



AS(MD)Nos.122 of 2020, 247 of 2021 and 300 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

AS(MD)Nos.122 of 2020, 247 of 2021 and 300 of 2025

and

C.M.P(MD)Nos.4170, 4171 of 2020, 15072 of 2024, 10213 of 2025

in AS(MD)No.122 of 2020 : -

B.S.Narayanan

... Appellant / Plaintiff

Vs.

1.B.S.Anandan

2.B.S.Velayutham

3.B.S.Gurusamy

4.B.S.Arunagiri

5.B.A.Bala Vadivel Murugan

6.A.S.Barakath Fathima

7.A.K.Anwar Basha

8.S.Mumtaj Begum

9.M.Abdul Rehman



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10.The Special Tahsildar (Land Acquisitions),
National Highways Office, Kulathur,
having office at No.12, Devaki Complex,
Pudukkottai, Trichy Main Road,
Keeranur, Pudukkottai District.

... Respondents 1 to 10 /
Defendants 1 to 10

For Appellant : Mr.V.Raghavachari, Senior Counsel
for Mr.K.Prabhakar

For Respondents : Mr.I.Abrar Md.Abdullah for R1 & R5

Mrs.Raji Vincent for Mr.Anil Sivaraman
for R2

Mr.K.Rajeshwaran for R3

Mr.H.Lakshmi Shankar for R4

Mr.K.Ragatheesh Kumar for R6 and R9

R7 - deceased

R8 – Tapal returned

Mr.C.Venkatesh Kumar,
Special Government Pleader for R10

in AS(MD)No.247 of 2021 : -

B.S.Arunagiri

... Appellant /4th defendant

Vs.

1.B.S.Narayanan

... 1st respondent/plaintiff

2.B.S.Anandan



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3.B.S.Velayutham

4.B.S.Gurusamy

...2 to 4 respondents / 1 to 3 defendants

5.B.A.Bala Vadivel Murugan

6.A.S.Barakath Fathima

7.A.K.Anwar Basha

8.S.Mumtaj Begum

9.M.Abdul Rehman

10.The Special Tahsildar (Land Acquisitions),
National Highways Office, Kulathur,
having office at No.12, Devaki Complex,
Pudukkottai, Trichy Main Road,
Keeranur, Pudukkottai District.

... Respondents 5 to 10 /
Defendants 5 to 10

For Appellant : Mr.H.Lakshmi Shankar

For Respondents :Mr.V.Raghavachari, Senior Counsel
for Mr.Raguvaran Gopalan for R1

Mrs.Raji Vincent for Mr.Anil Sivaraman
for R3

No appearance for R2, R4, R5, R7 & R9

Mr.C.Venkatesh Kumar,
Special Government Pleader for R10

R7 – deceased

R6 & R8 tapal returned



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in AS(MD)No.300 of 2025 : -

B.S.Gurusamy

... Appellant /3rd Defendant

Vs.

1.B.S.Narayanan

... 1st respondent/plaintiff

2.B.S.Anandan

3.B.S.Velayutham

4.B.S.Arunagiri

...2 to 4 respondents / 1 to 3 defendants

5.B.A.Bala Vadivel Murugan

6.A.S.Barakath Fathima

7.A.K.Anwar Basha

8.S.Mumtaj Begum

9.M.Abdul Rehman

10.The Special Tahsildar (Land Acquisitions),
National Highways Office, Kulathur,
having office at No.12, Devaki Complex,
Pudukkottai, Trichy Main Road,
Keeranur, Pudukkottai District.

... Respondents 5 to 10 /
Defendants 5 to 10

For Appellant : Mr.K.Rajeshwaran

For Respondents :Mr.V.Raghavachari, Senior Counsel
for Mr.Raguvaran Gopalan for R1

Mrs.Raji Vincent for Mr.Anil Sivaraman
for R3



AS(MD)Nos.122 of 2020, 247 of 2021 and 300 of 2025

No appearance for R2, R4, R5, R7 & R9

Mr.C.Venkatesh Kumar,
Special Government Pleader for R10

R6 & R8 tapal returned

R7 deceased

Common Prayer: First Appeals filed under Section 96 of Civil Procedure Code to set aside the judgment and decree dated 28.02.2020 made in O.S No. 116 of 2013 on the file of the III Additional District Judge, Trichirappalli and decree the suit in toto and pass such orders and thus render justice.

COMMON JUDGMENT
(By G.R.SWAMINATHAN, J.)

