

AS.(MD)No.131 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.02.2025

Pronounced On : 03.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

A.S.(MD)No.131 of 2019
and
Cross Objection No.4 of 2025
and
CMP.(MD)Nos.5392, 2077 of 2021 and 905 of 2025

A.S.(MD)No.131 of 2019

Mohamed Najmudin

... Appellant

Vs.

1.Syed Mohammed Sulaiman

2.Mohamed Malik Ibrahim

... Respondents

PRAYER : Appeal is filed under Order 41 Rule 1 r/w Section 96 of the Code of Civil Procedure against the judgment and decree dated 09.02.2019 made in O.S.No.81 of 2014 on the file of the learned Principal District Judge, Dindigul, Dindigul District.

Cross Objection (MD)No.4 of 2025

1.Syed Mohammed Sulaiman

... Cross Objector/1st respondent

Vs.



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1.Mohamed Najmudin

...1st Respondent/Appellant

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2.Mohamed Malik Ibrahim

... 2nd Respondent/2nd Respondent

For Appellant : Mr.G.Gomathi Sankar

For Respondents : Mr.K.Mohanamurali

JUDGMENT

(Judgment of this Court was delivered by **M.JOTHIRAMAN, J.**)

The unsuccessful Appellant/first defendant has preferred the present appeal. The respondent/plaintiff has preferred cross-objection in Cros.Obj(MD)No.4 of 2025 in A.S.(MD)No.131 of 2019. For the sake of convenience, the parties are referred to as their rank before the trial Court.

2.Brief case of the plaintiff is as follows:-

The plaintiff filed the suit for partition, declaration and injunction. The plaintiff and the first defendant are brothers. The suit properties and other properties were originally owned by the father of the plaintiff and the first defendant namely Jamal Mohamed. After the death of the Jamal



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Mohamed, his wife Sheik Sulthan Beevi, daughters Samsunisha, Sahitha Banu and Sabur Kamila and her sons are in joint possession and enjoyment of the properties. They have entered into partition on 20.05.2008 and the parties have been in possession and enjoyment of the properties of their respective shares allotted to them. In the said partition, 'B' schedule properties were allotted to the plaintiff and the first defendant. The suit 'A' schedule and 'B' schedule properties have been in joint possession and enjoyment of the plaintiff and the first defendant. Three months prior to the filling of the suit, the first defendant was neither rendering the accounts nor paying the share of the income. In order to defeat the rights of the plaintiff, the first defendant has executed a sale deed dated 19.08.2014 in favour of the second defendant fraudulently. The defendants and their men had attempted to oust the plaintiff from the suit properties on 25.08.2014 and the said attempts were thwarted by the plaintiff. Hence, the suit.

3. Brief Case of the defendants is as follows:-

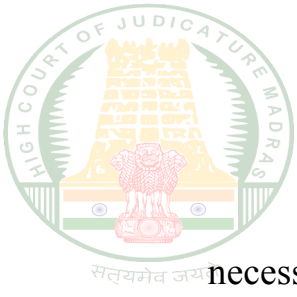
The partition deed dated 20.05.2008 entered between the family members is admitted. Originally the first defendant's father is having



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ground nut mill in the 'B' schedule properties and till their father's life time, they are doing the same business with their father. Even after the partition, the plaintiff and the first defendant were doing the same ground nut business. The plaintiff and the first defendant had obtained loan of Rs.9,30,000/- in their joint name from City Union Bank by mortgaging 'A' schedule properties and also obtained cash credit facilities to an extent of Rs.15,00,000/- by mortgaging 'B' schedule properties. Due to the heavy loss, their liabilities went up to Rs.58,00,000/- excluding the bank loans. The plaintiff had given his idea to sell the 'A' schedule property. The plaintiff had approached his relative Jallaluddin for selling lands and he had transferred a sum of Rs.5,00,000/- in the joint account of the plaintiff and the first defendant and they agreed to get the remaining amount of Rs.7,42,000/- from the second defendant and Jallaluddin to discharge the bank loan. The plaintiff had failed to come to the Sub Registrar Office to execute the sale deed. The first defendant had sold the undivided $\frac{1}{2}$ share in 'A' schedule properties in favour of the second defendant vide sale deed dated 19.08.2014. Entire sale consideration for the 'A' schedule property was received to discharge the bank loan. In the present suit, the said Jalaludeen is also one of the



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necessary party. Hence, the suit is hit under non-joinder of necessary parties.

