BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.11.2025
Delivered on : 18.11.2025

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE Mr.JUSTICE R.VIJAYAKUMAR

AS. (MD). Nos.130 and 131 of 2020
and CMP(MD) Nos.4596 and 4598 of 2020

AS(MD) No.130/2020

Ashokan ... Appellant/Plaintiff

Vs

Manickam Chettiar (died)

Umadevi

Sethu Ammal (Died) ... Respondent/2nd defendant

AS(MD) No.131/2020

Ashokan ... Appellant/defendant

Vs

Manickam Chettiar (died)

Umadevi

Sethu Ammal (Died) ... Respondent/Plaintiff

PRAYER :-Appeal suits filed under Order XLI Rule 1 and Section 96 of the Code of Civil Procedure against the judgment and decree dated 22.01.2020 in OS Nos.8/2011 and 28/2011 respectively on the file of the Principal District Judge, Sivagangai.

For Appellant : Mr.G.S.Ashok Adithyan

For Respondent : Mr.S.Manikandan

COMMON JUDGMENT

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

The plaintiff in OS No.8/2011 on the file of the Principal District Court at Sivagangai, aggrieved by the dismissal of the suit by judgment dated 22.01.2020 in OS No.8/2011, had filed AS (MD) No.130/2020.

2. The said plaintiff was the defendant in OS No.28/2011, and aggrieved by the decree passed in the said suit by the common judgment dated 22.01.2020, had filed AS(MD) No.131/2020.

3. O.S.No.8/2011 had been filed by the plaintiff Ashokan against his father Manikandan Chettiar and his sister Umadevi seeking partition and separate possession of 4/6th share in the suit properties. Pending the

suit, his father Manickam Chettiar/the first defendant died and his mother Sethu ammal was impleaded as a third defendant.

4. OS No.28/2011 had been filed by Umadevi/2nd defendant in OS No.8/2011 seeking declaration that she is the owner of the property described as 'A and B Schedules' and for recovery of possession of 'A' schedule property and for damages for use and occupation. The suit had been filed against her brother Ashokan.

5. By a common judgment dated 22.01.2020, OS No.8/2011 was dismissed and OS No.28/2011 was decreed. This necessitated the filing of the present two appeal suits.

6. **OS No.8/2011:**

It is the contention of the plaintiff that he and his father, Manickam Chettiar were members of a Hindu undivided joint family. He contended that his grandfather Muthandi Chettiyar started Dhanalakshmi Rice and Oil Mills at Singampunari in Sivagangai District and was running the same along with his four sons. In 1965, Muthandi Chettiyar leased out the said oil mill and shared the amount, which he had received in equal parts and handed them over to each one of his sons. Accordingly, the father of the plaintiff Manickam Chettiyar received Rs.30,000/- and also 20 sovereigns of gold.

6.1. It is contended by the plaintiff that out of the said amount, Manickam Chettiyar purchased the suit first item plot and also a small house and with the remaining amount started a cotton trading business. The plaintiff contended that he also joined in the business from when he was 10 years old. Thereafter in 1985, Muthandi Chettiyar sold Dhanalakshmi Rice and Oil Mills and according to the plaintiff, he had given Rs.80,000/- to each of his sons including Manickam Chettiyar. The plaintiff contended that this amount was also invested in the cotton trading business and out of the income earned, the house in suit first item was reconstructed and the 2nd and 3rd items of properties were purchased in the name of the 1st defendant/Manickam Chettiyar, according to the plaintiff, for the benefit of the joint family. The plaintiff claimed that therefore since the properties had been purchased from and out of the joint family nucleus, they must be considered as available for partition and separate possession. It had been further contended that the sister of the plaintiff Umadevi, the 2nd defendant had been given in marriage. But there were various disputes raised by her demanding share in the joint family properties. It had been stated that an agreement had also been reached on 29.10.1994. It had been further stated that the first defendant had however executed two settlement deeds with respect to 1st and 2nd items of suit properties in favour of the 2nd defendant/Umadevi. The plaintiff claimed that the said settlement deeds conferred no right or title to the 2nd defendant. It was under those circumstances, he filed the suit for partition.

