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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14 .02.2025

CORAM:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**
AND
THE HON'BLE **MR JUSTICE K.K.RAMAKRISHNAN**

A.S(MD)No.149 of 2015
and
M.P(MD)Nos.1, 2 and 4 of 2015
and
C.M.P(MD)Nos.939 of 2023, 1672, 7116 and 14557 of 2024

- 1.Kumarasamy(died),
- 2.Ramasamy @ Anantharaman ...Appellants/Defendants 6 and 7
- 3.Mathiarasai
- 4.Bhavani
- 5.Chithradevi
- 6.Savithri
- 7.Anbalagan
- 8.Tamilarasan
- 9.VijayaBanu
- 10.Nagarajan
- 11.Dhanalakshmi
- 12.StalinRaj ...Appellants 3 to 12/Third parties



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(Appellants 3 to 9 are brought on record as legal representatives of the deceased first appellant as per order of this Court made in C.M.P(MD)No.116 of 2023 in A.S(MD)No. 149 of 2015, dated 19.01.2023)

(Appellants 10 to 12 now transposed are brought on record as legal representatives of the deceased Manimegalai/legal representative of the deceased first appellant as per order of this Court made in C.M.P(MD)Nos.5338,5342 and 5345 of 2024 in A.S. (MD)No.149 of 2015, dated 26.4.2024)

(Memo dated 25.09.2024 is recorded to the effect that the appellants 10 to 13 are transposed as respondents 13 to 15 as per order of this court made in A.S(MD)No.149 of 2015, dated 26.09.2024.

(Appellants 10 to 12 are brought on record as legal representatives of the deceased Manimegalai/legal representative of the deceased first appellant as per order of this Court made in C.M.P(MD)Nos.5338, 5342 and 5345 of 2024 in A.S(MD)No.149 of 2015, dated 26.4.2024)

.Vs.

1.Padmavathi(died)

2.Selvaram Gandhi

3.Ramasamy

4.Gowsalya

Eshuvakkal(died)

...Fourth Defendant

5.Seetharaaman @ Ravichandran(died)

6.Anamman Madam
(represented by Mother Superior)
Nanjoor,
Keeranoor Post and Taluk,
Pudukkottai District.



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7.Azhagu

8.Abdul Samadu

...Respondents 2 to 8/Respondents
1 to 3,5, and 8 to 10

9.Saraswathi

10.Vasantha Karthicka

11.Gokularaja

12.Krishnaraja

13.Kalyani

14.Uma

15.Chandrasekaran

16.Karthick

....Respondents 9 to 16/Third parties.

(Respondents 2 to 4 and 6 to 8 remain exparte before the Lower Court. Hence notice to them is dispensed with)

(Respondents 9 to 12 are brought on record as legal representatives of the deceased 5th respondent as per order of this Court made in C.M.P(MD)No.722 of 2023 in A.S(MD)No.149 of 2015, dated 23.1.2023)

(Respondents 13 to 16/nor transposed are also brought on record as legal representatives of the deceased first appellant as per order of this Court made in C.M.P(MD)No.2036 of 2023 in A.S(MD)No.149 of 2025, dated 26.4.2024)

(Memo dated 25.09.2024 is recorded to the effect that the respondents 13 to 16 are transposed from Appellants 10 to 13 as per order of this Court made in A.S(MD)No. 149 of 2015, dated 26.09.2024)

... Respondents/Respondents



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PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code praying this Court to set aside the judgment and decree made in O.S.No.48 of 2012, dated 30.01.2015, on the file of Principal District Court, Ramanathapuram.

Respondent-1	: Died
For Appellants 2 to 6,8 and 9	: Mr.S.Ramsundar Vijayaraj
For Respondents 1 and 5	: Died
For Appellants 7 and 10 to 12	: Mr.J.Barathan for M/s.T.R.Jeyapalam
For Respondent-4	: Mr.N.Balakrishnan
For Respondent-6	: Mr.A.John Vincent
For Respondents 9 to 12	: M.H.Lakshmi Shankar for Mr.R.Paranjothi
For Respondents 13 to 16	: Mr.R.Murugan



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JUDGMENT

P.VELMURUGAN, J.

This Appeal suit is directed against judgment and decree made in O.S.No.48 of 2012, dated 30.01.2015, on the file of Principal District Court, Ramanathapuram.

2.The parties are referred to as per their ranking before the Trial Court for easy reference.

3.The plaintiff filed a suit for partition against the defendants. After trial, the learned Principal District Judge, Ramanathapuram decreed the suit and passed a preliminary decree. Challenging the same, the defendants 6 and 7 have filed the present appeal.

4. The brief facts of the plaintiff are as follows:

4.1. The plaintiff's father-in-law, Ramasamy, had two wives, viz., Chellammal (also known as Chellayee) and Palaniyammal (also known as Palaniayee). Chellammal passed away in 1921, and Palaniyammal died in 1953. The plaintiff's husband, Natarajan, and one Govindasamy were born to the first wife, Chellammal. In 1981, Natarajan left the plaintiff and their children (Defendants 1 to 3) and settled in



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Singapore. Govindasamy, the plaintiff's brother-in-law, was deaf and mute, and he passed away in 1960, leaving behind his wife (the fourth defendant) and his son (the fifth defendant) as his legal heirs.

