



A.S.(MD)No.216 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.02.2025

CORAM

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

**A.S.(MD)No.216 of 2017
and
C.M.P.(MD)No.12177 of 2017
and
C.M.P.(MD)No.3263 of 2025**

Pandian

... Appellant / 1st Defendant

Vs.

1.Valarmathi

... 1st Respondent / Plaintiff

2.Rajendran

3.Manimekalai

4.Kannan

5.Thivya

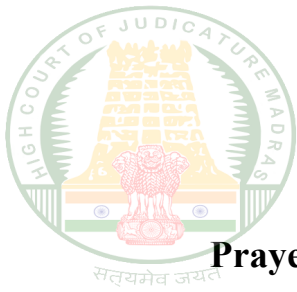
6.Mohan

7.Selvapandian

8.Rajapandian

9.Gnanapriya

... Respondents 2 to 9/
Defendants 2 to 9



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Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code r/w. Order 41 and Rules 1 and 2 of Civil Procedure Code, to set aside the judgment and decree passed in O.S.No.24 of 2012 dated 27.09.2016 on the file of the Principal District Court, Pudukkottai.

For Appellant : Mr.S.Meenakshi Sundaram, Senior Counsel,
For Mr.A.Mohamed Hanieef.

For Respondents : Mrs.N.Krishnaveni, Senior Counsel,
For Mr.P.Thiyagarajan for R1

Mr.S.Asai Thambi for R2

Mr.P.Vadivel for R3 to R5

JUDGMENT

(Judgment of the court was delivered by G.R.SWAMINATHAN, J.)

The first defendant in O.S No.24 of 2012 on the file of the Principal District Court, Pudukkottai is the appellant herein. The first respondent herein / Valarmathi filed the said suit for partition. The suit schedule contained as many as four items. The first item is comprised in Kothamangalam south village. The second item is comprised in Kothamangalam north village. The third item is comprised in Chennai. The fourth item is comprised in Pudukkottai.



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2.The case of the plaintiff is that the suit schedule properties belonged to his father / Karuppaiah @ Thirumaran. Karuppaiah @ Thirumaran got married to Rasammal and through the said wedlock, four sons and two daughters were born. The plaintiff was the eldest son. One of the sons, namely, Veeramani had passed away. The defendants 1 and 2 are brothers of the plaintiff while the defendants 3 to 9 are the legal heirs of the deceased two sisters of the plaintiff. The plaintiff sought 1/3rd share in the suit schedule properties. Though all the defendants contested the suit, it is only the first defendant who has filed this appeal.

3.The first defendant raised two fold defences in his written statement. The first was that two of the items, namely items 3 and 4 are his absolute properties and not amenable to partition. He also pleaded that the suit was bad for partial partition. The plaintiff examined himself as P.W.1 and marked Exs.A1 to A10. The first defendant examined himself as D.W.1 and four other witnesses were also examined on the side of the defendants and Exs.B1 to B10 were marked.



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4. After consideration of the evidence on record, the trial Court granted 1/5th share in favour of the plaintiff in respect of items 1 and 2 of the suit schedule properties and the suit was dismissed in respect of items 3 and 4. The defendants 2 to 9 appear to have accepted the decree and have not filed any appeal. The first defendant / Pandian alone filed this appeal. The appellant had also filed C.M.P.(MD)No.3263 of 2025 under Order 41 Rule 27 of the Civil Procedure Code for reception of additional evidence.

5. The learned Senior Counsel for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal. He strongly emphasized that the Court below ought to have dismissed the suit on the ground that it is bad for partial partition. He drew our attention to Paragraph Nos.9 and 10 of the written statement. The particulars regarding a number of properties had been set out in those two paragraphs. According to the appellant, those items, though standing in the name of the plaintiff and his wife, were actually purchased by selling ancestral properties. In support of his contentions, he placed reliance on the following case laws:-



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(1994) 4 SCC 294 (Kenchegowda Vs. Siddegowda @ Motegowda)

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2024-2-L.W. 469 (M.S.S.Jabar V. S.Sheik Ussaim Rawuthar

(Died)

He called upon this Court to set aside the impugned preliminary decree and remand the matter for fresh consideration so that the appellant can be given one more opportunity.

6.Per contra, the learned Senior Counsel for the first respondent / plaintiff submitted that this appeal itself is not competent. She submitted that as per Section 96 of the Civil Procedure Code, only a person aggrieved can maintain an appeal against a decree. She also submitted that the appellant had not adduced any evidence in support of his claim that the properties set out in Paragraph Nos.9 and 10 in the written statement were purchased out of ancestral nucleus. She called upon this Court to dismiss the appeal.

7.We carefully considered the rival contentions. The point that arises for determination is whether the Court below was justified in rejecting the appellant's plea that the suit is bad for partial partition.



