



A.S.(MD).No.177 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.11.2025

PRONOUNCED ON : 25.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

A.S.(MD).No.177 of 2018
and CMP(MD).Nos.10806 & 10807 of 2018

1.M.Premkumar1st Appellant/Plaintiff

2.M.Vasanthi

3.M.SelviAppellants 2 & 3
/Defendants 2 & 3

Vs

1.P.Murugan

2.Mariammal (died)Respondents 1 & 2/Defendant 1& 4

3.Singadurai

4.AlexLegal heirs of the deceased 2nd respondent

Seema (died)

(Respondents 3 & 4 are brought on record as legal heirs of the deceased 2nd respondent vide Court order dated 14.10.2025)

Prayer: The First Appeal filed under Section 96 of C.P.C r/w Order 41 Rule 1 & 2 of C.P.C, to allow the appeal with cost and set aside the judgment and decree made in O.S.No.17 of 2011 dated 30.11.2017 on the file of the Additional District Court (Fast Tract), Tenkasi and decree the suit for partition of appellants 3/4th share and thus render justice.



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For Appellants : Mr.T.S.R.Venkataraman
Senior Counsel for Mr.S.Prithiviraj

For Respondents : Mr.T.Selvan for R3 & R4
: R1-No appearance
:R2 died.

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The plaintiff and defendants 2 and 3 in a suit for partition are the appellants.

(A).Factual Background:

2.One Pitchiah had got married to Issakiammal. He had passed away leaving behind his three sons namely Veluchamy, Murugan(D1) and Samuthiram. The plaintiff and defendants 2 and 3 are the son and daughters of the 1st defendant. The 4th defendant is a purchaser from the 1st defendant under a sale deed dated 22.07.2004. The said facts are not in dispute.

3.According to the plaintiff, the suit schedule properties are the ancestral properties of the plaintiff and the defendants 1 to 3 and they are in their joint possession. Therefore, the plaintiff is entitled to 1/4th share. He had further contended that the 1st defendant is a drunkard and for some illegal debt, he had sold the suit schedule property to the 4th defendant on 23.07.2004. The said document is sham and nominal document and the same



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has not come into force. The said document should not bind the plaintiff.

Hence, the suit for partition.

4.The 4th defendant, namely the purchaser from the 1st defendant, had filed a written statement contending that the suit schedule properties are self-acquired properties of the plaintiff's grandfather namely Pitchiah who had purchased the same under Ex.B11 on 24.05.1966. After his death, the properties have been orally partitioned among the sons of Pitchiah. The suit schedule properties were allotted to the share of the 1st defendant. Therefore, they are the absolute properties of the 1st defendant. Hence, the sale deed executed by the 1st defendant in favour of the 4th defendant under Ex.B1 is a valid document.

5.The 4th defendant had further contended that she is in actual possession and enjoyment of the properties as a owner and the revenue records have also been mutated in her name. The defendant had further contended that the suit schedule properties are not the ancestral properties and therefore, the plaintiff is not a co-parcener to claim partition. The other properties owned by late Pitchiah have not been included in the suit schedule and hence, the suit is bad for partial partition. The plaintiff is not in joint possession of the suit properties and therefore, the Court Fee paid by the plaintiff under Section 37(2) of the Court Fees Act is not correct. The 4th defendant questioned the valuation of the property also.



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6.The trial Court relied upon Ex.B11 sale deed, arrived at a finding that the suit schedule properties are the self acquired properties of late. Pitchiah. Subsequently, the trial Court found that the property had devolved upon the 1st defendant under Section 8 of the Hindu Succession Act and therefore, the suit schedule properties are the absolute properties of the 1st defendant. In such circumstances, the plaintiff cannot have any right by birth over the suit properties since it is neither an ancestral property nor a joint family property. Therefore, the 1st defendant would be entitled to alienate the property in favour of the third parties.

7.The trial Court further found that the 1st defendant has sold some other properties under Ex.B10 in favour of a third party on 24.01.2005.Since those properties have not been included in the partition suit, the suit is bad for partial partition. The trial Court further found that since the third party to the suit (4th defendant) is in possession of the property for more than 7 years, the valuation of the suit under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act is not correct.