7. The first defendant Manickam Chettiyar filed a written statement denying and disputing the claims of the plaintiffs. He denied that he received a sum of Rs.30,000/- and 20 sovereigns of gold from his father Muthandi Chettiyar in the year 1965 and further denied that he received a sum of Rs.80,000/- in 1985. He further contended that the cotton trading business was not started out of the said funds. He stated that Dhanalakshmi Rice and Oil Mills was jointly owned by Muthandi Chettiyar and his brothers. Muthandi Chettiyar sold his share to his

brother Veluchamy Chettiyar for a total consideration of Rs.1,25,000/- and out of the said amount, Muthandi Chettiyar retained Rs.25,000/- for his expenses and shared the balance of Rs.1,00,000/- with his four sons by giving a sum of Rs.25,000/- to each one of his sons. The first defendant contended that it was utilizing that amount of Rs.25,000/-, he started cotton trading business in a small scale also utilising the jewels in the family. He also sold the house, which was given as Sreedhana and out of the sale proceeds, reconstructed the house in the 1st item of suit properties. He denied the assertion of the plaintiff that the plaintiff assisted him in the business. He claimed that out of his own efforts, the 2nd and 3rd items of suit properties had been purchased. He, therefore, contended that he was the absolute owner of the 1st and 2nd items of suit properties and accordingly, since the plaintiff was not taking care of him and his daughter/the 2nd defendant was taking care of him, he had executed settlement deeds with respect to the other two properties on 12.11.2010 and 28.01.2011 respectively in favour of the 2nd defendant. He therefore claimed that the suit for partition should be dismissed.

8. The 2nd defendant, Uma devi, the sister of the plaintiff also filed a written statement that the properties were the absolute properties of the 1st defendant and that the settlement deeds conferred absolute title in her name over the 1st and 2nd item of suit properties. It is, therefore, contended that the plaintiff was not entitled for partition and separate possession.

9. On the basis of the above pleadings, the following issues were framed:

(i) whether the plaintiff is entitled to claim partition of ½ share in the suit properties; and

(ii) To what reliefs the parties are entitled.

10. **<u>OS NO.28/2011</u>**

The 2nd defendant in OS No.8/2011 Umadevi filed the suit seeking declaration of title over the suit schedule properties described as 'A' and 'B' on the basis of the settlement deeds executed in her favour by her father dated 12.11.2010 and 28.01.2011 respectively. She claimed that the defendant, her brother was not in possession of A schedule properties and therefore, claimed damages for use and occupation. She also sought permanent injunction to protect her possession over the 'B' schedule properties.

11. The defendant Ashokan, the plaintiff in OS No.8/2011 filed a written statement reiterating the averments made in the plaint in OS No. 8/2011. He denied that his sister was the absolute owner of the suit schedule properties and sought dismissal of the suit.

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

> *(i) Whether the plaintiff got title for suit items 1 and 2 by settlement deeds executed by her father Manickam Chettiar?*
>
> *(ii) Whether the defendant is entitled for share as stated in OS 8/2011 filed in this Court?*
>
> *(iii) Whether the defendant is a permissive occupier in the 'A' schedule property?*
>
> *(iv) Whether the plaintiff is entitled for mesne profits for 'A' schedule property?*
>
> *(v) Whether the plaintiff is entitled for recovery of possession for 'A' schedule property and permanent injunction for 'B' schedule property?*

(vi) What relief the plaintiff is entitled?

13. **The joint trial:**

Since the suit properties were the same and in OS No.8/2011 partition and separate possession was sought, whereas, the plaintiff in OS No.28/2011 sought a declaration that she was the absolute owner of the suit properties and since the documents relating to the respective claims were the same, joint trial was conducted in both the suits.

14. The suit in OS No.28/2011 was taken up as the lead suit.

15. The plaintiff Umadevi examined herself as P.W.1 and also examined the attestors to the two settlement deeds as P.W.2 and P.W.3. She also marked Exs.A1 to A11. Ex.A1 was the sale deed in favour of Manickam Chettiyar dated 22.10.1996. Exs. A3 and A4 were the settlement deeds executed by Manickam Chettiyar in favour of the plaintiff dated 28.01.2011 and 12.11.2010 respectively. Exs.A6 and A7 were property tax, name transfer proceedings and property tax receipts in the name of the plaintiff. Ex.A10 and Ex.A11 were the sale deeds in

favour of Manickam Chettiyar dated 06.07.2005 and 20.03.2000 respectively. The defendant Ashokan examined himself as D.W.1 and also examined two other witnesses D.W.2 and D.W.3. He also marked Exs. B1 to B18. The certificate of registration in the name of the plaintiff was marked as Ex.B2 and Ex.B3. The sale deeds in favour of Manickam Chettiyar dated 24.10.1996, 20.03.2000, 06.07.2005 and 03.05.2016 were marked as Ex.B7 to B10 respectively. The certified copy of the partition deeds between Muthandi Chettiyar and his brothers dated 30.03.1985 were marked as Ex.B13 and Ex.B14. The receipts for payment made by the defendant was marked as Ex.B15 series and the receipts in the name of Manickam Chettiyar relating to electricity payment, house tax payment and water tax payment were marked as Ex.B16 to B18.

