



A.S.(MD).No.27 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.10.2025

PRONOUNCED ON : 27.10.2025

CORAM:

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

A.S.(MD).No.27 of 2017
and CMP(MD).No.1387 of 2017

S.Nachiyar

....Appellant/Plaintiff

Vs

1.A.Lakshmanan

2.M.Meenatchi

3.J.Chitra

4.M.Deepa

5.S.Roopu

6.J.Logeshwaran

7.K.Arulanthu

....Respondents/Defendants

Prayer: The First Appeal filed under Section 96 of C.P.C, to set aside the judgment and decree dated 25.11.2016 made in O.S.No.4 of 2014 on the file of the Additional District Judge, Fast Track Court, Paramakudi.

For Appellant : Mr.P.Thiagarajan

For Respondents : Mr.S.Deenadhayan for R1

: No appearance for R2 to R7



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J U D G M E N T

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

The plaintiff in a suit for partition has preferred the present first appeal challenging the dismissal of the suit.

(A).The plaint averments are as follows:

2.The first defendant is the brother of the plaintiff. The second defendant is the sister. Defendants 3 to 6 are the children of the deceased brother of the plaintiff. The seventh defendant is the purchaser from the first defendant.

3.Suit Item Nos. 1, 6 and 7 are the ancestral properties of one Ayyavu Chettiar. From the joint family income, he had purchased Item Nos. 2 and 3. Item Nos.4 and 5 were purchased in the name of the first defendant and the deceased brother Jeyagopi from and out of joint family income. The said Ayyavu Chettiar had passed away intestate and these properties remained undivided. The plaintiff has prayed for 1/12th share in Item Nos.1, 6 and 7 and 1/4th share in Item Nos.2 to 5.

(B).The sum and substance of the written statement of the first defendant are as follows:

4.The first schedule of property is the ancestral property of late Ayyavu Chettiar. Item Nos.6 and 7 were not purchased by the family. Due to long possession, a patta has been granted in favour of the first defendant for



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those properties. It is further contended that Item Nos.2 and 3 were purchased by the first defendant out of his income from his business in the name of his father Ayyavu Chettiar. It is further contended that Item No.4 was purchased by the first defendant out of his own earnings. Item No.5 was purchased out of earning of his brother Jeyagopi.

5.It is further contended in the written statement that the plaintiff after getting married, she is residing away from the family and she is not in joint possession. Therefore, the Court fee paid under Section 37(2) of the Court Fees Act is not correct. It is further contended that Item Nos.2 and 3 were purchased by the first defendant in the name of their father Ayyavu Chettiar as a vacant site and constructions were put up by the first defendant.

6. It is further stated in the written statement that after the death of Ayyavu Chettiar on 06.03.1972, oral partition was entered into, in which the jewels and utensils were allotted to the share of the daughters namely the plaintiff and the second defendant. The southern half of the first item was allotted to the first defendant and the northern half was allotted to Jeyagopi. In the second schedule, $\frac{1}{2}$ share was allotted to Jeyagopi and the balance $\frac{1}{2}$ share was allotted to the first defendant's mother. The first defendant's mother had executed a Will on 09.03.2003 with regard to her $\frac{1}{2}$ share in favour of the first defendant. The first defendant had mortgaged this property to a third party on 23.12.2011. Therefore, the plaintiff is not in joint possession of the



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suit schedule property.

WEB COPY (C).The sum and substance of the written statement of the sixth defendant is as follows:

7.Item Nos.1, 6 and 7 are the ancestral properties of Ayyavu Chettiar. The 5th item was purchased by Jeyagopi out of his earning and after his death, it is enjoyed jointly by the defendants 3 to 6. It is further contended that Item Nos.2 and 3 are self-acquired properties of late Ayyavu Chettiar. After the death of Vellaisamy Chettiar, his properties were orally partitioned between the Ayyavu Chettiar and Mottaiyandi Chettiar. The 1st item was allotted to the share of Ayyavu Chettiar in the said oral partition.

8.It is further contended that insofar as Item Nos.1, 2, 3, 6 and 7 are concerned, after the death of Ayyavu Chettiar, his legal heirs have entered into a partition on 06.11.1993. Since the plaintiff was not keeping in good health, she has not signed the said document. In fact, 'C' schedule has been allotted to the share of plaintiff and the second defendant. Since already partition has taken place, the present suit for partition is not maintainable.

9.It is further contended that the suit having been filed belatedly, it is barred by limitation. Due to non impleading of one Mottaiyandi Chettiar who is a joint pattadar with regard to Item Nos. 6 and 7, the suit is bad for non joinder of necessary party.



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10.Before trial Court, the plaintiff had examined herself as PW1 and Exs.A1 to A9 documents were marked. On the side of the defendants, the first defendant has examined himself as DW1 and three other witnesses have been examined as DW2 to DW4 and Exs. B1 to B13 documents were marked.