4.2. Kumarasamy (the sixth defendant) and Kaliyappan were born to Ramasamy by his second wife, Palaniyammal. Kaliyappan died in 1951 at the age of 6. The seventh defendant is the son of the sixth defendant. When the plaintiff's husband went to Singapore, his brother Govindasamy and the sixth defendant jointly administered the property. The suit schedule property includes items 1 to 31, called as "Veladi Vaiyal," an extent of 5.5 acres adjusant to the "Viladi Vaiyal" and was in joint possession. Except for the last item of the suit property, all the properties are self-acquired by Ramasamy from his own income. The last item of the suit property was in the possession of the plaintiff's husband.

4.3. After Ramasamy's death, his sons (Kaliyappan, the plaintiff's husband Natarajan, and Govindasamy) and the sixth defendant were in joint possession of the property. The plaintiff's husband, Natarajan, the sixth defendant, and the deceased Govindasamy each held $\frac{1}{3}$ share in the suit property. After Natarajan's death, the plaintiff is entitled to $\frac{1}{4}$ share of the total $\frac{1}{12}$ of the suit property. The fourth defendant, having passed away, is succeeded by the fifth defendant. The sixth



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defendant, who is currently administering the property, has failed to provide an account of the income derived from the suit property. Furthermore, the sixth defendant is attempting to transfer his share of the property to the seventh defendant, despite having no legal right to do so. Additionally, the sixth defendant has sold portions of the property to defendants 8 to 10, claiming to act as the manager of the same. However, the sixth defendant's claim to have purchased the last item of the property is false.

4.4. Despite repeated requests from the plaintiff for partition and possession, the defendants have refused to cooperate. The plaintiff asserts that, in the 1/3 share of Natarajan, she and defendants 1 to 3 have rights. Therefore, the plaintiff, along with defendants 2, 4, 5, 6, 8, 9, and 10, are joint shareholders. The annual income from the suit property is estimated to be Rs.2,00,000/-. Hence, the plaintiff has filed this suit seeking partition of her 3/12 share of the property and exclusive possession, along with interim compensation.

5. The brief case of the sixth defendant is as follows:-

The plaintiff's claim is false, and, except for certain facts, all the averments stated in the plaint are denied. It is denied that the two wives of Ramsasamy Konar, namely Chellammal and Palaniammal, died in 1953. It is further denied that the elder sons, Natarajan, Govindasamy, and Kalaiyappan, died without partitioning the property.



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The defendant asserts that the plaintiff's husband went to Singapore only in 1953, after a partition was effected by Ramsasamy Konar in 1951. According to the sixth defendant, all the properties are maintained by the plaintiff alone, not by this defendant. The last item in the suit schedule property was purchased in the name of Natarajan Konar by Ramsasamy Konar after effecting sale consideration. In 1951, after the sale, Ramsasamy Konar, in the presence of village elders, effected an oral partition of the suit schedule property, which was allotted to the sixth defendant. This property was later sold by the sixth defendant to the ninth defendant in 1981. The plaintiff and defendants 1 to 3 have no rights over the suit schedule property. The sixth defendant is not required to show accounts concerning the property allotted to him. The sale made by the sixth defendant to defendants 8, 9, and 10 is legally valid. The remaining properties are in the absolute possession and enjoyment of the sixth defendant. The plaintiff has concealed the fact that the oral partition was effected in 1951 at market value prevailing at that time. This suit is filed with mala fide intention. As per the Hindu Succession Act, although the plaintiff's husband-Natarajan, Govindasamy, and Kalaiyappan are the sons of Ramsasamy Konar, they are only the sons of Chellammal. Therefore, the deceased Natarajan, Govindasamy, and even Kalaiyappan had no right to any share in the properties of Palaniammal. The sixth defendant has been in absolute possession of the suit property since the oral partition in 1951. All government records, revenue records, as well as patta and tax receipts, have been updated in the



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name of the sixth defendant. Inam patta and Settlement Patta were granted in favour of the sixth defendant. The plaintiff and defendants 1 to 5 have already sold their respective shares. The sixth defendant further states that he conducted his marriage using his personal income. Additionally, the plaintiff's son, the second defendant Ramasamy, instituted a suit before the Sub Court, Pudukkottai, in A.S.No.39 of 2007, seeking partition of the suit property, claiming a share. Therefore, this defendant prays that the suit be dismissed.

