



A.S.(MD).No.159 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 09.10.2025

PRONOUNCED ON : 23.10.2025

CORAM:

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

A.S.(MD).No.159 of 2017
and CMP(MD).No.9119 of 2017

1.Muthuthilagavathy

2.Malathi

3.Karmegam

.....Appellants

Vs

1.Govindaraj

2.Gandhimathi

....Respondents

Prayer: The First Appeal filed under Section 96 of C.P.C r/w Order 41 Rule 1 of C.P.C, to call for the records, set aside the decree and judgment passed by the Principal District Judge, Ramanathapuram in O.S.No.52 of 2014 dated 27.06.2017.

For Appellants : Mr.D.Malaichamy

For Respondents : Mr.J.Barathan



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J U D G M E N T

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

The plaintiffs in O.S.No.52 of 2014 on the file of the Principal District Judge, Ramanathapuram have filed the present first appeal challenging the dismissal of their suit for partition and separate possession.

(A).The plaint averments are as follows:

2.The suit schedule properties, namely Survey No.47/1B and 47/2 originally belonged to one Karudaichi Konar, Son of Seeni Konar as his ancestral properties. The said Karudaichi Konar had four sons namely Ramu Konar, Kayambu Konar, Kalimuthu Konar and Kuppu Konar. After the death of their father, four brothers have orally partitioned the ancestral properties. In the said partition, 25 cents in Survey No.47/1B and 22 cents in Survey No. 47/2 were allotted to Ramu Konar. As far as Survey No.47/2 is concerned, a joint patta stands in the name of the Ramu Konar and his uncles Seeni Konar and Aandi Konar who are the brothers of Karudaichi Konar.

3.It is further contended in the plaint that after the death of Ramu Konar, the properties of the wife of Ramu Konar were divided among the daughters of Ramu Konar. The properties of Ramu Konar were jointly allotted in favour of the third plaintiff and the first defendant who are the



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sons of Ramu Konar. Out of 25 cents in Survey No.45/1B, an extent of 5 cents was acquired for widening of the road.

4.It is further contended in the plaint that out of 20 cents in Survey No. 47/1B, an extent of 12 cents and 9 cents in Survey No.47/2 were sold by the third defendant in favour of the plaintiffs 1 and 2 by way of registered document dated 26.03.2009. However, the first defendant who is the brother of the third plaintiff claiming that the entire extent of 47/1B belongs to him, had gifted the said property in favour of his wife, second defendant by way of a registered settlement deed by a document dated 24.11.2012. Since it has become difficult to enjoy the properties as joint properties, the present suit has been filed.

(B).Summary of the written statement of the first defendant is as follows:

5.The suit schedule properties are admittedly ancestral properties of Karudaichi Konar, Son of Seeni Konar. The defendants had also admitted that Karudaichi Konar died leaving behind his four sons namely Ramu Konar, Kayambu Konar, Kalimuthu Konar and Kuppu Konar. However, the averments that after the death of Ramu Konar, there was an oral partition and the suit schedule properties were allotted to the share of Ramu Konar were denied.



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6.In the written statement, it is further contended that as far as Survey No.47/2 is concerned, so far it has not been partitioned and even as on date of filing of the suit, a joint patta stands in the name of his uncle another Ramu Konar and Aandi Konar. It was further contended that several properties were allotted to the share of Ramu Konar and those properties have not been included in the suit schedule properties and hence, the suit is bad for partial partition.

7.It is further contended in the written statement that Ramu Konar had executed a registered Will dated 14.08.1989. In the said Will, the suit Survey No.47/1B has been allotted to the daughter of Ramu Konar. Therefore, the third plaintiff does not have any right whatsoever to execute a Will in favour of the defendants 1 and 2 with regard to Survey No.47/1B. A portion of Survey No.47/1B was allotted to the first defendant under the said Will. He had executed a registered settlement in favour of his wife the second defendant by way of sale deed dated 06.10.2008. In such circumstances, the sale deed executed by the third plaintiff in favour of the defendants 1 and 2 in respect of both the suit schedule properties are not valid in the eye of law.

8.It is further contended in the written statement that Survey No.47/2 stands jointly in the name of the plaintiffs, the first defendant and two brothers of Karudaichi Konar. In such circumstances, the suit is bad for non joinder of necessary party.



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9. On the side of the plaintiffs, the first plaintiff has examined herself as PW1 and third plaintiff's wife has been examined as PW2. Exs.A1 to A5 have been marked. On the side of the defendants, the second defendant has examined herself as DW2 and the first defendant has examined himself as DW1. Exs.B1 to B3 have been marked on the side of the defendants.

(C).The trial Court recorded the following findings:

10(i). Survey No.47/2, continues to be an undivided property and a joint patta stands in the name of the third plaintiff, the first defendant and two others who are the brothers of Karudaichi Konar. In such circumstances, the suit is bad for non joinder of two brothers of Karudaichi Konar.

(ii). Though the first defendant claims under Ex.B1 Will dated 14.08.1989, the same has not been proved in accordance with law.

(iii). The plaintiffs have not proved that the suit schedule properties have been allotted to the share of Ramu Konar.