11.The trial Court had framed 12 issues and has dismissed the suit for partition primarily on the ground that the plaintiff has not established that the suit schedule properties are the ancestral properties of Ayyavu Chettiar and the suit is bad for non-joinder of necessary party. The trial Court has further held that Item Nos.4 and 5 are the self-acquired properties of the first defendant and that of Jeyagopi respectively. The trial Court further found that there has been oral partition in the family and the first defendant is entitled to the share of his mother as per Will dated 09.03.2003.

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

(D).Points for consideration:

13(a).Whether the suit is barred by limitation?

(b)Whether Item Nos.6 and 7 are the ancestral properties of Ayyavu Chettiar?

(c)Whether Item Nos.4 and 5 are self-acquired properties of the first defendant and Jeyagopi respectively?

(d)Whether the suit is bad for non-joinder of necessary parties?

(e)Whether the plaintiff is in joint possession?



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

(E).Submissions of the learned counsel appearing on either side are as follows:

14. The learned counsel appearing for the appellant submitted that the sixth defendant in his written statement has admitted that Item Nos.1, 6 and 7 are the ancestral properties of Ayyavu Chettiar. It is further admitted that Item Nos.2 and 3 are the self-acquired properties of Ayyavu Chettiar. In such circumstances, the trial Court was not right in dismissing the suit with regard to Item Nos.1, 2, 3, 6 and 7.

15. The learned counsel for the appellant had further submitted that when the defendants have not pleaded ouster, the trial Court ought not to have arrived at a finding that the suit is barred by limitation or the plaintiff has been excluded from the suit schedule property. The learned counsel had further submitted that though Item Nos.4 and 5 stands in the name of the first defendant and Jeyagopi respectively, they were purchased, when the first defendant and the said Jeyagopi were very young in age. Therefore, it is clear that it was only purchased by their father Ayyavu Chettiar out of his income from the ancestral properties. He had further stated that when the defendants have admitted that Item Nos.6 and 7 are ancestral properties of Ayyavu Chettiar, the trial Court ought not to have dismissed the suit with regard to



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Item Nos. 6 and 7 on the ground that the plaintiff has not established that those properties are ancestral properties of the family. Hence, he prayed for allowing the appeal.

16.Per contra, the learned counsel appearing for the respondents submitted that the plaintiff's father namely Ayyavu Chettiar had passed away in the year 1972 and only thereafter, both the daughters namely the plaintiff and the second defendant were married off by the brothers namely the first defendant and Jeyagopi. Though the father of the plaintiff had passed away in the year 1972, the plaintiff has not taken any steps till 2014 to seek partition. Therefore, the claim of the plaintiff is clearly barred by limitation.

17.The learned counsel for the respondents had further stated that for more than 28 years, the plaintiff is residing away from the suit schedule property, only the first defendant is receiving the rent. In such circumstances, the plaintiff cannot be considered to be in joint possession and as a consequence, the payment of Court fee under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act is not legally sustainable.

18.The learned counsel for the respondents had further submitted that the first defendant and his brother Jeyagopi had independent business and out of the said income, they have purchased Item Nos.4 and 5 in their respective names. Therefore, those two items are not available for partition. He had further submitted that one Mottaiyandi Chettiar is a necessary party to the suit



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and not having impleaded him, the suit is bad for non joinder of necessary party.

19.The learned counsel for the respondents had further contended that for proving Ex.B12 Will, both the attestors have been examined. Therefore, Ex.B12 Will has been proved and in such circumstances, the trial Court has rightly rejected the request for partition. The plaintiff having got married in the year 1985 and residing away from the family, has not taken any steps seeking partition. Therefore, her rights, if any are said to have been ousted. Hence, he prayed for sustaining the judgment and decree of the trial Court.

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

(F).Discussion:

21.The 1st item of the property is the ancestral property of Ayyavu Chettiar. The parties have not disputed the said fact. As far as Item Nos.6 and 7 are concerned, the sixth defendant has admitted in his written statement that they are ancestral properties of Ayyavu Chettiar. The sixth defendant has further admitted in his written statement that Item Nos.2 and 3 are self-acquired properties of Ayyavu Chettiar.

22.The first defendant in his written statement has claimed that Item Nos.6 and 7 are not ancestral properties of Ayyavu Chettiar. The patta has been granted in favour of the first defendant based upon his possession.



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Ex.A6 is the patta for Item Nos.6 and 7 of the suit schedule properties. A perusal of the said document reveals that it is a joint patta standing in the name of the first defendant and one Mottaiyandi Chettiar, son of Vellaisamy Chettiar.