6. The short facts of the sixth and seventh defendants are as follows:-

The plaintiff's claim is false, and, except for certain facts, all the averments stated in the plaint are denied. It is denied that Kalaiyappan died before partitioning the suit schedule property. The plaintiff has no right to the land measuring 5.5 acres. It is also denied that Ramsasamy Konar died without effecting a partition. No partition was carried out after the death of Ramsasamy Konar. The sale made by the sixth defendant in favour of the eighth defendant is valid, and the plaintiff, along with defendants 1 to 5, is well aware of the said sale. The seventh defendant purchased items Nos. 2, 20, 22, 24, 26, 27, 28, 29, 30, and 31 using the income derived from his real estate business. The suit has been filed based on an incorrect claim, as if the sixth defendant is attempting to forge the property of the deceased Ramsasamy Konar. During Ramsasamy's lifetime, he effected a partition in 1951. The plaintiff has hidden



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the fact that the property was already allotted to her at the time of partition, and the suit has been filed with a false claim. The plaintiff and defendants 1 to 6 have no right over the suit property. Therefore, the defendant prays that the suit be dismissed.

7. The brief facts of the counter claim of the fourth defendant are as follows:

The fourth defendant and her son hold 1/3rd share in the suit property. The said property was purchased by Ramasamy through his own salary income. Ramasamy passed away in 1952, leaving behind the plaintiff's husband, Nataraja Konar; the fourth defendant's husband, Govindasamy; and the sixth defendant as his legal heirs. After Ramasamy's death, the sixth defendant, being the eldest son, took on the responsibility of managing the joint family property. As the fourth defendant was a young widow, with no one else to care for her, she stayed in the joint family with the sixth defendant. By his instructions, she carried out domestic work and agricultural duties on the property. When she moved into the joint family property with the fifth defendant, the sixth and first defendants obtained some signatures from her. However, the nature of the document has not been disclosed to her. As the sixth defendant was managing the property, all revenue documents were made in his name, and he acted as if he was the sole owner, and benefiting the same, the sixth defendant has been attempting to sell the property to third parties. In the plaintiff's plaint, it is stated that the property is self-acquired by Ramasamy Konar. Therefore, the fourth defendant



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claims 1/3rd share in the suit property. Likewise, in the opposing party's claims, this defendant holds 1/3rd share. The plaintiff and the fourth defendant jointly possess both the plaint schedule properties. Additionally, the fourth defendant holds 1/3rd share in the opposing party's claim. The plaintiff and the fourth defendant jointly possess both the plaint schedule property and the opposing party's suit claim as joint family property. As per Section 37(2) of the Court Fees Act, the valuation of the plaint and the opposite party's suit is approximately Rs. 33,61,000/-. Since the fourth defendant holds 1/3rd share, her portion amounts to Rs. 11,20,333/-. Therefore, a court fee of Rs.750/- has been paid, and the receipt has been enclosed.

8. Reply statement made by the plaintiff to the counter claim of the fourth defendant reads as follows:-

The fourth defendant's claim is entirely untenable. Items No. 26 and 27 in the counterclaim relate to the funeral place of Ramasamy Konar, which already exists and is also subject to partition. Items Nos. 1 and 49 in the suit schedule property belong to the plaintiff's husband, the rightful owner, and therefore, the fourth defendant has no right to seek partition of this property. If the parties are separate and, as per their convenience and at their own expense, a contract was entered into between them for constructing a house. The plaintiff has no objection to the partition of the property,



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provided it does not interfere with her rights in the plaint schedule property. Therefore, the plaintiff prays that the claim made by the fourth defendant be rejected.

9. After completion of pleadings, the trial Court framed the following issues.

"1. Whether the plaintiff is entitled for the relief as sought for in the plaint?

2. Whether it is true that the suit properties were enjoyed by the plaintiff and defendants as joint family properties?

3. Whether it is true that suit last item of property was orally partitioned in the year 1951 to the sixth defendant?

4. Whether it is true that the suit properties absolutely belongs to the sixth defendant?

5. Whether it is true that there is no property left for partition after the demise of Ramasamy Konar?

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

10. On 30.09.2010 the trial Court framed the following additional issues for consideration:

"1. Whether the counter claim sought for by the fourth defendant is sustainable in law?

7.2. Whether the 7th defendant has absolute right over any of the suit properties?"



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11. On 17.11.2011, the trial Court framed the following additional issue for consideration:

"Whether the averments of the sixth defendant as mentioned in Para 7 and 11 of the Written statement that the suit properties and other properties of Ramasamy Konar were orally partitioned, is correct?"

12. On the side of the plaintiff, one witness was examined as P.W.1 and 17 documents were marked as Ex.A1 to Ex.A17. On the side of the defendants, four witness were examined as D.W.1 to D.W.4 and 38 documents were marked as ExB1 to Ex.B38. Besides that, four documents were marked as ExC1 to Ex.C4.

13. After the completion of the trial and the hearing of arguments advanced on either side, the trial court decreed the suit, stating that in the suit schedule property and the fourth respondent's counterclaim, the plaintiff is entitled to 3/12 share and passed a preliminary decree to that effect. Further, the fifth defendant is also entitled to 1/3 share, and passed a preliminary decree to that effect. Challenging the said judgment and decree passed by the trial Court, defendants 6 and 7 / appellants have jointly filed the present appeal.