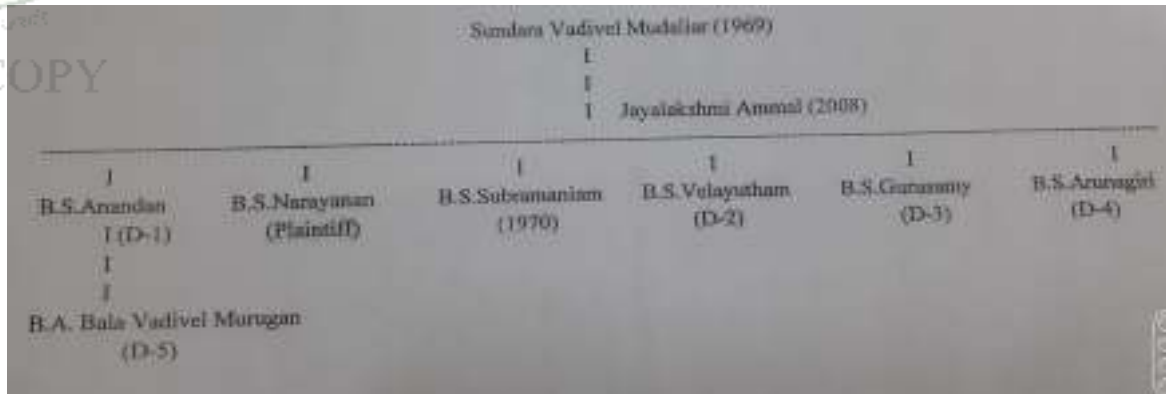
These appeals are directed against the judgment and decree dated 28.02.2020 made in O.S No.116 of 2013 on the file of the III Additional District Judge, Tiruchirappalli.

2.The plaintiff in the suit is the appellant in AS(MD)No.122 of 2020. The third defendant in the suit is the appellant in AS(MD)No.300 of 2025. The fourth defendant in the suit is the appellant in AS(MD)No.247 of 2021. The appeals arise out the suit for partition. The genealogical tree is as under :



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3.The plaintiff and the defendants 1 to 4 are brothers. The first defendant is the eldest male member of the family. Another brother namely, B.S.Subramanian, passed away in the year 1970. He died a bachelor. The plaintiff and defendants 1 to 4 are members of a Hindu undivided joint family. Their father did not have any ancestral nucleus. He started a Beedi manufacturing business in the year 1937 in the name and style of “Vel Beedi”. It was run as a joint family business. The first defendant attained majority in the year 1961 and he was taken as a partner on 01.04.1961. Sundaravadivel Mudaliyar, the father, was running the business in the name and style of B.S.Sundaravadivel Mudaliyar & Sons. The plaintiff was taken as partner in the year 1962 and when D2 to D4 attained majority, they were also inducted as partners. From the income yielded by the joint family business, the suit properties were purchased. Schedule “A” items stand in the name



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Sundaravadivel Mudaliyar. Schedule “B” items stand in the name of mother Jayalakshmi Ammal. Schedule “C” items stand in the name of the deceased brother Subramanian. Schedule “D” items stand in the name of the first defendant. Schedule “E” items stand in the name of the plaintiff. Schedule “F” items stand in the name of the second defendant. Schedule “G” items were purchased in the name of the third defendant. “H” Schedule properties stand in the name of the fourth defendant and “I” Schedule properties stand in the joint names of the plaintiff and the defendants 1 to 4. According to the plaintiff, in all these schedule properties, he has 1/5th share. The father passed away in the year 1969. The mother passed away in the year 2008. Both the parents as well as the brother Subramanian died intestate. In the year 2011, there was a proposal to divide the properties. But the process did not reach any culmination.

4.While so, the first defendant settled the “D” Schedule properties in favour of the fifth defendant/his son on 11.06.2012. Likewise, alienations had taken place during the intervening period in favour of D6 to D9. The first defendant through his son had already filed O.S No.1603 of 2012 on the file of the III Additional District Judge, Trichy seeking rendition of accounts in respect of the joint family business. While so, a portion of “D” schedule properties was



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acquired by NHAI. Since the sale deeds are in his name, the first defendant had managed to obtain the compensation exclusively for himself.