(iv). Various items of properties that have been mentioned to be the joint family properties, in Paragraph No.4 of the written statement but they have not been included as suit schedule properties. No explanation has been offered for not including those properties. In such circumstances, the suit is bad for partial partition.

11. Based upon the above said findings, the trial Court was pleased to dismiss the suit. Challenging the same, the present first appeal has been



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preferred by the plaintiffs.

WEB COPY (D).Points of consideration:

12.(a)Whether the suit is bad for partial partition?

b)Whether the suit is not bad for non joinder of necessary parties?

(E).Submissions made by the learned counsels appearing on either side are as follows:

13.The learned counsel appearing for the appellants submitted that the first defendant has relied upon Ex.B1 Will dated 14.08.1989. However, the said Will has not been proved in accordance with law. In such circumstances, the trial Court ought to have decreed the suit for partition as prayed for. He had further submitted that the plaintiffs 1 and 2, having purchased the undivided share from the third plaintiff, has become co-owner of the property and therefore, they are entitled to maintain the suit for partition.

14.The learned counsel appearing for the appellants had further submitted that the properties mentioned in 4th para of the written statement are the properties inherited through the mother and they are not liable for partition and hence, the suit is not bad for partial partition. When the suit schedule properties were allotted to the share of Ramu Konar in the partition, the non-impleadment of brother of Karudaichi Konar would not be fatal and therefore, the trial Court was not right in dismissing the suit on the ground of non joinder of necessary parties. Hence, he prayed for allowing the appeal.



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15.Per contra, the learned counsel appearing for the respondents/defendants have submitted that even as per plaint averments, Survey No.47/2 continues to be the joint family property and joint patta stands not only in the name of third plaintiff and the first defendant, but also in the name of brothers of Karudaichi Konar. In such circumstances, the trial Court has rightly arrived at a finding that the suit is bad for non-joinder of those parties. He had further submitted that though the plaintiffs claim that the suit schedule properties have been allotted to the share of Ramu Konar, in a oral partition, the same has not been established.

16.The learned counsel for the respondents had further submitted that the plaintiffs had also not established the fact that a portion of the property, Ramu Konar's wife were allotted to the share of the daughter in an oral partition that has taken place in the year 1998. He had further submitted that on the other hand, the defendants have established the fact that Ramu Konar has executed a registered Will under Ex.B1 on 14.08.1989 and under the said Will, Survey No.47/1B has been allotted to the share of the first defendant. Therefore, the present plaintiffs cannot make a claim over the suit Survey Number in S.No.47/1B. Therefore, Survey No.47/1B has rightly been gifted by the first defendant in favour of the wife namely the second defendant under Ex.B3 dated 06.10.2008. Hence, he prayed for sustaining the judgment and decree of the trial Court.



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WEB COPY 17.We have carefully considered the submissions made on either side and perused the material records.

(F).Discussion:

18. The suit for partition has been laid seeking $\frac{1}{2}$ share in favour of the plaintiffs in the suit schedule properties. A perusal of the suit schedule properties reveal that the partition has been sought for 25 cents in Survey No. 47/1B and 22 cents in Survey No.47/2 in Thillainayagapuram Village, Patinamkathan Group, Ramanathapuram Taluk.

19.As per Paragraph No.2 of the plaint, for Survey No.47/2, a joint patta stands in the name of Ramu Konar and his uncles (brother of Karudaichi Konar) namely Aandi Konar and Ramu Konar. Therefore, it is clear that without impleading the said Ramu Konar and Aandi Konar, the suit for partition is not maintainable.

20.In Paragraph No.4 of the written statement, several survey numbers have been pointed out which are said to have been allotted in favour of Ramu Konar and the defendants have pleaded that the suit is bad for partial partition for not including those properties as suit schedule properties. No reply



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statement has been filed by the plaintiffs to establish the fact that those properties are not available for partition. However, it is contended in the present appeal that those properties were allotted to the share of the third plaintiff and therefore, those properties have not been included in the suit for partition. Without any pleadings, such an argument is not legally sustainable.

21.It is the specific contention of the plaintiffs that there was a partition between the sons and daughter of Karudaichi Konar, in which the suit schedule properties have been allotted to the share of Ramu Konar. However, no details have been furnished with regard to the allotment of shares. In such circumstances, the contention of the plaintiffs that the left out properties have been allotted to the share of the third plaintiff is not sustainable.

22.Even though the Will projected by the first defendant under Ex.B1 has been held to be not proved by the trial Court, that would not in any way help the plaintiffs. Even assuming that the Will is not proved, the suit schedule properties would only become the properties of Ramu Konar and again would be liable for partition and should have been included in the suit schedule properties. Admittedly, those properties have not been included in the suit.

(G).Conclusion:

23.The trial Court has rightly arrived at a finding that the suit is bad for partial partition and non joinder of necessary party. There are no merits in the



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firs appeal and the judgment and decree of the trial Court are herein by confirmed and the first appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(C.V.K.J.,)

(R.V.J.,)

23.10.2025

Index :Yes/No
Internet :Yes/No
NCC : Yes/No
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WEB COPY To

1. The Principal District Judge,
Ramanathapuram
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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