



A.S.(MD)No.198 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.04.2025

CORAM

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

**A.S.(MD)No.198 of 2019
and
C.M.P.(MD)Nos.10063 of 2019, 4166 of 2021
& 5845 of 2025**

Akbar Seit

... Appellant /
1st Defendant

Vs.

1.Alavudheen

2.Azeez

... Respondents /
Plaintiffs

3.Valarmathi

... Respondent /
2nd Defendant

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code read with XLI Rule 1 & 2 of CPC to set aside the judgment and preliminary decree dated 15.04.2019 in O.S.No.104 of 2012 on the file of Additional District Judge (Fast Track Court), Palani.

For Appellant : Mr.S.Jeyasingh



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A.S.(MD)No.198 of 2019

For Respondents : Mr.H.Lakshmi Shankar
for R.1 & R.2

No Appearance for R.3

JUDGMENT

(Judgment of the Court was made by G.R.Swaminathan J.)

This appeal arises out of a suit for partition. The respondents 1 and 2 herein, namely, Alavudheen and Azeez filed O.S.No.104 of 2012 on the file of the Additional District Judge (FTC), Palani claiming 56/96th share in the suit schedule properties for themselves.

2.The first defendant / appellant herein Akbar Seit is the brother of the plaintiffs. Valarmathi / third respondent herein was shown as the second defendant. She is their sister. The case of the plaintiffs is that the suit scheduled properties belonged to the father Jamal Mohamed. Jamal Mohamed died intestate in the year 1993.

3.The suit was mainly contested by the appellant / first defendant. He filed written statement raising several defences. Based on the rival pleadings, the Court below framed the issues.



A.S.(MD)No.198 of 2019

WEB COPY

4.The second plaintiff examined himself as PW1. Ex.A1 to Ex.A13 were marked. The first defendant examined himself as DW1. Two other witnesses including a Jamathar were examined on his side. Ex.B1 to Ex.B16 were marked. After considering the evidence on record, the trial Court granted preliminary decree as prayed for on 15.04.2019. Challenging the same, this Appeal came to be filed.

5.The learned counsel appearing for the appellant / first defendant raised the following contentions:

- a) The suit is bad for partial partition since it did not include certain other items pointed out in the written statement
- b) The property belonging to the mother was also included
- c) Item no 5 is a Government Poramboke land and it could not have been a subject matter of partition
- d) The sixth item is a bank deposit and the second defendant was already shown as a nominee
- e) A oral partition had also taken place in the year 1993 and this was duly substantiated by the Jamadar / DW3



A.S.(MD)No.198 of 2019

WEB COPY

f) As per Muhammedan law, the shares allotted to the parties is incorrect.

He called upon this Court to set aside the impugned judgment and decree and allow this Appeal.

6.Per contra, the learned counsel for the plaintiffs submitted that the impugned judgment and decree do not call for interference.

7.We carefully considered the rival contentions and went through the evidence on record.

8.The point that arises for consideration is whether the Court below was right in allotting 56/96th share in the suit schedule properties.

9.The specific case of the plaintiffs is that the suit schedule items, namely, items 1 to 5 which are immovable properties belonged to their father Jamal Mohamed and that he died intestate. Though the appellant pleaded that a oral partition had taken place among the family members



A.S.(MD)No.198 of 2019

in the year 1993 itself, it was not at all substantiated. In other words, the plea of prior oral partition had not been established at all.

10. On the other hand, by marking Ex.A5 and confronting the defendant with the said document, the plaintiffs have proved that no oral partition had taken place. Ex.A5 is the certified copy of the plaint filed by the first defendant against one Siraj-ud-din in O.S.No.99 of 2009 on the file of District Munsif Court, Kodaikanal. It was a suit for permanent injunction. It comprised suit schedule items 1 and 4. We carefully went through the plaint averments set out therein. The defendant had pleaded in the said suit that the suit schedule were belonged to Jamal Mohamed and following his demise it was being enjoyed in common by all the legal heirs and since the other legal heirs were residing elsewhere, he was managing on behalf of all the legal heirs. In the said plaint, there is no reference whatsoever to any prior oral partition. We therefore hold that this plea is liable to be rejected.

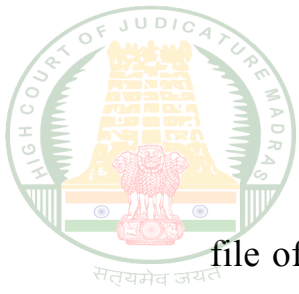
11. There is also no merit in the contention that the suit is bad for partial partition. In the written statement, the appellant had pleaded that



A.S.(MD)No.198 of 2019

certain properties were purchased by the father in the names of the first plaintiff and himself and that they should also be included in the suit schedule. The stand of the plaintiffs is that they are the absolute properties respectively of the first plaintiff and the first defendant and that therefore they are not amenable for partition. If according to the appellant, they should also have been included, nothing stopped him from filing a petition for amending the suit schedule. Admittedly, the appellant did not file any such IA. If the properties had stood in the name of Jamal Mohamed and they had been omitted to be included, certainly the suit would be hit by the vice of partial partition. That is not the case. The plaintiffs cannot be blamed for not including an item of property that stood in the name of the first plaintiff when according to them it is the absolute property of the first plaintiff. We, therefore, reject the defence of partial partition projected by the appellant.