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14. The learned counsel for the defendants 6 and 7 submits that, admittedly, some of the properties belong to Ramasamy Konar, who passed away in 1952. Even during the lifetime of Ramasamy Konar, the properties were divided in 1951. The properties listed in the counterclaim were allotted to the sons of Chellammal, the first wife of Ramasamy Konar. Some of the suit properties were allotted to the sixth defendant and his brother Kaliyappan, who are the sons of Palaniammal, the second wife of Ramasamy Konar. Even during Ramasamy's lifetime, some of the properties were dealt with by the sixth defendant as per the partition. As per the oral partition between the sons of Ramasamy Konar during his lifetime, the properties were divided, and after Ramasamy's death, they lived separately. There was no joint family and no joint family properties. The sixth defendant never acted as the manager or Kartha of the family, nor he managed the properties as the manager of any joint family assets. After Ramasamy Konar's death, the properties were not in joint possession. The sixth defendant dealt with the properties allotted to him and even alienated some of them to third parties, who have not been impleaded in the suit. Even though the sixth defendant mortgaged the property and also all the sale deeds and other documents, which clearly shows that they sold only the undivided properties, as if he dealt with the undivided properties. Similarly, the plaintiff's husband also sold some of the properties allotted to him, and subsequent mortgage deeds and other sale deeds further demonstrate that the properties of Ramasamy Konar were divided. Therefore, after the



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properties were divided during Ramasamy Konar's lifetime, and after some of the properties were dealt with individually by the plaintiff and the other sons of Ramasamy Konar, the suit for partition is not maintainable.

15. Pending the appeal, the appellants have filed applications in M.P.(MD) No.4 of 2015, C.M.P. (MD) No.939 of 2023, C.M.P. (MD) No.1672 of 2024, C.M.P. (MD) No.7116 of 2024, and C.M.P. (MD) No.14557 of 2024 under Order 41 Rule 27 of the C.P.C. for receiving additional evidence, which will prove that the plaintiff and the fourth defendant have also dealt with the properties separately. According to the learned counsel, this evidence, further supports the claim that there was an oral partition, and the properties of Ramasamy Konar were divided among the legal heirs. The learned counsel would further submit that the plaintiff has suppressed material facts and falsely claims properties that were allotted to the share of the seventh defendant. The seventh defendant is the son of the sixth defendant, and he purchased some properties with his own income. These properties, standing in the name of the seventh defendant, are not joint family properties and are not liable for partition. The learned counsel would also submit that the defendants 6 and 7 are having some documents to show that the mutation was effected as early as 1960, whereas everyone has their own patta and documents to demonstrate that the properties are not joint family properties and are not undivided. There has been no record of



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mutation from 1952, when Ramasamy died, until the filing of the suit in 2007.

Specifically, Natarajan was not in India, and the family members were not jointly enjoying the properties. Therefore, the plaintiff's claim is false, and the suit is liable to be dismissed. The documents and additional evidence sought to be introduced by the defendants will demonstrate that the plaintiff and other heirs, including the son of Govindasamy, the fourth defendant, have dealt with their respective properties separately. Hence, the application to receive the additional documents should be allowed.

16. The learned counsel for the contesting defendants further submit that the plaintiff has not come to court with clean hands. She has failed to disclose that she was not subjected to cross-examination, and only her Grand son was examined as P.W.

1. Moreover, the first defendant sent a notice to the plaintiff, but the plaintiff did not send any notice in return. To overcome this issue, the plaintiff filed the suit. Furthermore, the plaintiff has not entered the witness box to prove the averments in her plaint. Therefore, the suit should be dismissed as it has not been properly substantiated.



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17. In support of their contention, the learned counsel for the appellants relied on the following decisions:

1. ***Ramdas Chimna .vs. Pralhad Deorao*** [1964 SCC Online Bom 20]
2. ***Bhagwat Sharan(dead, through legal representatives) .vs. Purushottam and others.*** [(2020) 6 Supreme Court Cases 387]

18. The learned counsel for the plaintiff would submit that though the plaintiff stated that the sixth defendant was managing the property, he was the manager for the undivided properties, the sixth defendant states that the properties of Ramasamy Konar were orally partitioned in the year 1951 while Ramasamy Konar was alive. However, the sixth defendant has not come to the witness box and subjected himself for cross-examination. Therefore, the non-examination of the sixth defendant is fatal to the case of the defendants. When the plaintiff specifically stated that Ramasamy Konar and his four sons constituted a Hindu Joint Family, and after the death of Ramasamy Konar, the properties were treated as joint family properties, the sixth defendant, enjoying the properties, managed them for himself and other joint family members. He also dealt with some of the properties, which was not in the interest of the joint family. However, the sixth defendant has not come to the witness box to deny the same. Further, the seventh defendant had no independent income, and all the properties purchased in the name of the seventh defendant are only out of the joint family



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nucleus. Therefore, the defendants 6 and 7 pleaded that there was an oral partition, and it is for them to prove the oral partition and therefore, they admitted that Ramasamy Konar had properties, and the relationship was also admitted. Thus, the plaintiff specifically stated that the property were treated as joint family property, which was managed by the sixth defendant. When the sixth defendant stated that there was an oral partition, it is for him to prove the same in the manner known to law. Further, the learned counsel for the plaintiff submitted that the sixth defendant has not stated that the partition took place in the year 1951, and even in the pleadings, it is stated that one of the members of the joint family sold the property to third parties, and which does not mean that the properties were partitioned. Unless the defendants, who claim that there was an oral partition, prove the details, such as what are the properties were specifically allotted to the parties concerned and whether the partition took place with metes and bounds, mere dealing with one of the properties by one of the joint family members does not mean that the entire property has been partitioned.