5. In this background, the suit for partition came to be filed. The first defendant filed written statement and the same was adopted by the fifth defendant also. According to him, the properties were enjoyed in common till 1982 when a oral partition was entered into amongst them. It was agreed that the properties standing in the name of the father and the sons are to be treated as individual properties. The common properties are to be divided equally after the lifetime of the mother. This partition was entered into in the year 1982 itself. That is why, the third defendant sold an item of property standing in his name in favour of the first defendant on 18.05.1983. Likewise, the plaintiff's son and the first defendant have entered into lease agreement in respect of the properties, standing in the name of the first defendant. The plaintiff had also effected mortgage of a property in his name in favour of City Union Bank. The allegation of the first defendant was that all his brothers have ganged up against him. He has also made serious allegation against the plaintiff that he had swindled the amounts belonging to the partnership business. He also contested the claim of the plaintiff that there was a proposal to partition the properties in the year 2011. The document relied on by the plaintiff in this regard is also



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challenged by the first defendant. The second defendant filed written statement and the same was adopted by the third defendant. The defendants 4, 7 and 9 remained exparte. As already mentioned the fifth defendant is none other than the son of the first defendant. The eight defendant is the subsequent purchaser of an item of “D” Schedule property from the first defendant by virtue of the registered sale deed dated 09.01.2012. According to her, she was a bona fide purchaser. The prayer of the eight defendant was that in the event of the trial court decreeing the suit for partition, it was prayed that the item sold in favor of her may be allotted to the eight defendant. The plaintiff filed reply statement denying the alleged oral partition held in the year 1982.

6. Based on the rival pleadings, the following issues were framed :

“1. Is the plaintiff entitled for a preliminary decree of 1/5 share in the suit property ?

2. Is it true to state that already an oral partition took place in 1982 itself?

3. Is it true to state that as a result of such oral partition, the plaintiff and defendants 1 to 4 entered into various sales in respect of properties allotted to them?

4. Is it true to state that basing such oral partition D2 was allotted a compensation by D10 also?



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- 5.Are the suit property still joint family properties or not?
- 6.Is the suit bad for non-joinder of necessary properties?
- 7.Any other relief?
- 8.Whether the 8th defendant purchased the 16th of the 'D' schedule property as a bonafide purchaser?
- 9.Whether the plaintiff is entitled to get the relief of injunction against the defendant as prayed for
- 10.Whether the suit is bad for partial partition
- 11.Whether the suit is barred by Limitation Act?"

7.On the side of the plaintiff, no witness was examined. However, Exs.A1 to 49 were marked. The first defendant also did not enter the witness box. Instead, the son of the fifth defendant was examined as DW.1. The second defendant was examined as DW.2. Exs.B1 to B17 were marked. After considering the evidence on record, the trial court dismissed the suit. Challenging the same these first appeals have been filed.

8.The points that arise for determination are as follows :

- a) Whether the court below was justified in dismissing the suit in toto?
- b) Whether any oral partition took place in 1982?
- c) Whether the suit is bad for partial partition?
- d) Whether the suit is barred by limitation?



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A mere look at the pleadings would show that the dispute is only in respect of the “D” Schedule properties. In respect of the other suit schedule items, there is no dispute that they have to be partitioned into equal shares and allotted accordingly. Even before us, the learned counsel appearing for the defendants 1 and 5 substantially conceded this position. We fail to understand as to how the trial court could have dismissed the suit in toto. Schedule “A” items stand in the name of Sundaravadivel Mudaliyar (father). Schedule “B” items stand in the name of Jayalakshmi Ammal (mother). The mother died only in the year 2008. By no stretch of imagination, the plaintiff could have been denied the decree for partition at least in respect of the undisputed suit schedule items. On this sole ground, the judgment and decree of the trial court has to be set aside and the matter remanded. The first point for determination is answered accordingly.

9.The first defendant in his written statement stated that Sundara Vadivel Mudhaliyar had acquired properties out of his hard work in his own name, in common names, in the name of the firm, in the name of individuals and in the name of his wife Jayalakshmi Ammal. He averred in the written statement that after the demise of the father, all the properties were enjoyed by the plaintiff and D1 to D4 till 1982 and that in the year 1982, there was an oral partition.



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When such a specific stand has been taken by the first defendant, obviously, the burden to prove the same lay only on him. It is the first defendant who has asserted that the oral partition took place in the year 1982. Therefore, the burden to prove lay only on him. It is well settled that burden of proving a fact lies upon a person who asserts it. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Until such burden is discharged, the other party is not required to be called upon to prove his case (vide ***Rangammal vs. Kuppuswami, AIR 2011 SC 2344***). The first defendant was set exparte on 08.06.2016. He filed I.A No.288 of 2016 for setting aside the same. The application was allowed on the condition that the first defendant would depose as a witness. But the first defendant did not comply with the said conditional order.