23.Ex.B13 is the patta standing in the name of Mottaiyandi Chettiar. A sketch annexed to the said patta clearly reveals that Mottaiyandi Chettiar is entitled to 3.43 acres on the eastern side and the balance 3.43 acres on the western side is admittedly enjoyed by the first defendant. In such circumstances, the trial Court has rightly arrived at a finding that the non-impleading of Mottaiyandi Chettiar is not fatal to the suit for partition. Though the first defendant had contended that due to long possession, patta has been granted in his favour for Item Nos.6 and 7, the first defendant is not able to establish the same. In fact, the sixth defendant has categorically admitted in his written statement that Item Nos.6 and 7 are also ancestral properties of Ayyavu Chettiar. Therefore, this Court can safely arrive at a finding that Item Nos.6 and 7 are also the ancestral properties of Ayyavu Chettiar.

24.As far as Item Nos.2 and 3 are concerned, they stand in the name of deceased Ayyavu Chettiar. They have been purchased under Ex.A1 dated 13.10.1971 and Ex.A2 dated 03.01.1968. At the time of purchase of the 3rd item, the first defendant was 16 years old and at the time of purchase of the



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2nd item, he was 19 years old. Though the first defendant had contended that he was running a business and out of the said income, Item Nos.2 and 3 were purchased in the name of his father, he had miserably failed to establish his business and the fact that he had purchased these properties in the name of his father out of the said income. Therefore, it is clear that Item Nos.2 and 3 are the self-acquired properties of Ayyavu Chettiar.

25.As far as Item Nos.4 and 5 are concerned, they stand in the name of the first defendant and the deceased Jeyagopi. The said Ayyavu Chettiar had passed away in the year 1972. These properties have been purchased by the first defendant and Jeyagopi on 14.10.1979 under Exs.A4 and A5.

26.Considering the fact that these properties were purchased much after the death of Ayyavu Chettiar, it can safely be concluded that they are the self-acquired properties of the first defendant and the deceased Jeyagopi respectively. The plaintiff is not able to establish the fact that there was a joint family nucleus and out of the surplus funds, Item Nos.4 and 5 were purchased in the name of individuals. Therefore, the trial Court has rightly dismissed the suit with regard to Item Nos. 4 and 5.

27.The trial Court had further found that Ayyavu Chettiar had passed away in the year 1972 and the present suit for partition having been filed in the year 2014 is barred by limitation and the rights of the plaintiff, if any, have been ousted. A careful perusal of the written statement filed by the first



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defendant as well as the sixth defendant would clearly indicate that there is no pleading whatsoever with regard to the ouster of the plaintiff. The Building Plan Approval, Water Tax, House Tax and Electricity Receipts would not in any way result in exclusion of the other co-sharers from the joint family properties. Any co-sharer who is possession of the property, for a better enjoyment, would mutate these records in his name. That apart, no registered document has been produced by the defendants to show any transaction of the joint family properties which are adverse to the interest of the other co-sharers. In such circumstances, the trial Court was not right in invoking the common law principle of ouster to non suit the plaintiff.

28.A registered partition deed has been entered into between the co-sharer under Ex.B11 on 06.11.1993. Admittedly, the plaintiff is not a party to the said document. Therefore, the said partition deed is not binding upon the plaintiff. According to the first defendant, 'C' schedule property in the said partition deed was allotted to their mother as a life interest holder and thereafter, the vested remainder was conferred upon the sisters namely the plaintiff and the first defendant.

29.A perusal of the said document reveals that two items are shown in 'C' schedule property. The 2nd item is said to be located in Parasala in the State of Kerala. The partition deed has been registered at Sub-Registrar Office, Parasala. Therefore, it is clear that the said imaginary property has been



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included in the suit schedule property only for the purposes of conferring jurisdiction upon the Sub Registrar Office, Parasala, Kerala. The 1st item of 'C' schedule property said to have been located at Paramakudi. Since the plaintiff is not a party to the said document, the partition deed is not binding upon her and therefore, the same cannot be relied upon.

30.The trial Court has not properly considered the oral and documentary evidence on either side with regard to Item Nos.1,2,3,6 and 7 which are either ancestral properties of Ayyavu Chettiar or his self-acquired properties. We are of the concerned opinion that the suit deserves to be partly decreed with regard to Item Nos.1, 2, 3, 6 and 7, granting preliminary decree for 1/4th share in the above said items.

(G).Conclusion:

31(a).There shall be a preliminary decree for 1/4th share in favour of the plaintiff with regard to Item Nos.1, 2, 3, 6 and 7.

(b).The prayer with regard to Item Nos.4 and 5 shall stand dismissed.

32.The appeal is partly allowed to the extent as stated above. No Costs. Consequently, connected miscellaneous petition is closed.

(C.V.K.J.,)

(R.V.J.,)

27.10.2025.



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To

1.The Additional District Judge
(Fast Track Court)
Paramakudi

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
A.S.(MD).No.27 of 2017
and CMP(MD).No.1387 of 2017

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