

S.A.(MD) No.752 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 29.08.2025

CORAM:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

**S.A.(MD) No.752 of 2022
and
CMP(MD)No.11173 of 2022**

1. Petchimuthu Konar(Died)
S/o. Subbiah Konar, No.541/396,
Karunkaalamman Kovil Sannathi Street,
Kulasekarapattinam Post,
Kulasekarapattinam Village,
Tiruchendur Taluk,
Thoothukudi District.
... Appellant / Appellant /Defendant
2. Lakshmi,
W/o. Late Petchimuthu Konar, No.541/396,
Karunkaalamman Kovil Sannathi Street,
Kulasekarapattinam Post,
Kulasekarapattinam Village,
Tiruchendur Taluk,
Thoothukudi District.
3. Vattalthagam,
D/o. Late Petchimuthu Konar, No.541/396,
Karunkaalamman Kovil Sannathi Street,
Kulasekarapattinam Post,
Kulasekarapattinam Village,
Tiruchendur Taluk,
Thoothukudi District.



S.A.(MD) No.752 of 2022

WEB COPY

4. Gengeshwari,
D/o. Late Petchimuthu Konar, No.541/396,
Karunkaalamman Kovil Sannathi Street,
Kulasekarapattinam Post,
Kulasekarapattinam Village,
Tiruchendur Taluk,
Thoothukudi District.
5. Balasubramaniyan,
S/o. Late Petchimuthu Konar, No.541/396,
Karunkaalamman Kovil Sannathi Street,
Kulasekarapattinam Post,
Kulasekarapattinam Village,
Tiruchendur Taluk,
Thoothukudi District.
6. Kamalakala,
D/o. Late Petchimuthu Konar, No.541/396,
Karunkaalamman Kovil Sannathi Street,
Kulasekarapattinam Post,
Kulasekarapattinam Village,
Tiruchendur Taluk,
Thoothukudi District.
7. Veeraperumal,
S/o. Late Petchimuthu Konar, No.541/396,
Karunkaalamman Kovil Sannathi Street,
Kulasekarapattinam Post,
Kulasekarapattinam Village,
Tiruchendur Taluk,
Thoothukudi District.
8. Sathya Bama,
D/o. Late Petchimuthu Konar, No.541/396,
Karunkaalamman Kovil Sannathi Street,
Kulasekarapattinam Post,
Kulasekarapattinam Village,
Tiruchendur Taluk,
Thoothukudi District



S.A.(MD) No.752 of 2022

WEB COPY

(Appellants 2 to 8 are brought on record as LR's of the deceased sole appellant vide Court order dated 03.06.2024 made in CMP(MD)Nos.5913 & 5918/2024 in SA(MD)No.752/2022 by GIJ)

... Appellants/LR's of defendant

Vs.

1. S.H. Beema Beevi,
W/o. N.M.S. Sahul Hameed, 43/95,
Kothuvaapalli North Street,
Kulasekarapattinam Post, Kulasekarapattinam
Village, Tiruchendur Taluk, Thoothukudi District.
2. Muthurabeela Bayisha Beham,
W/o. O.S.M. Nehmathulla, No.20, Kalampudhu
Street, Udankudi, Christhiya Nagaram Post,
Udankudi Village, Tiruchendur Taluk,
Thoothukudi District.
3. Navsath Malik Sha,
W/o. N.M.S. Sahul Hameed, H. Fathima Kameela,
No.44/94, Kothuvaapalli North Street,
Kulasekarapattinam Post, Kulasekarapattinam
Villag, Tiruchendur.

...Respondents / Respondents /Plaintiffs

PRAYER in SA:Second Appeal filed Under Section 100 of Civil Procedure Code, to call for the records the relating to the judgment and decree dated 28.02.2020 made in A.S.No.78 of 2018 on the file of the Subordinate Judge Tiruchendur confirming the judgment and decree dated 05-04-2018 made in O.S.No.10 of 2016 on the file of the District Munsif Tiruchendur and set aside the same and allow the Second Appeal and pass such further order or other orders as this Hon'ble Court may deem fit and proper in the case and thus render justice.



S.A.(MD) No.752 of 2022

PRAYER in CMP:

WEB COPY

To pass an order of stay of all further proceedings by way of final decree in O.S.No.10 of 2016 dated 05.04.2016 dated 05.04.2018 pending disposal of the above second appeal and thus render justice.

For Appellants : Mr. P.T.Ramesh Raja, Advocate

For Respondents : Mr.M.P.Senthil, Advocate
for R1 to R3

JUDGMENT

Heard.

2. This second appeal is directed against the judgment and decree dated 28.02.2020 made in A.S.No.78 of 2018 on the file of the Subordinate Judge Tiruchendur confirming the judgment and decree dated 05-04-2018 made in O.S.No.10 of 2016 on the file of the District Munsif Tiruchendur.

3. For the sake of convenience, the parties would be referred to as per their ranks before the trial Court.



S.A.(MD) No.752 of 2022

4. The plaintiffs, being the widow and children of late N.M.S.

WEB COPY Sahul Hameed, claimed that he was the brother of N.M.S. Mohamed Kavdhu, who had purchased the suit property in 1969 and passed away in 1991 as a Muslim. According to them, upon his death, the estate devolved in accordance with Mohammedan law, whereby his widow became entitled to 9/72 share, each of his two daughters to 24/72 share, and his brother, Sahul Hameed, as the residuary heir, to 15/72 share. Since Sahul Hameed died in 1992, his heirs, namely the plaintiffs, claimed succession to his share. Their grievance was that the defendant, who had purchased the entire property in 2004 from Mohamed Kavdhu's widow and daughters, ignored their lawful entitlement and asserted absolute ownership. The plaintiffs therefore sought partition and separate possession of their 15/72 share.

