



A.S.(MD)Nos.103 to 105 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.10.2025

DELIVERED ON : 21.11.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**A.S.(MD)Nos.103 to 105 of 2019
and
C.M.P.(MD)Nos.7161 and 5461 of 2019**

Chellappan

... Appellant in
all A.S.

-VS-

1.M.Manikandan

2.M.Manjamma Devi

3.M.Velammal

... Respondents in
A.S.(MD)Nos.103 & 105/2019

M.Manikandan

... Respondent in
A.S.(MD)No.104/2019

COMMON PRAYER: Appeal Suits filed under Section 96 of CPC against the judgment and decree dated 04.12.2018 passed in O.S.Nos.203 of 2015, 25 of 2017 and 26 of 2017 respectively on the file of VI Additional District Court at Madurai.



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For Appellant : Ms.J.Anandhavalli
(In all As.)
For Respondents : Mr.V.Meenakshisundaram
(In all As.)

COMMON JUDGMENT

(Judgment of the Court was delivered by ***C.V.Karthikeyan, J.***)

All the three appeals have been filed by the same appellant L.Chellappan, questioning the common judgment in O.S.Nos.203/2015, O.S.No.25/17 and O.S.No.26/2017, dated 04.12.2018 passed by the VI Additional District Court at Madurai.

2. O.S.No.203 of 2015 had been filed by the appellant herein, L.Chellappan against three defendants, M.Manikandan, M.Manjamma Devi and M.Velammal, who were the children of his elder brother Manickavasagam Pillai, seeking partition and separate possession of the suit schedule property.

3. O.S.No.25 of 2017 had been filed by M.Manikandan against the appellant herein L.Chellappan, seeking recovery of possession of the suit schedule property and for past and future mesne profits.



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4. O.S.No.26 of 2017 had also been filed by L.Chellappan against the same defendants, M.Manikandan, M.Manjamma Devi and M.Velammal seeking permanent injunction restraining the defendants from interfering with the peaceful possession of the suit property. The suit schedule property was land and building at Old Door No.288, New Door No.289, Murugan Timber Depot at Thirunagar, Thirupparankundram Village, Madurai. In the plaint in O.S.No. 203/2015, the plaintiff had sought partition and separate possession of not only that particular property but also other properties as detailed in the schedule to the plaint.

5. By common judgment dated 04.12.2018, O.S.No.203 of 2015 was dismissed, O.S.No.26/2017 was also dismissed and O.S.No. 25/2017 was decreed. This has necessitated the filing of the three first appeals.

O.S.No.203/2015 [VI Additional District Court,

Madurai]:

6. In the plaint, it had been contended by the plaintiff L.Chellappan that he and his elder brother L.Manickavasagam Pillai had



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jointly started a business in Timber called “Murugan Timber Depot” at Periya Kadai Veethi, at Thirumangalam in the year 1972. He stated that the registration certificate and other documents of the business stood in the name of L.Manickavasagam Pillai. Thereafter, they started another branch at Thirunagar in 1976. It was agreed that the plaintiff, L.Chellappan, would look after the new establishment at Thirunagar and L.Manickavasagam Pillai, would continue to look after the business at Thirumangalam.

6.1. The plaintiff further contended that another brother Swaminathan joined him in the business at Thirunagar. But however, owing to differences between them, Swaminathan left the business after receiving a consideration of Rs.5,00,000/-. Thereafter, the business at Thirunagar was shifted to the suit property in a portion of the property at Old Door No.288, New Door No.289, Murugan Timber Depot at Thirunagar, Thirupparankundram Village, Madurai. It is the contention of the plaintiff that the profits in the business increased while correspondingly the business at Thirumangalam suffered losses. It was also contended that the Registration Certificate and other documents of the business at Thirunagar stood in the name of the plaintiff.



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6.2. The plaintiff sought partition and separate possession of his share in the properties. However, without partitioning the properties L.Manickavasagam Pillai died on 10.12.2012. It had been stated that the defendants, who are the legal heirs of L.Manickavasagam Pillai did not come forward to partition the suit schedule properties. It had been further contended that they had subsequently tried to interfere with his possession. This necessitated him to file O.S.No.276 of 2015 before the District Munsif Court, Thirumangalam, which was subsequently, re-numbered as O.S.No.26/2017 and transferred to VI Additional District Court at Madurai.

6.3. The plaintiff claims that the first, second and fifth items of the properties stood in the name of L.Manickavasagam Pillai. The third item of the suit schedule property stood in the name of second defendant M.Manjamma Devi. The fourth item of the suit property stood in the name of the third defendant M.Velammal. It had been contended that all these properties had been purchased only from the income derived from the business and therefore, the plaintiff has an equal share in all the properties. It was under those circumstances that the suit had been filed seeking partition and separate possession of the suit schedule properties.