16. **Common judgment:**

The learned Principal District Judge examined the averments made in the pleadings and also the oral and documentary evidence adduced. He held that there was no evidence to establish the averment that Muthandi Chettiyar had shared Rs.30,000/- to each of his sons including

Manickam Chettiyar and had given him 20 sovereigns of gold in the year 1985. He also noted that during cross-examination, D.W.1 admitted that he has no personal knowledge of the said fact. The learned trial Judge further stated that Ex.B2, the license in the name of the defendant would not come to his rescue. He doubted the credibility of the said document. He further held that there was no document or evidence adduced to show that the cotton trading business was a joint family business and that the said business had started out of the ancestral nucleus.

17. The learned trial Judge also rejected Ex.B4, which was an unregistered document and held that it was a document, which required registration. He further rejected the evidence of D.W.2 and D.W.3 by stating that there was no document produced to substantiate their claim. It had been further held that there was no evidence produced to show that the properties were purchased by the first defendant out of the ancestral nucleus. He further held that the Binami Transaction (Prohibition Act) would come into play and would be a bar against the defendant seeking a share in the properties under Sections 3 and 4 of the said Act. In view of the said discussions, the learned trial Judge held that the plaintiff in OS

No.8/2011 would not be entitled to seek partition and separate possession.

18. With respect to the competency or authority of Manickam Chettiyar to execute settlement deeds, the learned trial Judge held that since the properties were in his name, he had every right and title to execute the settlement deeds. He further held that the settlement deeds have been proved in the manner known to law by examination of P.W.2 and P.W.3. He, therefore, held that the properties will have to be declared as the absolute properties of the plaintiff in OS No.28/2011. In view of the findings OS No.8/2011 was dismissed and OS No.28/2011 was decreed,

19. **AS (MD) Nos.130 and 131 of 2020:**

Aggrieved by the findings of the learned trial Judge in the said two suits, these appeals have been filed by the plaintiff in OS No.8/2011 and defendant in OS No.28/2011.

20. The learned counsel for the appellant pointed out that the contention of the first defendant was that he had started the cotton trading business from and out of Rs.25,000/-, which had been given by his father Manickam Chettiyar, who had received a sum of Rs.1,25,000/- by sale of his right in Dhanalakshmi Rice and Oil Mills to his brother and had shared the sale consideration received among his sons. The learned counsel stated that therefore this constituted an ancestral nucleus and any income and every income obtained from the cotton trading business should be considered as part of ancestral income derived from the balance amount paid to Manickam Chettiyar by his father and therefore contended that every property purchased from the income of the said cotton trading business should be considered as joint family property. The learned counsel contended that therefore the learned trial Judge had misdirected himself in not granting the decree of partition and in upholding the right of Manickam Chettiyar to execute the settlement deeds. He therefore, urged the appeals should be allowed.

21. The learned counsel for the respondent, however, contended that the receipt of Rs.25,000/- by Manickam Chettiyar from his father can

never be said to constitute an ancestral nucleus. It was only an amount paid by the father to his sons. He contended that the income generated from the cotton trading business was therefore the individual income of Manickam Chettiyar and out of the said income, Manickam Chettiyar had purchased the suit properties. Later being the absolute owner, he had executed two settlement deeds in favour of the respondent, which granted absolute title to the respondent in both the suit properties. The learned counsel therefore, contended that the trial Court had correctly appreciated the evidence advanced and had correctly dismissed OS No. 8/2011 and decreed OS No.28/2011.

22. We have carefully considered the arguments advanced on either side and also perused the materials available on record.

23. The following points arise for determination:

(i) Whether the trial Court was correct in holding that the cotton trading business of Manickam Chettiyar was his individual business and that the properties purchased from the income of the said business were the

absolute properties of Manickam Chettiyar; and

(ii) Whether the trial Court had come to a correct conclusion that the appellant herein was not entitled for partition and separate possession of the suit properties.

24. Since the facts relating to both the points framed for determination overlapped, they are taken up together for discussions and determination.