19. The learned counsel for the plaintiff further submits that the registration of the sale deed by the plaintiff in favour of Nadarajan, dated 21.1.1979, is not conclusive proof of the arrival of Nadarajan Konar from Singapore to India and also the mandatory presence of the purchaser for execution of the sale deed. The notice under Section 34-A of the Tamil Nadu Amended Act 28/2000 (w.e.f. 14.4.2000) is immaterial and



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irrelevant to prove his document and is only intended to prolong the hearing of the appeal. The person who pleads oral partition is bound to prove the same, firstly by examining himself, followed by other requirements under law. This has not been done in the present case, and the trial court has considered numerous documents, similar to the additional evidence, and concluded that the petition is liable to be dismissed. It is for the sixth defendant, who pleads oral partition, has to prove the same in the manner known to law. Therefore, the appeal is liable to be dismissed, and the judgment and decree passed by the trial court should be confirmed.

20. The fifth defendant is the son of Govindasamy and his mother fourth defendant filed a counter claim. The properties mentioned in the counter claim is also liable to be partitioned.

21. In support of their contention, the fourth respondent relied on the following decisions:

1. ***Mst.Rukhmabai .vs. Lala Laxminarayan and others.*** [AIR 1960 Supreme Court 335]

2. ***Union of India .vs. Ibrahim Uddin and another*** [(2012) 8 Supreme Court Cases 148]

3. ***Rajendhiran Vs. Muthaiammal alias Muthayee and others*** (2024) 2 Supreme Court Cases 661



WEB COPY 4. **A.Arunagiri .vs. Egmore Benefit Society Limited.** [2013 SCC Online Mad 1829]

22. Heard the rival submissions made on either side and perused the materials placed before this Court.

23. It is the case of the plaintiff that the suit properties originally belonged to Ramasamy Konar, who had four sons, and he died in the year 1952, leaving behind his four sons as stated above. His first wife had predeceased him. Subsequently, since the husband of the plaintiff left India, and another son of the first wife, Govindasamy, was deaf and dumb, the sixth defendant acted as a manager, managing the property after the death of Ramasamy. They have been enjoying the joint family property, which has remained undivided. Though the joint family properties were undivided, the sixth defendant dealt with some of the properties. Hence, he sent a legal notice, but even after receiving the notice, the sixth defendant has not come forward to divide the property with metes and bounds. Therefore, the suit for partition has been filed.

24. The main contention of the learned counsel for the appellants is that the properties standing in the name of the seventh defendant were purchased out of his own earnings. The plaintiff has not proved that there was surplus income derived from



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the ancestral property. Admittedly, the suit properties originally belonged to one Ramasamy, who died intestate. When the plaintiff says that the suit properties are undivided joint family property, the defendants have denied in the written statement that they had divided the properties by oral partition, and that the suit properties were allotted to the sons of the second wife of Ramasamy Konar. That being the case, it is for the defendants 6 and 7 to establish the same. They have not stated what are the properties were allotted to the husband of the plaintiff, what are the properties were allotted to the share of the sixth defendant, and they have not produced any details about the extent or survey number. Therefore, the submission made by the learned counsel for the appellants is not acceptable.

25. The specific case of the defendants 6 and 7 is that even during the lifetime of Ramasamy Konar, the properties of Ramasamy Konar were divided through an oral partition between the sons of the first wife, Chellammal, and the sons of the second wife, Palaniammal. Since one of the sons, namely Kaliyappan, died, the sixth defendant enjoyed the properties that were allotted to him in the oral partition. All the suit properties were allotted only to the sixth defendant, the appellant herein, and therefore subsequently, some of the properties were purchased in the names of the seventh defendant, who is the son of the sixth defendant. Therefore, the suit properties were allotted to the sixth defendant, and as a result, the plaintiff is not entitled to partition.



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26. According to the sixth and seventh defendants, whatever properties are mentioned in the plaint were divided between the second wife of Ramasamy, namely Kumaraswamy, and Kaliyappan. The properties shown in the counterclaim were allotted to the sons of the first wife of Ramasamy Konar. Hence, the entire properties were already divided even during the lifetime of Ramasamy Konar, and the properties were also dealt with separately by the parties to the oral partition.