10.It is true that the fifth defendant, the son of the first defendant entered the witness box and examined himself as DW.1. But he was hardly eight years old in the year 1982. Therefore, he was incompetent to prove the plea of oral partition. The court below ought to have drawn an adverse inference against the first defendant for not having entered the witness box. It is true that the plaintiff also did not enter the witness box but the same cannot be put against him. The Hon'ble Supreme Court in the decision reported in ***2025 INSC 1038***



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(R.Chowdamma (D) by LR and anr v. Venkatappa (D) by Lrs and anr) held as follows :

“53.. In civil proceedings, particularly where the facts lie exclusively within the personal knowledge of the party, the refusal to enter the witness box carries grave evidentiary consequences.

54. This principle is neither novel nor uncertain. This Court in **Vidhyadhar v. Manikrao and Anr. (1999) 3 SCC 573** held thus:

“17. Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct....”

In the present case, the first defendant appears to have consciously and deliberately chosen not to enter the witness box. This impels us to draw adverse presumption under Section 114(g) of the Indian Evidence Act.

11.We are of the view that this failure of the first defendant will operate to his prejudice. This is because the basic case of the plaintiff that all the suit schedule properties attract the character of a joint family properties was



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originally accepted by all the plaintiffs. The only defence put forth by the first defendant was that the oral partition took place amongst the five brothers. So long as this plea remained unestablished, the question of calling upon the plaintiff to prove his case did not arise at all. The burden of proof lay solely on the defendants 1 to 5. Since the first defendant did not enter the witness box, this defence plea should be treated as having failed. We hold that on account of the failure of the first defendant to enter the witness box, the plea of oral partition was not established. The second point for determination is answered accordingly.

12.It is true that the first defendant had purchased an item of property from the third defendant vide sale deed dated 18.05.1983 (Ex.A22). The court below infers from the above transaction that it is in tune with the terms of oral partition agreed to among the brothers on 18.05.1983. We have already held that the oral partition has not been established. The sole reason of the court below to come to the conclusion that the suit is barred by limitation is that it was not filed within twelve years from 18.05.1983. In as much as the foundation for this conclusion has already been undermined, this argument also falls. This point is also answered accordingly.



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13.The court below held that the suit is bad for partial partition. In a partition suit, all the parties occupy the same position of a plaintiff. If according to the contesting defendants, certain items had been left out, nothing stopped them from filing an IA for including the left out items in the suit schedule.(vide ***Solavaiammal vs Ezhumalai Goundar (2011) 5 LW 859***) Without doing so, they cannot rest content by putting forth a simple plea that the suit is bad for partial partition.

14.We, therefore, hold that the suit could not have been dismissed on the ground of partial partition. This point is also answered accordingly. To be fair to the learned counsel for the first defendant, he endeavoured his best to sustain the impugned judgment of the trial court. The court below failed to take note of the fact that in respect of most of the items, there is consensus among the parties on the issue of partition. Yet, the court below chose to non-suit the plaintiff. There was absolutely no justification for doing so. Secondly, the court below knew that the first defendant was obliged to enter the witness box. In fact, the exparte order made against him was set aside on condition that he would enter the witness box. He did not do so. Instead, his son deposed as DW.1. A witness can depose only as to facts which are within his knowledge. One cannot testify on things about which one has no personal knowledge. The



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entire testimony of the fifth defendant ought to have been rejected as incompetent. The court below was obliged to have drawn an adverse inference against the first defendant. The entire suit stands on the question as to whether there was oral partition in the year 1982 as claimed by the first defendant. The first defendant no doubt was a practicing Doctor. But he must have set up his medical practice only from 1965 onwards. He attained majority in the year 1961. Most of the suit schedule items were purchased before the first defendant could have started earning his independent income. In any event, the first defendant himself had conceded that all the suit items bore the character of joint hindu family property. His only defence is that the brothers had agreed to divide the same on certain basis. Having putforth such an assertion, the burden lay entirely on him to prove the same. He failed to do so. All these aspects were not taken note of by the court below. We, therefore, deem it fit and appropriate to set aside the impugned judgment and decree of the court below. It is accordingly set aside. The matter stands remanded to the file of the court below. We are aware that alienations have taken place in the meanwhile. The subsequent purchasers can definitely plead equity during final decree proceedings. Since the suit is of the year 2012 and the parties are also senior citizens, we request the court below to give prority for the disposal of the suit. Even though the first defendant did not avail the opportunity originally, we are



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of the view that opportunity of adducing further evidence may be given to both the parties.

15.All these first appeals are allowed. No costs. Connected miscellaneous petitions are closed.

[G.R.S., J.] & [K.R.S., J.]

28.08.2025

SKM

To

III Additional District Judge, Trichirappalli



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G.R.SWAMINATHAN, J

and

K.RAJASEKAR, J.

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