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8.It is true that the appellant had put forth a specific plea that the plaintiff had left out a number of properties. It is not in dispute that those properties catalogued by the appellant stand in the name of the plaintiff or his wife. If according to the appellant those properties are joint family properties in the sense they were purchased out of the joint family nucleus, the burden lies only on the appellant to establish the said plea. In the decision reported in **(2012) 1 CTC 128 (Malla Naicker vs. Jeeva)**, it was held that the law recognises two standards of burden of proofs, one for the kartha of the joint family and another for a coparcener, when they claim that certain properties are their separate properties and not joint family properties. When a kartha claims certain properties as separate properties and the joint family admittedly possessed some nucleus, the burden is on the kartha to prove that the properties are his separate properties and not purchased out of the joint family properties' income. On the other hand, if the coparcener claims certain properties as his separate properties, then, the burden is cast on the other coparcener, who claims that the property is a joint family property to prove that property purchased in the name of one of the coparceners was purchased out of the joint family properties income and it was not a separate property.



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9. In the light of the above legal position, one can easily conclude that the burden lay entirely on the appellant to show that the left out properties bore the character of joint family properties and amenable to partition. It is too much to expect the plaintiff to include those properties in the suit schedule when his case is that they are his personal and self acquired properties. Nothing stopped the appellant from filing an application for amending the suit schedule and including those items. At that stage itself, an enquiry would have been conducted and a decision taken. The Hon'ble Division Bench in the decision reported in **2012 (1) CTC 159 (Solavaiammal Vs. Ezhumalai Gounder)** in paragraph No.18 held as follows:-

“18. It is argued that in the event some of the properties which are available for partition are not included in the plaint schedule, the decree would be invalid on the ground of partial partition. However, it must be kept in mind that in such event, a further suit has to be filed either at the instance of the plaintiff or defendant to include all the properties which are available for partition. In order to avoid such a situation, in partition suit, the Court could certainly entertain an application for amendment to include the properties which are left out and it cannot be said that in the event the amendment petition is dismissed, the decree would be invalid for partial partition.



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Hence, we hold that in a suit for partition, application for amendment at the instance of either party to the suit is maintainable under Order VI, Rule 17 of the Civil Procedure Code. We may also refer to the judgment of the Apex Court in Shub Karan Bubna alias Shub Karan Prasad Bubna v. Sita Saran Bubna and others, 2009 (12) Scale 259, wherein the Apex Court has observed that a decree in partition suit enures to the benefit of all the co-owners and it is sometimes said that there is really no judgment-debtor in a partition suit.

When the defendant pleads that the suit is bad for partial partition, he has to necessarily furnish the particulars of the left out items. A bald plea of partial partition does not deserve consideration. If the details of the left out items are furnished and they are in the names of the individual member of the joint family other than kartha, then, sufficient foundation must be laid in the pleadings to the effect that those properties were purchased out of joint family nucleus. Once these facts are made known, it is the duty of the plaintiff to amend the suit schedule by including those items without prejudice to his contention that they are not amenable for partition. If he does not do so and goes to trial and the defendant is able to make good his plea, the suit has to fail. In the case on hand, the first defendant failed to adduce any evidence that the left out



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items which admittedly stand in the name of the plaintiff or his wife can be impressed with the character of joint family property.

10. Even though the appellant had the fullest opportunity, for reasons that are not quite clear, he did not do so. We are of the view that the appellant had missed the bus. The appellant has filed petition under Order 41 Rule 27 of CPC for reception of additional evidence. They are all sale deeds standing either in the name of the plaintiff or his wife. All these documents are registered documents. They were registered during the period from 1976 to 1984. The appellant had referred to the properties covered under these documents in his written statement. Even if the documents are received by way of additional evidence, that would still not advance the case of the appellant. The appellant has to show that the funds for these transactions came from joint family nucleus. Such evidence is absent. In paragraph 6 of the written statement, the appellant had pleaded that the left out items were purchased by the plaintiff from out of the fund mobilised out of the sale proceeds of the ancestral lands of the family at Vanniyanvidudhi, Alangudi Taluk. The appellant has not marked any sale deed indicating sale of the Vanniyanvidudhi lands. The



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plaintiff has also denied the existence of the lands at Vanniyanviduthi. In these circumstances, we hold that there is no purpose in allowing the petition filed under Order 41 Rule 27 of CPC. The Court below rightly rejected the plea of partial partition put forth by the appellant herein and granted 1/5th share in favour of the plaintiff in respect of suit items 1 and 2 alone.

11.This appeal is dismissed. No costs. Consequently, C.M.P.(MD)No.3263 of 2025 is dismissed and C.M.P.(MD)No.12177 of 2017 is closed.

(G.R.S. J.) & (M.J.R. J.)
25.02.2025

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

The Principal District Judge,
Pudukottai.



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