece of land has also been spoken in the gift deed. What Munusamy got under the gift deed Ex.A8 is a hut and not a permanent super structure which is build by Anandan as per Ex.B-1, Ex.B-2 and Ex.B-3. The communication from TAHDCO, Electicity Card and bills proves by



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preponderance of probability that, the land was in occupation of the first defendant, developed by him in the year 1981 and thereafter, with the knowledge of the plaintiff. The suit for partition is sought through this plaint is dated 27.04.2016, taking advantage of his occupation in the premises and the issuance of separate electricity service.

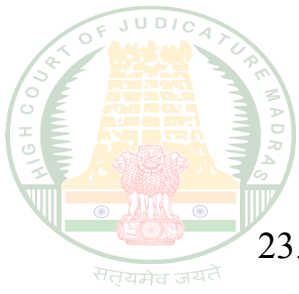
21. The plaintiff had not disclosed about the measurement of land given to the 7th defendant, Gowri nor the date on which the said portion was handed over to her. A plea has been raised that a portion of the property was given to the seventh defendant by Munusamy at the time of her marriage. As pointed out, even if the seventh defendant got married in the year 1964. The allocation of land to the seventh defendant must have been only subsequent to 1965 and not prior to that, since Munusamy had got title over the land measuring 6458 sq.ft and thereabout only on 02.02.1965. In any event, when the plaintiff has come forward to file a suit for partition, he should have included the portion of the land alleged to be in possession of Gowri the seventh defendant. Admittedly, the property in her possession was the property of Munusamy. Non inclusion of her portion suffers partial partition. For the reason best known, the plaintiff had not come forward to



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disclose the clear details about the date and measurement of the land allotted to Gowri the seventh defendant. This create suspicion and probabalise the case of the defendants about the oral partition.

22. The trial Court had also accepted the division of the property by upholding the allotment a piece of land to the seventh defendant. While so, Ex.B1 and Ex.B2 which are anterior in point of time to the other documents relied by the plaintiff indicate that it was the first defendant, who constructed superstructure on the land and as early as in the year 1981 submitted request for electricity service. Further Ex.B3, indicates that the additional structure has also been carried out by him in the year 1996 and thereafter. Nodoubt, the first defendant is unable to produce the evidence for realise of his 1/3rd share by the plaintiff in his favour during the alleged oral partition. However, Ex.A2-marriage invitation with manipulation and manual corrections indicates that the contention of the plaintiff that he had been in possession of the property continuously, since his father's demise is belied by Ex.B1 and Ex.B2. That part, having chosen to challenge the settlement deed Ex.A1 dated 03.02.2016.

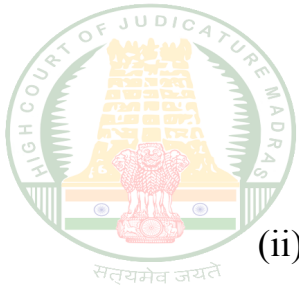


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23. All the beneficiaries under the settlement deed Ex.A1 are appropriate parties since my declaration about the validity of the document will affect the rights vested on them. However, in this case, Sankar who is on the array of parties to the suit, his absence has not caused any impediment in passing final adjudication. No doubt he is one of the appropriate party but his non inclusion noway stand in the way of. Final adjudication in this case, since the right of the said Sankar wholly depend on the right of his settler namely Anandan the first defendant. That apart, the trial Court's judgment suffers badly for non-application of mind, since after holding that Munusamy had three children the preliminary decree of partition among his male heirs alone after excluding the female heir of the family (i.e.) the seventh defendant is erroneous. The trial Court has passed a preliminary decree by allotting 50% of the suit property to the plaintiff and 50% of the suit property to the first defendant. This division on the face of the records, is contrary to law.

24. Therefore, this Appeal Suit is to be allowed for the following reasons:-

(i) Failure of the plaintiff to prove the joint possession of the property and contribution to the construction of the building.



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(ii) Non-inclusion of the property in possession of the seventh defendant;

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(iii) Improper division of the suit property by the trial Court.

25. As a result, **this Appeal Suit is allowed.** The judgment and decree passed by the XVII Additional City Civil Court, Chennai made in O.S.No.2714 of 2016 dated 23.07.2019 is hereby set aside. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

29.07.2025

Index:yes/no

Internet:yes

Speaking order/non speaking order

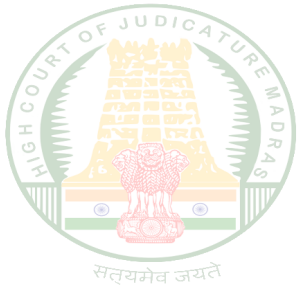
Neutral citation:yes/no

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To

1.The XVII Additional City Civil Court, Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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delivery judgment made in
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