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7. The first defendant M.Manikandan, filed a written statement disputing the contentions raised by the plaintiff. He stated that the suit properties have been purchased by L.Manickavasagam Pillai, out of his own earnings in business, Murugan Timber Depot. He had stated that the plaintiff was only working under his elder brother L.Manickavasagam Pillai and cannot claim any right, title or interest over the suit schedule properties. He further stated that the claim of the plaintiff that the business at Thirunagar was handed over entirely to him was false. He further stated that L.Manickavasagam Pillai had no intention of partitioning the said properties.

7.1. He further stated that the plaintiff had actually purchased yet another property in the name of his wife and therefore, cannot claim any right or title over the properties detailed in the schedule. He further had stated that the said items 1 and 2 were in the name of L.Manickavasagam Pillai, who was the absolute owner and on his death, had devolved on to the defendants. He further stated that third item of suit schedule properties was originally purchased in the name of Gomathi Ammal, the mother of the defendants and thereafter,



construction was also put up. The fourth item of suit property was purchased again by L.Manickavasagam Pillai. Fifth item of the suit property was also purchased by him and he later demolished the old house and put up fresh construction. Sixth item of suit property was absolute property of the first defendant, who had purchased it out of his own funds. He further stated that on the death of Gomathi Ammal, the defendants had executed a released deed with respect to their share in the name of their father L.Manickavasagam Pilli.

7.2. He further stated that Manickavasagam Pillai had also executed a Will dated 31.08.2007 and accordingly, 1st , 2nd and 5th items of properties had been allotted to the first defendant. Third item of the suit property had been allotted to the second defendant and 4th item of the suit property had been allotted to the third defendant. He claimed that the defendants were therefore, absolute owners of the respective properties which had been allotted to them. He also claimed that he was the absolute owner of the 6th item of the suit property. He stated that the plaintiff has been only in permissive occupation of the portion of the property, wherein, he is doing business and on the death of Manickavasagam Pillai, the permission had lapsed. He therefore, stated



that the plaintiff had no right to claim partition and therefore, he had stated that the suit should be dismissed.

7.3. The first defendant filed an additional written statement specifically stating about the Wills executed by L.Manickavasagama Pillai. He had first executed a Will on 04.09.2002, which later he revoked and executed another registered Will dated 08.02.2006. This was also cancelled and a third Will was executed on 31.08.2007, which had come into force.

8. The plaintiff filed a reply statement wherein he contended that the third Will had been forcibly obtained from Manickam Pillai and it has not been validly executed. He asserted his right to seek partition and separate possession. On the basis of the said pleadings, the following issues were framed for trial:

“1. Whether the plaintiff is entitled to ½ share in the suit properties?

2. Whether the father of the defendants namely Manickavasagam has executed a Will deed dated 31.08.2007 and whether defendants have obtained title and possession over the suit properties?

3. Whether the plaintiff is entitled to get



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preliminary decree for partition of ½ share as prayed for?

4. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

5.To what other relief and costs, the plaintiff is entitled to?”

O.S.No.25/2017:

9. This suit had been filed by the first defendant in O.S.No. 203/2015, M.Manikandan, seeking recovery of possession of the portion of the property in the possession of the defendant L.Chellapan, wherein, the defendant was doing a business called “Murugan Timber Depot”.

10. In the plaint, it had been contended that the suit property belonged to his father L.Manickavasagam Pillai and the defendant was permitted to occupy a portion of the same to do his business and since his father died that permission automatically lapsed. It had been contended by the defendant that subsequently, his father had also executed a Will and the property had been allotted to him absolutely. He claimed that the defendant continued to be in unlawful possession even after the death of his father. It was under those circumstances that he sought recovery of possession. He also sought damages for use and occupation.



11. The defendant filed a written statement which was the replication of plaint in O.S.No.203/2015 stating the same fact about the commencement of the business along with Manickavasagam Pillai and claiming right and share over the property.

12. On the basis of the said pleadings, the following issues were framed:

- “1. Whether the plaintiff is entitled for the reliefs sought for?*
- 2. Whether the suit is barred by law of limitation?*
- 3. Whether the contention that the defendant was in permissive occupation was correct?*
- 4. Whether the right and title claimed by the plaintiff is correct?*
- 5. To what other relief is the plaintiff entitled?”*

O.S.No.26/2017

13. This suit was initially filed as O.S.No.276/2015 before the District Munsif Court, at Thirumangalam by the plaintiff L.Chellappan, seeking protection of possession of the portion of the suit schedule properties, where he was conducting business called “Murugan



Timber Depot.” The plaintiff had stated the same facts which he later again stated in O.S.No.203/2015, which he had filed before the District Court at Madurai, seeking partition and separate possession of the suit schedule properties. He claimed that the defendants were interfering with the business and therefore, he had filed the said suit for permanent injunction restraining them from interfering with his business and possession.