27. Though one of the contentions of the plaintiff is that her husband, Natarajan, left India for Singapore nearly 50 years ago and never returned to India, and passed away there in the year 1981, this was specifically denied by the sixth defendant. In para 12(8) of the judgment, it is observed that the said Natarajan Konar went to Singapore in 1953 and passed away in 1981. It was further observed that he was residing there until his demise, and the plaintiff's husband, Natarajan Konar, never came back to India. The claim that he left for Singapore in 1953 is utterly false, as the plaintiff sold one of the properties in favor of her husband, Natarajan Konar, through a registered sale deed dated 21.01.1979. The document is from the year 1979, and the sale consideration was Rs.1500/-. The recital in the sale deed shows that the plaintiff received the amount in cash from her husband, Natarajan Konar, which proves the sale consideration of the sale deed. Further, it is clearly shown that Nataraja Konar came to



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India at one point of time. So, the version of the plaintiff has been falsified by the said sale deed. In order to prove this, the appellant filed a petition under Order 41, Rule 27 of C.P.C. to receive additional evidence in C.M.P(MD) No. 14557 of 2024, which is relevant to this case. The appellant filed some documents related to the plaintiff, which show that specific property was allotted to them. Some of the properties were dealt with by the sixth defendant, and the recitals show that they were divided by oral partition. Some of the documents also show that they mortgaged the properties, and the recitals in those documents indicate that there was an oral partition. Therefore, the application filed under Order 41, Rule 27 in C.M.P(MD) No.14557 of 2024 is liable to be allowed, and the documents have to be received.

28. From the above-mentioned pleadings, documents, and the submissions made on either side, the following points are raised for determination:

"(i) Whether the appellants have proved the oral partition as pleaded in their written statements?

(ii) Whether the judgment and decree passed by the trial court are liable to be set aside?

(iii) Whether the applications filed by the appellants under Order 41 Rule 27 are admissible?"



WEB COPY 29.Point No.1:

29.1. The specific case of the plaintiff is that the suit properties originally belonged to Ramasamy Konar. In paragraph No.5 of the plaint, the plaintiff has specifically stated that, except for the last item of the suit properties, the other items of the plaint schedule were the self acquire properties of K.Ramasamy, purchased from his independent earnings through his separate business. On his death, intestate, in the year 1952, his four sons succeeded to the same. The last item of the suit properties is the self acquired property of the plaintiff's husband but became joint by enjoyment. After the death of the said K.Ramasamy and his sons viz., Kaliyappan, the husband of the plaintiff-Natarajan, Govindasamy, and the sixth defendant, they have constituted a Hindu Joint Family and enjoyed the suit properties as joint family properties. One of the brothers, Kaliyappan, died at the age of 6 years. Therefore, the husband of the plaintiff is entitled to 1/3rd share, the sixth defendant is entitled to 1/3rd share, and Govindasamy is entitled to 1/3rd share. Therefore, she filed the suit for partition. Since 1/3rd share of Natarajan in the suit properties was succeeded by the plaintiff and the defendants 1 to 3, the plaintiff is entitled to 1/2 share by succession, and the defendants 1 to 3 are each entitled to 1/12 share. The defendants 1 and 3 had orally relinquished their right in the suit properties on 15.1.2005 in favour of the plaintiff. Therefore, the plaintiff is entitled to 3/12 share in the suit properties, and the alienation made by the defendants 6 and 7 will not bind the share of the plaintiff.



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Therefore, from the above reading of the pleadings of the plaintiff, the plaintiff has stated that, except for the last item of the suit properties, all other items originally belonged to her father-in-law Ramasamy. After the death of her father-in-law in the year 1952, the plaintiff's husband and his brothers, namely Govindasamy (the 6th defendant) and one Kaliyappan, were entitled to the properties. Since Kaliyappan died during childhood and the husband of the plaintiff also left India in the year 1953, and since Govindasamy is deaf and dumb, the only suitable male member was the sixth defendant. Therefore, the family constituted a Hindu Joint Family, and the last item of the properties purchased in the name of the husband of the plaintiff was thrown into the hotchpot of the Hindu Joint Family, and therefore, the same was also treated as Hindu Joint Family property.

29.2. The sixth defendant admitted while filing the written statement that the husband of the plaintiff died in the year 1981 in Singapore, and also in paragraph 3 of the written statement, he admitted the relationship. He also stated that Govindasamy died in 1960, leaving behind the defendants 4 and 5 as legal heirs. However, he denied the fact that Natarajan, Govindasamy, and Kaliyappan died without any partition. In paragraph 4 of the written statement, he also stated that the father, Ramasamy, while he was alive, divided the property in the year 1951, and thereafter Natarajan left for Singapore in 1953 only after the partition. Even the last item of the suit properties,



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purchased by the father of the sixth defendant in the name of Natarajan, was mentioned. In paragraph 7 of the written statement, he has stated that the father of Ramasamy divided the property by way of oral partition in the presence of important persons in the village. However, in paragraph 11 of the written statement, the sixth defendant/appellants have clearly stated that in the year 1951, there was an oral partition with regard to the suit properties and other properties, and the suit properties were allotted to the sixth defendant's share. The suit for partition, therefore, is not maintainable. Furthermore, in the year 1950, the suit properties were divided, and from the year 1951, the suit properties were enjoyed by the sixth defendant by paying kist, obtaining patta, and enjoying the property as a separate property. In paragraph 19 of the written statement, the sixth defendant has specifically stated that the suit properties, which stand in the name of the seventh defendant, are only the separate property of the sixth defendant. Though the seventh defendant is the son of the sixth defendant, it is also stated in paragraph 10 of the written statement that the properties belong to the deceased Ramasamy Konar, divided in the year 1951 during the lifetime of Ramasamy Konar. The property allotted to the husband of the plaintiff and Govindasamy was also divided between the legal heirs of Natarajan and Govindasamy. The plaintiff's residence also belongs to the deceased Ramasamy Konar and the same was allotted to the plaintiff by way of oral partition between the legal heirs of the deceased Natarajan and Govindasamy. The deceased Ramasamy Konar made the