8.Based upon the above said findings, the trial Court dismissed the suit for partition. Challenging the same, the present first appeal has been preferred by the plaintiff and the defendants 2 and 3.



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(B).Submissions of the learned counsels appearing on either side:

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9. According to the learned Senior Counsel appearing for the appellants, the suit schedule properties are the ancestral properties in the hands of the 1st defendant. Though late. Pitchiah had purchased the property under Ex.B11, on his death, his sons have partitioned the properties. In the said oral partition, the suit schedule properties have been allotted to the share of 1st defendant. Therefore, the properties in the hands of the 1st defendant are his ancestral properties. In such circumstances, the trial Court has erroneously arrived at a finding that the properties in the hands of 1st defendant are his absolute properties.

10. The learned Senior Counsel had relied upon the judgment of the Hon'ble Supreme Court reported in *AIR 2013 SC 3525 (Rohit Chauhan Vs. Surinder Singh and others)* and submitted that though the property allotted in favour of a sole co-parcener be his separate property, once a son is born to him, the co-parcenary is again revived. Hence, he submitted that though on oral partition, the property was allotted to the share of the 1st defendant, on the birth of his son namely the plaintiff, the co-parcenary is revived. In such circumstances, the alienation made by the 1st defendant in favour of the 4th defendant will not bind the share of the plaintiff. He also relied upon Mulla Hindu Law and contended that the suit for partition would be valid by the non-alienating co-parcener as against the purchaser for



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partition of the alienated property without bringing a suit for a general partition. Therefore, according to him, the suit is not bad for partial partition.

11.The learned Senior Counsel appearing for the appellants had further submitted that when the alienation made by the 1st defendant will not be binding upon the share of the plaintiff, the plaintiff should be construed to be in constructive possession and therefore, the Court Fee paid under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act is correct and the findings of the trial Court on the said aspect are not legally sustainable.

12.Per contra, the learned counsel appearing for the respondents submitted that the self acquired property of late.Pitchiah had devolved upon his son under Section 8 of the Hindu Succession Act and therefore, the property that was allotted to 1st defendant in oral partition should be construed to be his absolute property. When it is the absolute property of the 1st defendant, he would be entitled to alienate the same during his life time. He had further submitted that when the property in the hands of the 1st defendant is his absolute property, the plaintiff who is the son of the 1st defendant would not be entitled to claim a share in the said property treating it to be the ancestral property.

13.The learned counsel for the respondents had further submitted that under Ex.B10, the 1st defendant has sold other properties in favour of third parties and for non-including those properties in the suit, the suit is bad for



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partial partition. He had further submitted that the 1st defendant has sold the property in favour of the 4th defendant under Ex.B10 on 22.07.2004 and patta has also been mutated in her name, she is regularly paying kist to the property. The present suit for partition was filed on 01.12.2008 and it was taken on file only on 26.03.2014. In such circumstances, the contention of the plaintiff that he is in constructive possession and the payment of Court Fee under Section 37(2) of the Act is valid, is not legally sustainable. Hence, he prayed for sustaining the judgment and decree of the trial Court.

14.We have considered the submissions made on either side and perused the material records.

(C).Analysis:

15.In this case, the appeal revolves around the character of the property in the hands of the 1st defendant.

16.The 1st defendant's father namely Pitchiah had purchased the suit schedule properties and other properties under Ex.B11 on 24.05.1966. The 4th defendant in her written statement has contended that the suit schedule properties are the self-acquired properties of Pitchiah. Though the plaintiff claims that it is the ancestral properties in the hands of the 1st defendant, no documents have been produced to the said effect.

17.After the death of Pitchiah, his three sons namely Velucham, Murugan(1st defendant) and Samuthiram have orally partitioned the suit



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schedule properties and other properties among themselves. In the said partition, the suit schedule properties have been allotted to the share of the 1st defendant. These facts have not been disputed.

18.The property of Pitchiah has been inherited by the 1st defendant as Class-I heir on the death of his father after 1956. Therefore, it is the absolute property of the 1st defendant. The plaintiff would not get a right by birth over the same and as a consequence, he will not have a right to challenge the alienation.