14. In the written statement, the first defendant again contended that the plaintiff was only in permissive occupation and had no right to occupy the portion in the suit schedule property after the death of L.Manickavasagam Pillai. He claimed that the property devolved on him under a Will executed by L.Manickavasagam Pillai. He therefore, stated that the suit should be dismissed.

15. On the basis of the said pleadings, the following issues were framed:

“1. Whether the plaintiff is entitled for the relief sought?

2. Whether the claim of the plaintiff that the suit property was purchased by the joint earnings of the plaintiff and



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in the name of Manickavasagamm Pillai?

3. Whether the defendant had any right and title over the suit schedule properties?

4. Whether the plaintiff had cause of action to institute the suit?

5. To what other relief is the plaintiff entitled?"

Joint trial:

16. The trial in all the three cases were conducted jointly and O.S.No.203/2015 was taken as a lead case. Accordingly, the plaintiff examined himself as P.W.1 and examined another witness Abdul Jabar as P.W.2. He marked Ex.A1 to Ex.A16. Ex.A1 to Ex.A6 and Ex.A16 were the sale deeds for the purchase of the suit properties. Ex.A8 was the registration certificate of the business. Ex.A13 and Ex.A14 were the legal notices exchange between the parties.

17. On the side of the defendants, the first defendant examined himself as D.W.1 and also examined another witness Bava Sikkanthar as D.W.2. Defendants marked Ex.B1 to Ex.B52. The documents relating to the property tax receipts were marked as Ex.B7 to Ex.B11, Ex.B20, Ex.B25, Ex.B30 and Ex.B31. The documents relating



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to the payment of electricity charges were marked as Ex.B14, Ex.B22, Ex.B27, Ex.B33, Ex.B38. The patta with respect to the suit properties were marked as Ex.B12, Ex.B24 and Ex.B34. The three Wills executed by Manickavasagam Pillai were marked as Ex.B44, Ex.B45 and Ex.B46.

Common judgment:

18. By common judgment dated 04.02.2018, in the three Original Suits, the learned VI Additional District Judge, Madurai examined the evidence adduced and took up for consideration the issues framed. As a fact, there was no document produced to show that the plaintiff L.Chellappan was a partner in Murugan Timber Depot with his brother L.Manickavasagam Pillai. He found that more than sufficient evidence had been produced to show that L.Manickavasagam Pillai had started the said business initially at Thirumangalam. Later another branch was opened at Thirunagar. To accommodate his younger brother, who was nearly 20 years younger than him, L.Manickavasagam Pillai permitted the plaintiff L.Chellappan to manage the said business. The registration and other certificates were in the name of L.Chellappan. However, the suit had not been filed seeking dissolution of the



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partnership firm or for accounts. The suit had not been filed over the business at all. There was no evidence of partnership and each of the two brothers were doing the businesses separately.

18.1. The learned trial Judge further found that out of the income earned they both also purchased the properties. Even the plaintiff had purchased another property in the name of his wife. Later, item No.1 of the property was purchased by L.Manickavasagam Pillai. In a portion of that particular property, the plaintiff L.Chellappan was permitted to continue his business in the same name “Murugan Timber Depot”. This was only permissive occupation. The learned trial Judge held that by continuing the business in the suit property, the plaintiff cannot and did not acquire title over the property. The documents filed very clearly established that the title vested only with Manickavasagam Pillai.

18.2. During the course of trial, the attesor to the Will had been examined as D.W.2 and clearly spoke about the mental condition of Manickavasagam Pillai at the time of execution of the Will. He very clearly stated that Manickavasagam Pillai signed the Will in his presence and he also signed in the presence of Manickavasagam Pillai.



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18.3 On the basis of the above findings, the learned trial Judge proceeded to dismiss the suit seeking partition and separate possession. He also found that the defendants had established title by proving the Will and by also producing the document relating to the mutation of revenue records. In view of the same, the suit filed for recovery of possession was decreed. Simultaneously, the suit filed seeking injunction was dismissed.