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partition according to the prevailing market value of the year 1951. Therefore, from the reading of the written statements of the appellants/defendants 6 and 7, they have clearly stated that originally, the suit properties and other properties belonged to the deceased Ramasamy, who is none other than the father of the sixth defendant. According to the plaintiff, the said Ramasamy died intestate without any partition, leaving behind his four sons, as stated above. The sixth defendant, as a suitable male member, after the death of Ramasamy, managed the undivided Hindu Joint Family properties, since Natarajan left for Singapore, Govindasamy is deaf, and he died in the year 1960. Even Kaliyappan died before that. But only the male member, the sixth defendant, was residing in the suit properties and enjoying the suit properties as Manager of the Hindu Joint Family, and the properties were not divided at any point of time until filing of the suit. They are continued to be joint family properties.

29.3. The contesting defendants, namely defendants 6 and 7/appellants herein, have also admitted that the suit properties, including the last item of the properties, belong to Ramasamy Konar. However, they have stated that Ramasamy Konar died in the year 1952. While he was alive, in 1951, he divided the properties by oral partition and subsequently, the properties allotted to the husband of the plaintiff and Govindasamy were also divided between the legal heirs of Natarajan and Govindasamy. Therefore, once the appellants admitted that the properties belonged to Ramasamy



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Konar and there is no document to show that there was a partition either during the lifetime of Ramasamy Konar or even after his death between the legal heirs, it is for the defendants 6 and 7 to prove that there was an oral partition.

29.4. It is a settled proposition of law that once the character of the suit properties is not in dispute, the appellants must establish that the oral partition, as claimed by them to have taken place in 1951, actually occurred. This fact has been stoutly denied by the plaintiff and the other defendants. In such a situation, the appellants must prove that, in this oral partition, the entire suit property was allotted to them. The onus is on defendants 6 and 7 to establish the oral partition. However, the defendants 6 and 7 failed to establish the partition as they claimed. Therefore, once the character of the properties is admitted by the appellants and they plead oral partition, the burden of proof rests on them to establish it. In this regard, the learned counsel for the appellants submits that, from the year 1950 onwards, sales were effected in the suit properties, and the sixth defendant parted with the property as early as 1950. Mutation was effected, and the revenue records show that the appellants mortgaged the property. Recitals in the sale deeds refer to the partition, and the appellants argue that these actions establish the partition. However, when defendants 6 and 7 admit the character of the property and plead oral partition, it is for them to prove that the partition took place. The onus remains on them to establish the oral partition.



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29.5. The seventh defendant has filed a written statement separately. However, the sixth defendant, who pleaded oral partition, did not come to the witness box and subject himself to cross-examination. When the seventh defendant was examined as one of the witnesses, he answered most of the questions raised by the plaintiff but stated that he was not personally aware of the facts and that his father, the sixth defendant, might know. The seventh defendant was not even born at the time of the alleged oral partition in 1951. The best person to speak about the oral partition is the sixth defendant. The sixth defendant has not come to the witness box to give evidence to prove the plea of oral partition, and therefore, the non-examination of the sixth defendant is fatal to the case of the contesting defendants.

29.6. Though the sixth and seventh defendants have stated that the suit properties are allotted to the sixth defendant, there is no whisper about the partition. Even the sixth defendant had pleaded oral partition, but he has not specifically pleaded the extent, survey numbers, and boundaries of the properties allotted to the husband of the plaintiff and Govindasamy, as well as to the sixth defendant and his brother Kaliyappan. Even the documents filed by the sixth and seventh defendants and also the additional documents sought to be relied on do not specifically state the date of the oral partition.



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29.7. In the written statement, the sixth and seventh defendants have stated that Ramasamy himself had divided the property in the presence of important persons of the village, but no independent witnesses were examined to substantiate the oral partition. If, at all, while Ramasamy Konar was alive, he divided the property among with his sons and mutation may have taken place in the name of the respective share holders. However, the mutations and other revenue records were not effected individually soon after the oral partition. When the plaintiff has specifically stated that the suit properties are joint family properties and that the sixth defendant, as Manager, had dealt with and sold some of the properties without the consent of the other persons, and the same was denied by the sixth defendant, who stated that the properties were divided by oral partition, it is for the sixth defendant to plead and prove which survey numbers, extent, and boundaries were allotted to the legal heirs of the deceased Ramasamy. In the absence of this, because some of the properties were dealt with by one of the co-sharers or the revenue records stand in the name of one of the joint family members, it does not mean that a partition took place. Therefore, when the defendants 6 and 7 admitted that the properties belonged to Ramasamy and that Ramasamy, during his lifetime, divided the suit properties and allotted them to the shares of his sons, it is for the sixth defendant to establish the particulars of the properties that were divided by metes and bounds and accordingly, mutation was effected.