4. Based on the above pleadings, the trial Court framed the following issues:-

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

2. Whether the plaintiff is entitled to a preliminary decree for partition as prayed for?

3. Whether the plaintiff is entitled for declaration that the sale deed dated 19.08.2014 executed by the first defendant in favour of the second defendant as null and void?

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

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

During trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and his mother was examined as P.W.2 and Ex.A1 to Ex.A6 were marked. On the side of the defendants, the first defendant was examined himself as D.W.1, witness Thiru.S.Abdul Halick was examined as D.W.2 and witness Thiru.Jallaludeen was examined as D.W.3 and Ex.B1 to Ex.B6 were marked.



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5. Findings of the Trial Court:-

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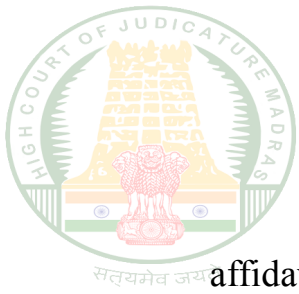
(i) The first defendant has not produced any documents to show that the Bank loans and private loans incurred by him and the plaintiff.

(ii) D.W.3 would admit his cross examination that the plaintiff has not executed any sale agreement in his favour. Similarly D.W.2 would admit that the plaintiff has not given anything in writing that he had agreed to repay his share loan amount.

(iii) In Ex.A2, the first defendant had only sold his undivided $\frac{1}{2}$ share in 'A' schedule properties, but, he is not entitled to sell any specific portion of the properties as there was no partition between the parties.

(iv) There was no evidence to show that the the plaintiff is in actual possession and enjoyment of the suit properties along with first defendant and the plaintiff is not entitled to get the relief of permanent injunction.

6. During pendency of this appeal, the first respondent/plaintiff has filed an application in CMP.(MD)No.2077 of 2021 in A.S.(MD)No.131 of 2019 under Order 41 Rule 27 of the Code of Civil Procedure to receive additional documents in A.S.(MD)No.131 of 2019. In the



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affidavit it is stated that when the petition in CMP(MD)No.6730 of 2019 in A.S.(MD)No.131 of 2019 came up for hearing on 09.09.2020, this Court was pleased to pass an order passing final decree alone is stayed until further orders. The plaintiff has been restricted by the first defendant, though he got a preliminary decree. The documents, which are sought to be received, are crucial to decide the appeal and the cross objection, unless the same is not allowed, the plaintiff will be put great hardship. The said petition has been filed to receive the following documents:-

S.No.	Date	Description
01.	14.01.2020	Acknowledgement issued by the Central Bank of India, Dindigul.
02.	11.03.2020	Account statement of ICICI Bank, Pallapati Branch of Syed Mohammed Sulaiman.
03.	11.03.2020	Receipt issued by R.Subramanian
04.	16.03.2020	Receipt issued by Union Bank of India
05.	01.07.2020	Police complaint given by the Syed Mohammed Sulaiman to the Inspector of Police, Dindigul Taluk.
06.	01.07.2020	Online receipt of Police complaint.

Similarly, the first defendant has filed an application in CMP.(MD) No.905 of 2025 in A.S.(MD)No.131 of 2019 to receive additional documents. It is stated in the affidavit the following documents were not



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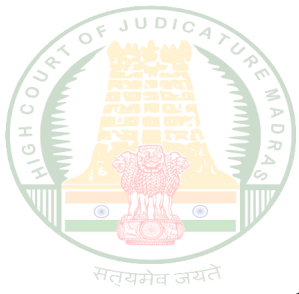
marked before the trial Court by their erstwhile counsel: i)Bank Pass Book (Original), ii)Loan Sanction Letter given by the Union Bank of India, Dindigul Branch (Original) and iii)Closing Letter for Joint Account executed by first defendant and the first plaintiff (Original). If the said documents are not received, then, the first defendant will be put to irreparable hardship. Both side have filed their objections to receive the additional documents in this appeal and cross objection.