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19. Challenging the said common judgment, the present appeals have been filed. The learned counsel for the appellant argued that the appellant herein had worked as a partner with his elder brother in building the business called “Murugan Timber Depot”, initially at Thirumangalam and later at the Branch office at Thirunagar. The learned counsel stated that the registration number and other documents relating to the business at Thirunagar stood in the name of the appellant. The learned counsel further pointed out that while running the business at Thirunagar, another brother of the appellant, Swaminathan had also joined him but, later left the business and was paid consideration of Rs.5



lakhs. The learned counsel stated that all these facts would show that the business was the exclusive business of the appellant herein.

19.1. The learned counsel further stated that the business was then shifted with full consent of Manickavasagam Pillai in a portion of item No.1 property. It was therefore contended that the intention of Manickavasagam Pillai was to hand over the business and also grant title to the appellant over that particular portion. As a matter of fact when partition was sought, he had asked the appellant to wait for some time. In the meanwhile, unfortunately Manickavasagam Pillai died. The learned counsel stated that Manickavasagam Pillai had written down three separate Wills. In the first Will he had bequeathed the particular property to the appellant. But however, in the final Will he had totally disinherited the appellant. The learned counsel argued that this court should take an over all view of the entire issue and should grant partition of that particular portion, where the business is being run and allot the same to the appellant.

19.2. The learned counsel was also emphatic in her submission that the business had prospered only due to the efforts taken



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by the appellant. The properties were purchased only out of the income generated by the business. Therefore, the properties must be deemed to be the joint family properties of the appellant and his brother Manickavasagam Pillai. The learned counsel urged that in view of that particular reasoning, the appellant was entitled for a share in the suit property. The learned counsel found fault with the reasoning of the learned trial Judge, who had rejected the claim for partition. The learned counsel stated that the Will was shrouded with suspicion and had been surreptitiously obtained by the respondents. The learned counsel therefore urged that the Court should allow the appeals and decree the suit for partition and grant permanent injunction in favour of the appellant. She also urged that the suit seeking recovery of possession must be dismissed.

20. The learned counsel for the respondents however, denied and disputed these contentions. According to the learned counsel, the properties in item No.1 stood in the name of initially Manickavasagam Pillai and subsequently, in the name of the first respondent. The revenue records had also been mutated. He contended that the appellant was granted permission to occupy a portion of the said building for the



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business purposes alone. This permission was granted by Manickavasagam Pillai. On the death of Manickavasagam Pillai, the permission lapsed. According to the learned counsel, the first respondent was conducting Timber business in a rented place. He also pointed out that the appellant had purchased yet another property in the name of his wife. He pointed out that each one of the properties stood in the individual names of the defendants and therefore, they were the absolute owners of the said properties. He also contended that third Will had revoked the earlier two Wills and had been proved in the manner known to law by examining D.W.2. Therefore, he contended that the suit for partition would not lie and the first respondent was entitled for recovery of possession and mesne profits. He, therefore urged that the appeals should be dismissed

21. We have carefully considered the arguments advanced and perused the materials on record. The following points arise for determination:

1. whether the learned trial Judge had correctly held that the suit properties were the absolute



property of the defendants?

2. Whether the learned trial Judge had correctly held that the appellant was not entitled for partition and separate possession?

3. Whether the learned trial Judge had correctly held that the first respondent was entitled for recovery of possession?

22. Since the discussion relating to the points framed for determination overlap, all the three points are taken up for consideration together.

23. The elder brother of the appellant, L.Manickavasagam Pillai had come over to Madurai and had started small other businesses and finally started a business called “Murugan Timber Depot” at Thirumangalam. He was 20 years older than the appellant, L.Chellappan. The business was started in the year 1972. the appellant was working under his elder brother. There is no evidence to show that he had provided capital to start the said business. There is no evidence to show that he was a partner in the said business. There is no evidence to show



that the business was in the joint names of L.Manickavasagam Pillai and the appellant, L.Chellappan.

24. The business at Thirumangalam was in the name of L.Manickavasagam Pillai alone. Later, another branch was opened at Thirunagar. The appellant was permitted to manage the said branch. Again this was not a joint partnership firm. L.Manickavasagam Pillai was gracious enough to permit the registration and other licenses to stand in the name of the appellant. He was also gracious enough to permit the appellant to use the goodwill of the existing firm at Thirumangalam and use the very same name “Murugan Timber Depot”. To that extent, the appellant had benefited from the existing goodwill which the business at Thirumangalam had established. He had the registration certificate in his name. He had the right to conduct business. He conducted the business. This was a separate business and the business at Thirumangalam was a separate business. The statement of accounts of the two businesses have not been produced by the appellant. He had not filed the Profit and Loss Account of the business at Thirunagar. He had not called upon the respondents to produce the statement of accounts or the Profit and Loss Account of the business at Thirumangalam.