5. The defendant contested the suit by denying the very relationship between Mohamed Kavdhu and Sahul Hameed, asserting that they were not brothers. He further maintained that, having purchased the property in its entirety from the widow and daughters of Mohamed Kavdhu, he had acquired absolute title. On that basis, he contended that the plaintiffs had no manner of right in the suit property.



S.A.(MD) No.752 of 2022

6. The trial court framed the main issues as to whether

WEB COM Mohamed Kavdhu and Sahul Hameed were brothers and whether the plaintiffs were entitled to a share under Mohammedan law. Relying on death certificates, prior decrees in O.S. No.66 of 1996, partition deeds, and revenue records, it found that the brotherhood between Kavdhu and Sahul Hameed stood established. Applying the principles of Mohammedan law of succession, the court held that the widow of Kavdhu was entitled to 9/72 share, each of his two daughters to 24/72 share, and the remaining 15/72 share devolved upon his brother, Sahul Hameed, as residuary heir. Since Sahul Hameed had died in 1992, his heirs, namely the plaintiffs, succeeded to his 15/72 share. The court further held that the defendant's sale deed of 2004 was valid only to the extent of the shares of the vendors—the widow and daughters—and could not affect the plaintiffs' entitlement. The suit was therefore decreed for partition. On appeal, the findings and decree of the trial court were affirmed, and the appeal came to be dismissed.

7. At the time of hearing, the learned counsel for the appellant confined his submissions to the plea of non-joinder of parties. He contended that the vendors of the appellant, from whom he had



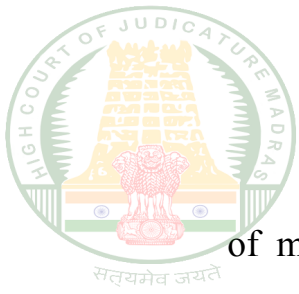
S.A.(MD) No.752 of 2022

WEB COPY

purchased the property, were not impleaded in the suit, and that such omission amounted to non-joinder of necessary parties, rendering the very suit for partition not maintainable. He further urged that, since the objection went to the root of maintainability and involved a pure question of law, it could be raised at any stage of the proceedings, even in appeal, irrespective of whether it had been pleaded in the written statement or set forth in the grounds of appeal.

8. The appellant, as defendant in the suit, had not raised the plea of non-joinder either in his written statement or at any stage before the trial court. He did not urge the same before the first appellate court, nor was it even set out as a ground in the memorandum of this Second Appeal. It is only for the first time, at the stage of admission of the Second Appeal, that the plea of non-joinder was sought to be raised and argued.

9. It is not in dispute that the plaintiffs have instituted the suit for partition of their share by impleading the purchaser, namely the present appellant, as defendant. The vendors, however, were not added as parties. Under Order I Rule 9 CPC no suit shall be defeated by reason



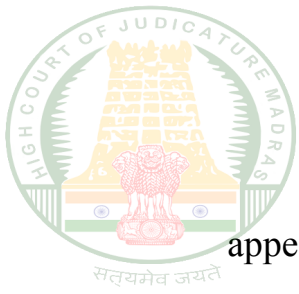
S.A.(MD) No.752 of 2022

WEB COPY

of mis-joinder or non-joinder of parties, except in the case of non-joinder of a necessary party. Equally, Order I Rule 13 CPC mandates that any objection on the ground of non-joinder must be taken at the earliest opportunity, and in every case before the settlement of issues; failing which, such objection shall be deemed to have been waived.

10. In the present case, the alienee, namely the appellant/defendant, has been impleaded and is before the Court. In law, an alienee effectively represents the interest of the alienor, and a decree for partition passed against the alienee is binding upon him. The absence of the vendors, therefore, does not render the decree inoperative or ineffective. Moreover, as on the date of institution of the suit, the alienees had no subsisting interest in the suit properties. Consequently, the non-joinder of the vendors of the appellant, at the highest, would amount only to non-joinder of a proper party, but cannot be regarded as non-joinder of a necessary party so as to vitiate the proceedings.

11. In view of the foregoing discussion, the plea of non-joinder, not having been raised either before the trial court or the first



S.A.(MD) No.752 of 2022

WEB COPY

appellate court, cannot be permitted to be urged for the first time in second appeal. The objection stands waived under the mandate of Order I Rule 13 CPC. The contention of the appellant is, therefore, devoid of merit and unsustainable.

12. Accordingly, the Second Appeal stands dismissed at the admission stage. In consequence, the connected miscellaneous petition is closed. There shall be no order as to costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
LS

29.08.2025

Copy to:

- 1.The Subordinate Judge,
Tiruchendur.
- 2.The District Munsif,
Tiruchendur
- 3.The Section Officer
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

9/10



WEB COPY



S.A.(MD) No.752 of 2022

DR.A.D.MARIA CLETE, J.

LS

S.A.(MD) No.752 of 2022

29.08.2025