



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2025

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THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

A.S. No.195 of 2022

Dhanalakshmi

... Appellant

-VS-

N. Palanisamy (Died)

1. P. Muthurathinam

P. Ravichandran (Died)

2. D. Yogesh

3. Muthulakshmi
(Respondent No.3 is legal heir of N.Palanisamy)

4. Udhaya

5. Athisaya

6. Arupudharaj

(Respondent Nos.4 to 6 are legal heirs of
N.Palanisamy and P.Ravichandran)

7. M. Rathinasamy

8. M. Palanisamy
(R7 and R8 are impleaded, vide order dated
11.06.2025 made in C.M.P.No.27093 of 2024)

... Respondents



Prayer: This appeal filed under Section 96 of the Code of Civil Procedure to set aside the Judgment and Decree of the learned II Additional District & Sessions Judge, Tiruppur made in O.S.No.187 of 2016 dated 30.04.2019.

For Appellant	:	Mr. J. Franklin
For RR 1 and 3	:	No Appearance
R2	:	Died
R4 to R6	:	No such person
For RR 7 and 8	:	Mr. N. Manokaran

JUDGMENT

The plaintiff in the partition suit being aggrieved by the dismissal of the suit in O.S.No.187 of 2016, vide order dated 30.04.2019 by the learned II Additional District & Sessions Judge, Tiruppur has preferred this appeal.

2. The case of the plaintiff as seen from her pleadings is that, she is the grand daughter of one Nachimuthu and the suit property is an ancestral property devolved to her father namely Palanisamy from her grand father. The said Nachimuthu had three children and the property was



divided among them by virtue of a partition deed dated 07.07.1979, by which the A-schedule property mentioned in the partition deed was allotted to her father Palanisamy and her grand father Nachimuthu. The plaintiff got married after the State amendment 1/90 came into force and therefore, she has equal right in the ancestral property, it is more fully described in the schedule to the plaint.

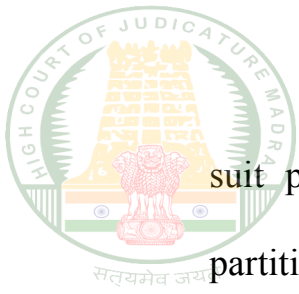
3. According to the plaintiff, after the division of the family property among the Nachimuthu and his sons, vide document dated 07.07.1979, the said Nachimuthu died in the year 1980 leaving behind his son Palanisamy (who is the first defendant) as his legal heir, thus the entire family properties have been managed by the first defendant as 'Karta' of the joint family. From out of the income of the joint family properties, the marriage expenses of his sons and daughter were met out. The defendants 2 and 3 are the sons of Palanisamy, the fourth defendant is the son of one Thilagavathy, who is another one daughter of Palanisamy, who pre-deceased her father. In the said circumstances, after first defendant/ Karta is unable to manage the family properties due to his old age, the plaintiff sought for partition of the suit property, which is declined by the



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defendants. While so, on 19.07.2016 the third defendant along with others tried to trespass into the land in Survey No.538, measuring 3 acres and 98 cents and tried to level the field using a bulldozer. In this regard, an oral complaint was given to the local police, who summoned the third defendant and enquired, at that time the third defendant disclosed about the alleged partition deed between the first defendant and his two sons, who are the defendants 2 and 3 on 08.08.1995, which was registered as Document No.4585 of 1995. After knowing about the alleged partition deed, the plaintiff was shocked that in respect of the ancestral property, the partition being done only between the father and his two sons, excluding the two daughters. With this averment, claiming 1/5th share in the suit property and to declare the alleged registered partition deed dated 08.08.1995 will not bind her, the plaintiff has filed the suit.

4. The suit was contested by the second defendant by filing a written statement, wherein he has specifically stated that the suit was filed by suppressing the material fact and the Court fee filed under Section 37(2) of The Tamil Nadu Court Fees and Suits Valuation Act is not legally sustainable, when the plaintiff has not being in the joint possession of the



suit property. In fact, the ancestral property was earlier subjected to partition among Nachimuthu and his son Palanisamy (first defendant) on 07.07.1979 and thereafter, certain other properties were purchased by Palanisamy and those properties were subjected to partition on 08.08.1995. After that the plaintiff got marriage and the other daughter by name Thilagavathy, who got married to a person of her choice. In the said circumstances, since on 08.08.1995 the portion of land allotted to the second defendant as per the partition, being in exclusive possession and enjoyment of the second defendant. The allegation that on 19.07.2016, there was an interference in the enjoyment of the plaintiff is a concocted story and for the sake of suit to show as if she has been in joint possession of the suit property, the above said averments are made.

5. It is also pleaded by the second defendant in his written statement that so far as 3.76 acres of land in Survey No.372 is the property of Karuppathal, who is the wife of Nachimuthu Gounder. Under the partition deed dated 07.07.1979, this property was allotted to Karuppathal under B-schedule. On the death of Karuppathal, the property was reverted back to Nachimuthu Gounder, who along with his son and daughter jointly



enjoyed the property. Later, it is in the possession and enjoyment of the first defendant and one Pappathi, who is the daughter of Karuppathal. It is also contended that the second defendant had sold a portion of the property allotted to him under the partition to one Eswaran on 12.12.2005 and presently, it is in the possession and enjoyment of the said Eswaran. Likewise, the third defendant has also alienated the property allotted to him under the partition, thus the partition dated 08.08.1995 being acted upon by the parties to the partition, therefore the suit for partition is not maintainable.