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25. It is therefore, evident that the two businesses were separate even though they were run under the same name “Murugan Timber Depot”. But the appellant initially benefited by the usage of that particular name, in view of the goodwill “Murugan Timber Depot” had established at Thirumangalam. Thereafter, Manickavasagam Pillai had purchased the first item of the suit property. In a portion of that particular property, since the business at Thirunagar was running in a rented place, the appellant was permitted to shift his business. This was only a permission granted to occupy a portion of item No.1 of the property. By this permission, the appellant can never claim that he had acquired title over that particular portion. The land and buildings still stood in the name of Manickavasagam Pillai. The appellant was not inducted as a tenant. He was not inducted as a partner. He was only granted permission to conduct the business in that particular place. This was granted in view of the relationship he had with Manickavasagam Pillai, who was nearly 20 years senior to him. The fact that another brother Swaminathan had joined the business and left the business and was paid consideration is a fact which does not advance the case of the appellant. A mere statement had been made that the business of the



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appellant prospered, while the business of Manickavasagam Pillai at Thirumangalam suffered losses. But again no proof had been produced for the said assertion. The appellant had not produced either the books of accounts or called upon the respondents to produce the books of accounts relating to the business at Thirumangalam. Therefore, this statement made by the learned counsel for the appellant is rejected by us.

26. It is contended by the learned counsel for the appellant that Manickavasagam Pillai had written three separate Wills and in the final Will he had disinherited the appellant. That Will have been marked as Ex.B46. D.W.2 had signed as attestor to the said Will. He had very clearly stated that Manickavasagam Pillai had signed in each page and he saw Manickavasagam Pillai affixing his signature and that he also signed in the presence of Manickavasagam Pillai. The witness also with stood cross examined. The Will in Ex.B46 stood proved. By the said Will, Manickavasagam Pillai had bequeathed the property to the first respondent. we find that there are no suspicious circumstances surrounding either the execution of the Will or over the nature of bequeath. It is only natural that the property had been bequeathed by the Manickavasagam Pillai, to his son, the first respondent. It must also be



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stated that Manickavasagam Pillai had also purchased properties in the names of respondents 2 and 3, his two daughters.

27. The learned counsel for the appellant pointed out that item No.2 of the property had been purchased in the name of Gomathi Ammal, wife of Manickavasagam Pillai and on her death, the respondents had relinquished their particular share. The learned counsel stated that such relinquishment would mean that the property was a joint family property. We reject the particular arguments. The mother died. The property would devolve on to her legal heirs. The legal heirs/her children had executed a relinquish deed in favour of their father. We find nothing legally wrong in that particular aspect.

28. It is contended by the learned counsel for the respondents that on the death of Manickavasagam Pillai, the permission granted to continue to be in occupation lapsed. We agree with that argument. The appellant was only a mere permissive occupier of the place. He cannot claim right, title or interest over the property. He can claim a right over the business. He had not sought for dissolution of either one of the two businesses or for rendition of accounts. His focus



was only on the property. The property did not stand in his name. The revenue records did not stand in his name. We hold that therefore, the property was the absolute owner of Manickavasagam Pillai and later, on the will being proved, the absolute property of the first respondent.

29. The first respondent had also filed the suit seeking recovery of possession. The appellant has no right to continue to occupy, once the permission granted to occupy had lapsed owing to the death of Manickavasagam Pillai. In view of the circumstances, we hold that the learned trial Judge had correctly held that the properties were the absolute properties of the respondents and that the first respondent had every right to claim recovery of possession. We further hold that the appellant had not made out any case to show that he had title over the properties to seek partition. He had not made out any case to show that the properties were joint family properties to seek partition. In fact he had no title over the property. He was only a permissive occupant and permission had lapsed on the death of Manickavasagam Pillai. We therefore, hold that the learned trial Judge, had correctly held that he had no right to seek partition and that the first respondent has every right to seek recovery of possession.



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30. In view of the foregoing reasons, we are of the firm opinion that the appeal suits will necessarily have to fail and that they have to be dismissed.

31. In the result,

1.A.S.(MD)No.103 of 2019 is dismissed

2.A.S.(MD)No.104 of 2019 is dismissed. Three (3) months' time is granted to vacate and hand over vacant possession of the suit schedule property to the first respondent.

3.A.S.(MD)No.105 of 2019 is dismissed.

4. Connected civil miscellaneous petitions are closed. There shall be no order as to costs.

[C.V.K., J.] [R.V., J.]
21.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/No
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C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.

vsm

To

1. 6th Additional District Judge, Madurai
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court.

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