7.At this juncture, it is relevant to read the Order 41 Rule 27 of the Code of Civil Procedure, as hereunder:-

27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be



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produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

The reasons stated in the affidavit filed by the plaintiff and the first defendant are not sufficient and not attracted the terms stipulated under Order 41 Rule 27 of the Code of Civil Procedure. They have failed to establish the conditions stipulated under Order 41 Rule 27 that the additional documents are most relevant material to the present case. The additional documents must be necessary to enable the Court to decide the issue. The additional documents must not have been available before the trial Court during trial proceedings. They have not shown that no fault on them, for not producing the aforesaid additional documents before the trial Court. We are of the view that there is no necessity to receive the said documents to decide the issues involved in this appeal and the cross objection. Therefore, the civil miscellaneous petitions in C.M.P. (MD)Nos.2077 of 2021 & 905 of 2025 in A.S.(MD)No.131 of 2019 are dismissed.



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8.The points for determination arises in this appeal is that,

(i)Whether the plaintiff is entitled for partition and permanent injunction as prayed for in the suit?

(ii)Whether the sale deed executed by the first defendant in favour of the second defendant is valid or not?

9.The learned counsel appearing for the first defendant would submit that the suit property already partitioned between the parties in the year 2008 itself. Therefore, the plaintiff is not having right to file the suit for partition once again. The father of the plaintiff and the first defendant has borrowed a loan of Rs.58,00,000/- and he died without repaying the same. After partition under Ex.A1, the plaintiff and the first defendant jointly running the business in 'B' schedule property and borrowed the loan and therefore, they have to jointly discharge their loan. He would further submit his arguments based on the several grounds raised in this appeal.

10.The learned counsel appearing for the plaintiff in cross-objection No.4 of 2025 would submit that the trial Court was passed based on the evidence adduced on both side. While so, the plaintiff is



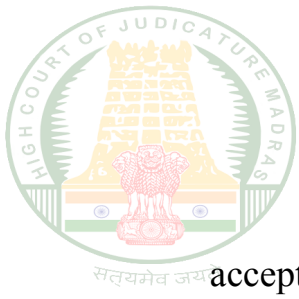
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entitled the decree for permanent injunction. He would further submit his arguments based on the grounds raised in the cross-objection.

11. We have considered the submissions made on either side and perused the materials available in the record.

12. It is not in dispute that one Jamal Mohamed and his wife Sheik Sulthan Beevi have two sons, namely, Mohamed Najmudin-first defendant and Syed Mohammed Sulaiman-plaintiff and three daughters namely, Samsunisha, Sahitha Banu and Sabur Kamila. The said Jamal Mohamed died on 17.10.2006. It is also not in dispute that the plaintiff and the first defendant have obtained the properties through Ex.A1 partition deed. The suit 'A' schedule properties are agricultural lands and suit 'B' schedule properties are ground-nut oil mill buildings and the related lands, machineries. According to the plaintiff, the first defendant had initially had maintained the mill business and was rendering proper accounts to the plaintiff and paid his share of profits regularly. While so, in the year 2014, the first defendant under the influence of the third parties, he had stopped rendering accounts and he compelled the plaintiff to join him in selling 'A' schedule properties. The plaintiff had refused to



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accept the demand and the first defendant, without consent and knowledge of the plaintiff, had sold the $\frac{1}{2}$ share in 'A' schedule properties to the second defendant under Ex.A2 sale deed. Since there was no partition effected between them, the first defendant has no right to execute any sale deed. It is the specific case of the first defendant that after the death of their father, the had continued their father's business. The plaintiff and the first defendant had purchased two other properties. They had jointly obtained cash credit facilities to the extent of Rs.15,00,000/- and obtained mortgage loan at Rs.9,30,000/- from Union Bank of India and also other private loans to the tune of Rs.58,00,000/-. The plaintiff has to bear $\frac{1}{2}$ share in the business loans and he agreed to sell 'A' schedule to clear some debts. But the plaintiff has not turned up to execute the sale deed and hence, the first defendant had executed Ex.A2 sale deed in respect of his undivided share in 'A' schedule property. It is an admitted fact that there is no partition between the plaintiff and the first defendant in respect of the suit properties under Ex.A1 partition and the first defendant himself had admitted that they have not partitioned the suit properties and they are owning jointly. From the above pleadings and admissions made by the parties, it is clear

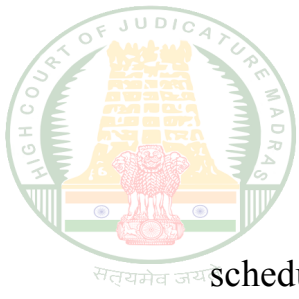


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that the plaintiff and the first defendant are entitled to get $\frac{1}{2}$ share each in the suit properties.