6. The Trial Court based on the pleadings framed the following issues:

1. *Whether the plaintiff is entitled to get a relief of partition as prayed for?*
2. *Whether the partition deed dated 08.08.1995 is true, valid and binds the plaintiff?*
3. *To what relief the parties are entitled?*

7. On behalf of the plaintiff, she and two other witnesses were examined and five exhibits were marked on her behalf. Further, two other



exhibits were marked during the cross examination of P.W.1, one exhibit was marked during the time of cross examination of P.W.2 and they were assigned as Exs.B.1 to B.3.

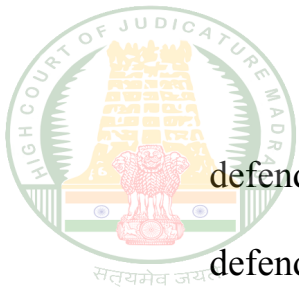
8. The Trial Court taking note of the fact that there was partition among the family members of Palanisamy on 17.04.2009, in which the plaintiff is also one of the participant and beneficiary and the said fact has been suppressed by the plaintiff and had held that while C-schedule property mentioned in partition deed/ Ex.B.1 dated 17.04.2009, the properties were allotted to the plaintiff and the fourth defendant, therefore, there cannot be a further partition of the property.

9. Being aggrieved, the appeal is filed on the ground that the earlier partition dated 08.08.1995 among the male members of the family without including the female members is illegal and will not bind the plaintiff. Further, the marriage of the plaintiff/ P.W.1 with Bala Subramaniam/ P.W.2 was on 05.03.1995, which was proved through Ex.A.5. This is after the State amended under Section 29A of Hindu Succession Act, which came into force on 21.03.1989 and on that date, the



plaintiff was an unmarried daughter of the first defendant/ Palanisamy and her right on the ancestral property has accrued. In so far as Ex.B.1/ partition deed dated 17.04.2009, the partition is not in respect of the all the properties held by the family jointly and it was only a partial partition and therefore for the remaining properties, the plaintiff is entitled for 1/5th share.

10. The learned counsel appearing for the respondent would submit that the plaintiff had approached the Court with unclean hands by suppressing the vital facts and had attempted to mislead the Court as suit properties remained undivided among the family members and enjoyed as joint family properties. In fact the suit properties had undergone three partitions, firstly on 17.07.1979 by way of Ex.A.1, next under Ex.A.2 dated 08.08.1995 and lastly under Ex.B.1 dated 17.04.2009. The entire joint family properties had subjected to partition under three partition deeds, wherein the properties were put under three schedules, where A-schedule was allotted to the father, B-schedule was allotted to two sons and the C-schedule was allotted to two daughters. Thereafter, the properties which were allotted to respective parties being enjoyed and several alienation has taken place, particularly, the C-schedule property allotted to the third



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defendant was settled in favour of one Udaya, who is the wife of the third defendant on 17.03.2017. The said Udaya sold the property to one Shankar, who in turn sold to one Hakkim, during the pendency of the suit. After dismissal of the suit, the said Hakkim sold the property to one M/s.Sivaganapaathi Spinners Private Limited on 07.12.2019 and the said M/s.Sivaganapaathi Spinners Private Limited sold the property to the respondents 7 and 8 on 06.06.2022.

11. The point for consideration is whether the suit property was enjoyed as a joint family property, carrying the nature of ancestral property and was available for any division on the date of filing the suit.

12. This Court after considering the fact that the plaintiff, who had sought for partition was a party to the partition deed dated 17.04.2009, which is marked as Ex.B.1 and got her share in the family property had projected the case before the Court as if, the family properties which were subjected to partition on 07.07.1979 under Ex.A.1 held as a joint family properties. The properties were accrued from out of the nucleus of the joint family properties and never been subjected to division and the partition



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effected on 08.08.1995 under Ex.A.2 is not a valid partition and she came to know about the said partition only when she had given a complaint to the police about the incident that took place on 19.07.2016. This contention of the plaintiff has been falsified through evidence, more particularly, the partition deed dated 17.04.2009, marked as Ex.B.1, which is a registered deed, in which the plaintiff herself is a party and beneficiary. This fact being suppressed by the plaintiff not by ignorance but with an ulterior motive to suppress the fact and sustained a suit else, there will be no cause of action for her suit for partition.

13. This Court after considering the materials placed, finds that the appeal is unsustainable for the reason that the family properties had already been subjected to division under Ex.B.2, which is much prior to the Central Act [Hindu Succession (Amendment) Act, 2005] came into force, since the ancestral property being dealt prior to 20.12.2004 and the plaintiff also been given a share in the family property under Ex.B.1, she cannot seek for a larger share nearly after 11 years, hence this Court finds that there is no merit in the appeal.



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14. Accordingly, the appeal stands dismissed. There shall be no order as to costs.

23-07-2025

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

1. The II Additional District & Sessions Judge, Tiruppur.
2. The Section Officer,
VR Section,
High Court of Madras.



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Dr. G. JAYACHANDRAN, J.,

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