25. The relationship among the parties are not in dispute. The appellant Ashokan and the respondent Umadevi are siblings. Their father is Manickam Chettiyar. It is the case of the appellant that his paternal grandfather Muthandi Chettiyar was running business in the name and style of Dhanalakshmi Rice and Oil Mills along with his brothers. According to the appellant, Muthandi Chettiyar had sold his share to his brother for a total sum of Rs.1,25,000/- and out of the said amount, had given a sum of Rs.25,000/- to Manickam Chettiyar. It is contended that it was from and out of the particular amount, the cotton trading business was started by Manickam Chettiyar and therefore, the learned counsel for

the appellant asserted that any income derived from the said business should be considered as joint family income and any property purchased out of the said income, should be considered as joint family property giving right to all co-parceners in the family, who were at that time Manickam Chettiyar and the appellant Ashokan. We hold that this argument does not withstand the scrutiny of this Court.

26. It is a fact that Muthandi Chettiyar was running Dhanalakshmi Rice and Oil Mills along with his brothers. It is the further fact that he had sold his share to his brother and received a sum of Rs.1,25,000/-. It is the further fact that he had given R.25,000/- to Manickam Chettiyar. It is a further fact that, the amount was also used for starting the cotton trading business. But the moot question is whether the sum of Rs.25,000/- received by Manickam Chettiyar should be considered as forming a joint family nucleus. In our considered opinion, it would not. It was just the handing over of part of the sale consideration received by a father to his son. There is no ancestral nucleus, which is formed out of the same.

27. The appellant will not only have to prove that the total amount was used for starting the cotton trading business, but also to prove that there was surplus ancestral nucleus to enable the business to be started and to further enable the properties to be purchased from and out of that ancestral nucleus. In the instant case, the cotton trade business started by Manickam Chettiyar was with the portion of the sum of Rs.25,000/- he had received from his father. That would not form part of the ancestral nucleus. He had used a portion of amount received from his father. His father Muthandi Chettiyar had received it as sale consideration for sale of his share in the Oil Mills. When he had received the sale consideration, it became his absolute income. It was not part of any joint family income. He had every right to deal with the amount, which he had received as sale consideration. He had handed over a sum of Rs.25,000/- to his son Manickam Chettiyar. When Manickam Chettiyar received that particular amount, it became his absolute amount and did not form part of family nucleus. The learned trial Judge had come to a correct conclusion that there was no evidence adduced by the appellant herein about the joint family nucleus.

28. From and out of the income received from the cotton trading business, Manickam Chettiyar purchased the suit schedule properties. He had purchased the same in his name. Those properties naturally vested with him absolutely. They can never, at any stretch of imagination, be categorized as joint family properties. Manickam Chettiyar had every right, title and authority to deal with the same as and how he pleases. He had thought it fit to execute two separate settlement deeds in favour of the respondent herein. Accordingly, he had executed the settlement deeds, which had been produced as Ex.A3 and Ex.A4 dated 28.01.2011 and 12.11.2010 respectively.

29. Section 68 of the Evidence Act 1872 [Section 68 of the Bharatiya Sakshya Adhiniyam, 2023] is as follows:

> ***"68. Proof of execution of document required by law to be attested.***
>
> *If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence;*

:[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.] [Inserted by Act 31 of 1926, Section 2.]"

30. This requires settlement deeds to be proved in the manner known to law by examining one of the attesting witnesses. Accordingly, P.Ws.2 and 3 have been examined to prove the execution of the two settlement deeds Ex.A3 and Ex.A4. The said witnesses have withstood cross-examination. The said settlement deeds have been proved in the manner known to law. It conveyed absolute title to the respondent herein. Those settlement deeds are binding on the appellant herein. They had been executed by Manickam Chettiyar lawfully. There has been no evidence adduced by the appellant that the said settlement deeds were the result of coercion or undue influence. The averments made regarding compromise arrived at with the respondent have to be rejected, since they did not convey right, title and authority of Manickam

Chettiyar to execute settlement deeds in favour of the respondent.

31. We, therefore, hold that the learned trial Judge had come to a correct conclusion that the settlement deeds have been executed in the manner known to law and have been proved in the manner known to law. They conveyed title absolutely in favour of the respondent. We, therefore, further hold that the appellant herein is not entitled for partition and separate possession as claimed. The points framed for determination are answered accordingly.

32. In the result,

(a) AS(MD) No.130/2020 stands dismissed;

(b) AS(MD) No.131/2020 also stands dismissed;

However, there shall be no order as to costs. Consequently connected Miscellaneous Petitions are closed.

[C.V.K,J] **[R.V,J]**
18.11.2025

NCC : Yes
Index : Yes
RR

To
1.The Principal District Judge, Sivagangai.

2.VR Section
Madurai Bench of Madras High Court,Madurai.

C.V.KARTHIKEYAN J.
AND
R.VIJAYAKUMAR, J.

RR

Pre-delivery common judgment
made in
AS(MD) Nos.130 and 131 of 2020

Date : 18.11.2025