13. According to the plaintiff, he is not aware of the loans or debts. According to the first defendant, they have obtained the loan jointly for their joint business. Burden of proof lies on the first defendant to prove that the Bank loan and other private loans were availed for the benefits of their joint business. The first defendant, in his cross-examination has deposed that there is a recital found in Ex.A1 partition deed that after partition, the plaintiff and the first defendant have to repay the loan amount obtained by them individually. He admits that he has not filed any document to show that they have joint account in a Bank and he also admits that they are submitting income tax returns individually. Further, he admits that he has not file any document to show that he is doing business in suit 'B' schedule property and he has not filed any documents to show that they were doing business jointly. Ex.B5 is the memorandum of deposition of title deeds executed by the plaintiff and the first defendant in favour of the Union Bank of India dated 23.10.2009, wherein, it has been stated that by confirming the deposit already made on 22.10.2009 with intent to create an equitable mortgage over the 'B'



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schedule properties for the purpose of securing repayment to the Bank of all the documents owing to the Bank under advance made to J.Mohamed Najmudeen by the Bank up to the limit of Rs.15,00,000/-. It is clear that Ex.B5 refers to the loan taken by the first defendant alone. Ex.B6 is receipt, wherein, it has been stated that Bank has received the entire loan amount of Rs.9,30,000/- with interest, which was obtained on 09.08.2010, by depositing title deeds in respect of suit 'A' schedule properties. Admittedly, the first defendant has not produced memorandum of deposit of title deeds executed by the plaintiff and the first defendant in respect of suit 'A' schedule properties. Therefore, it is clear that the first defendant has not produced any valid documents to prove that the Bank loans and private loans were obtained jointly by the plaintiff and the first defendant.

14.It is the case of the first defendant that he had sold his undivided $\frac{1}{2}$ share in 'A' schedule properties. It is settled law that the co-owner can sell his undivided share to the third parties. But, in the instant case, the sale effected by the first defendant in favour of the second defendant, does not bind the plaintiff nor his $\frac{1}{2}$ share in 'A' schedule properties. It is stated in the plaint that the plaintiff and the first

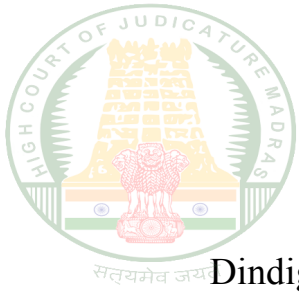


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defendant are doing joint business and that the first defendant has been paying agricultural produce and other income from the suit properties to the plaintiff. As a genuine principle, an injunction cannot be granted against co-sharers or co-partners in a partition suit, as it would amount to granting a decree in suit for partition without trial. In a reported judgment in **2016 (8) SCC 677, K.Kamalavalli Vs. K.Rajalakshmi**, it has been held by the Hon'ble Supreme Court of India that an injunction cannot be granted against the co-sharers (or) co-partners in a partition suit, except in case of waste or destruction of property. In this regard, the findings of the trial Court is that absolutely there is no evidence to show that the plaintiff is in actual possession and enjoyment of the suit properties along with the first defendant, therefore, the plaintiff is not entitled to get the relief of permanent injunction. In the light of the above discussions, there is no reasons to interfere with the judgment and decree of the trial Court. The points are answered accordingly.

16.In the result, the First Appeal and the cross objection are dismissed and the judgment and decree dated 09.02.2019 made in O.S.No.81 of 2014 on the file of the learned Principal District Judge,



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Dindigul, Dindigul District is hereby confirmed. Considering the relationship between the parties, the parties are directed to bare their own costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (M.J.R., J.)
03.03.2025

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To

The Principal District Judge,
Dindigul,
Dindigul District.



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AS.(MD)No.131 of 2019

G.R.SWAMINATHAN, J.
AND
M.JOTHIRAMAN, J.

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Pre-Delivery Judgment made in
A.S.(MD)No.131 of 2019

03.03.2025