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29.8. From the reading of the entire material, this Court finds that the sixth defendant has not proved the oral partition. Therefore, Point No. 1 is answered accordingly.

30. Point No.2

The plaintiff has specifically stated that the properties originally belonged to Ramasamy Konar, who died in the year 1952, he had two wives, viz., the plaintiff's husband and one Govindasamy were the sons from the first wife, while the sixth defendant and one Kaliyappan were the sons from the second wife of Ramasamy, who died intestate and left the suit properties and other properties. After the death of Ramasamy, his sons constituted a Hindu undivided joint family, and the sixth defendant was managing the properties and he dealt with some of the properties and sold them without the consent of the other members of the joint family. Therefore, the plaintiff filed the suit. The defendants admitted the relationship and the character of the properties. The only defense taken was an oral partition. The defendants 6 and 7, though filing separate written statements, the sixth defendant did not come to the witness box. The seventh defendant alone was examined, and now both defendants 6 and 7 together have jointly filed the present appeal before this Court. This itself clearly shows that they are colluding with each other, and the seventh defendant is none other



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than the son of the sixth defendant. The sixth defendant purposely did not come to the witness box, despite being the person with personal knowledge of the entire facts. He refused to enter the witness box. The seventh defendant, however, was not the person having personal knowledge of all the events that occurred in the family. Therefore, under these circumstances, the trial court has rightly drawn an adverse inference and decreed the suit. This Court does not find any error or perversity in the said findings. The point No. 2 is answered accordingly.

31. Point No. 3:

Though the appellants have filed applications in M.P(MD) No.4 of 2015, C.M.P(MD) Nos 939 of 2023, 1679 of 2024, 7117 of 2024, and 14557 of 2024 to receive additional evidence, stating that these documents will amply prove the oral partition and that these documents are necessary to be considered as additional evidence, and the judgment of the trial court is liable to be set aside and the same may be remitted back to the trial court for a fresh trial, the learned counsel for the respondent/plaintiff mainly contended that the defendants have already marked certain documents for the similar purpose, and they have subsequently filed these documents along with the applications, which only show the quantity of the documents and materials, and not their quality, which will not improve the case of the appellants.



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32. As rightly pointed out by the learned counsel for the plaintiffs, the seventh defendant has already marked certain documents to show that those documents would demonstrate a partition, and now the appellants are trying to show that the plaintiff also sold certain properties. All the documents filed by the defendants, and now the documents sought to be marked, also show some of the sale deeds executed either by the defendants or by the plaintiff. As already stated, when stating about any partition, merely because some of the properties were sold by some of the members of the joint family, the same cannot be taken as proof of partition, unless there is evidence to show that there was a partition. When the defendants pleaded oral partition, it is for them to prove the same by stating the particulars of the properties with their extent and boundaries, and also the survey numbers or the identity of the properties. An entire reading of the written statements filed by the defendants shows that they have not specifically stated what are the properties allotted to their share and what are the properties allotted to the share of the husband of the plaintiff. In the absence of this, these documents will not be helpful in showing that there was an oral partition in the year 1951. Therefore, under these circumstances, the applications are dismissed. The documents sought to be received will not improve the case of the appellants, change the final decision given by the trial court and point No.3 is answered accordingly.

33. As per the decision of the Hon'ble Supreme Court in the case of ***Kattukandi Edathil Krishnan and another vs. Kattukandi Edathil Valsan and***



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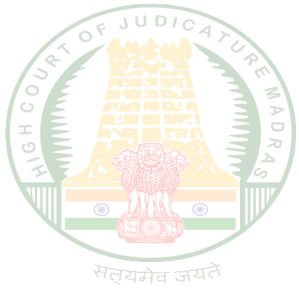
others, [2022 LiveLaw (SC) 549], the Trial Court is directed to comply with para 33 of the said judgment in case the plaintiff has not filed an application for a final decree so far. The relevant portion of the said judgment reads as follows:

'33. We are of the view that once a preliminary decree is passed by the Trial Court, the Court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The Courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the Court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.'

34. In the result, the Appeal Suit stands dismissed. No costs. The applications filed to receive additional documents stand dismissed as stated in Point No.3. Consequently, the connected Miscellaneous Petitions are closed.

[P.V.,J.] [K.K.R.K.,J.]
14/02/2025

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
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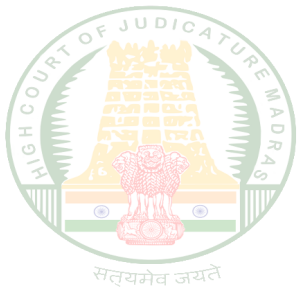
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To

The Principal District Judge,
Ramanathapuram.

Copy to

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

vsn/sbn

JUDGMENT MADE IN

A.S(MD)No.149 of 2015
and
M.P(MD)Nos.1, 2 and 4 of 2015
and
C.M.P(MD)Nos.939 of 2023, 1672, 7116
and 14557 of 2024

14/02/2025