12. According to the appellant, item no.5 happens to be a Government poramboke land. To substantiate the same, the appellant had filed CMP(MD)No.5845 of 2025. The appellant now wants to mark the judgment and decree dated 26.04.2016 in O.S.No.72 of 2009 on the

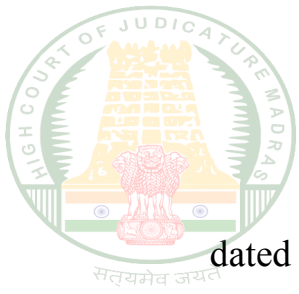


A.S.(MD)No.198 of 2019

file of the District Munsif Court, Kodaikanal. The appellant filed a suit for permanent injunction against the plaintiffs in respect of the present suit item no.5. A decree for permanent injunction was also granted on 26.04.2016. Since only a certified copy of the judgment and decree is sought to be marked by way of additional evidence, no exception can be taken thereto. It is all the more so because the subject matter of said injunction decree pertains to item no.5(2) of the present suit schedule. We therefore have no hesitation in allowing C.M.P(MD)No.5845 of 2025 which was filed under Order 41 Rule 27 of CPC. The judgment and decree in O.S.No.72 of 2009 on the file of the District Munsif Court, Kodaikanal are marked as Ex.B17 and Ex.B18.

13.Since both the defences anchored on partial partition as well as oral partition has been rejected, we come to the conclusion that the trial Court was justified in decreeing the suit for partition.

14.However, as regards item no.5(2), so long as the injunction for permanent decree to operating him in favour of the appellant, it cannot be the subject matter of final decree proceedings. Only after the decree



A.S.(MD)No.198 of 2019

dated 26.04.2016 in O.S.No.72 of 2009 is set aside in the manner known to law, the said suit schedule item no.5(2) can be the subject matter of final decree proceedings. We grant leave to the plaintiffs to file a supplementary final decree petition as far as the said item is concerned.

15.Even according to the plaintiffs, their father Jamal Mohamed did not appear to have any title document. There appears to be some considerable force in the contention that the suit schedule item no.5 is the Government poramboke. We, therefore, hold that the present decree does not bind the Government. We also draw attention of the jurisdictional Thasildar for taking appropriate action.

16.The suit item no.6 are bank deposits. The second defendant has been named as a nominee. It is well settled that a nominee holds the position of the trustee. The second defendant is directed to receive the bank deposits from the respective banks and the same shall be distributed among all the legal heirs in the following ratio: the brothers will have $2/7^{\text{th}}$ share each and the second defendant (sister) shall take $1/7^{\text{th}}$ share in the bank deposits.



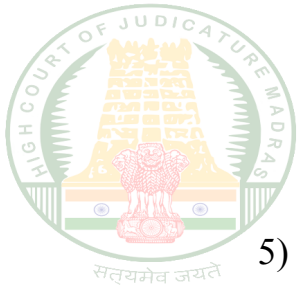
A.S.(MD)No.198 of 2019

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17.As regards suit items 1 to 3, the mother had already settled her 5/32 share in favour of the second defendant. The plaintiffs have also accepted the said settlement. It is seen that the second defendant had executed Ex.A1 release deed in favour of her brothers and mother after receiving a sum of Rs.1,00,000/-. Therefore, the second defendant would be entitled to only 5/32 share alone in the suit items 1 to 3.

18.In this view of the matter, the impugned judgment and decree is modified and this first appeal is disposed of in the following terms:

- 1) The plaintiffs as well as the first defendant (appellant herein) are entitled to 27/96th share each.
- 2) The second defendant is entitled to 15/96th share in the suit items 1 to 3.
- 3) As regards items 4 and 5, the plaintiffs and the first defendant are entitled to 1/3rd share each.
- 4) As regards suit item no.6, the plaintiffs and the first defendant are entitled to 2/7th share each and the second defendant is entitled to 1/7th share.



A.S.(MD)No.198 of 2019

WEB COPY

5) As regards the suit item no.5/2, it can be the subject matter of final decree proceedings only after the judgment and decree in O.S.No. 104 of 2012 is set aside.

No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.) & (M.J.R. J.)
02.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

Note: Registry is directed to mark the judgment and decree to the Tahsildar, Kodaikanal.

To:

The Additional District Judge (Fast Track Court),
Palani.



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A.S.(MD)No.198 of 2019

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and

M.JOTHIRAMAN, J.

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A.S.(MD)No.198 of 2019

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