19.A Full Bench of our High Court in a judgment reported in AIR 1979 Mad 1 (*The Additional Commissioner of Income Tax, Madras -1 Vs.P.L.Karuppan Chettiar, Karur*) in Paragraph Nos.10 and 11 has held as follows:

“10.This is a case where a person who had obtained the property under partition, died. His name was Palaniappa. When he died, his son Karuppan was alive. We are concerned with the property which Palaniappa had obtained in the partition. In that partition, Karuppan was also a party, we are concerned with the question of devolution of the property of Palaniappa which he obtained in the partition and which had devolved on some persons, after his death. Not only was Karuppan alive at the time of the death of Palaniappa, but at the time his death, Karuppan's son was also alive. In such circumstances, under the Hindu Law, the property will, devolve on the son and the grand-son will also have an interest in the property; and the two together will form a



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Hindu undivided family (we are of course assuming that there were no females).

11.The question is whether when succession opens under S. 8, Karuppan and his son will take the property in the same manner. Clearly, this is not so. When we search for the relatives mentioned in Class-I of the Schedule, which is attracted by virtue of S.8, we find no sons' sons are mentioned at all though the grandson of a deceased son is mentioned. What would be the effect when such a grandson comes into the picture need not be dealt with in this case. But where the son as well as his son are the persons concerned, by applying S.8, we have to come to the conclusion that the father alone, namely Karuppan in this case will inherit the property to the exclusion of the grandson. This being the effect of the statutory provision, no interest will accrue to the grandson in the property which belonged to Palaniappa. Even, assuming Palaniappa's property is ancestral property in the hands of Karuppan, still because of the effect of the statute, Karuppan's son will not have an interest in the property. This is directly derogatory of the law established according to the principles of the Hindu Law and this provision in the statute must prevail in view of the un-equivocal expression of the intention in the statute itself which says that to the extent to which provisions had been made in the statute, those extent to which provisions had been made in the statute, those provisions shall override the established provisions in the texts of Hindu Law.....”

20.The judgment of the Full Bench of Madras High Court was quoted in approval by the Hon'ble Supreme Court in a judgment reported in **(1986) 3**



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SCC 567 (Commissioner of Wealth Tax, Kanpur and others Vs. Chander

Sen and others). These two decisions have been followed by a learned Single Judge of this Court in a decision rendered in **2020 (1) MWN (Civil) 528 (Govindan and another Vs.Revathi and others).** Paragraph No.24 of the said judgment is extracted as follows:

“24.In view of the above discussions, the essential conclusion is that the property which belonged to Ranganatha Kounder, which was inherited by the First defendant Radha as the Class-I heir on the death of Ranganatha Kounder after 1956, will not partake a character of coparcenary property or Joint Family property so that his children, namely, the plaintiffs would get a right by birth over the same and they will not have a right to challenge the alienation made by the first defendant of the second defendant as the power agent of the first defendant.”

21.In view of the judgments cited supra, it is clear that on the death of Pitchiah, the property has been inherited by the 1st defendant as a Class-I heir as contemplated under Section 8 of the Hindu Succession Act. Therefore, the property has neither the character of a co-parcenary property nor a joint family property, but it is the absolute property of the 1st defendant. In such circumstances, the plaintiff, who is not a Class-I heir of the deceased Pitchiah, cannot file a suit for partition and therefore, would not be entitled to claim a share in the self-acquired property of Pitchiah while his father namely the 1st defendant is alive.



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22.In view of the above said deliberations, we are of the opinion that the plea of partial partition or payment of Court Fee under the wrong provisions of law may not arise for consideration.

(D).Conclusion:

23.In the result, there are no merits in the appeal. The judgment and decree of the trial Court stands confirmed and the first appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(C.V.K.J.) (R.V.J.)
25.11.2025.

Index :Yes/No
Internet :Yes/No
NCC : Yes/No
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- 1.The Additional District Judge
(Fast Track Court)
Tenkasi
- 2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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

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Pre-delivery Judgment made in
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