



AS.(MD)No.176 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 21.04.2025

Pronounced On : 30.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN**

A.S.(MD)No.176 of 2019
and
C.M.P.(MD)No.9021 of 2019

1.T.Karuppanan @ Pandi (Died)

2.P.Gunapandian

3.P.Sivabackiam

4.N.Geetha

5.P.Anitha

6.S.Angayarkanni

... Appellants / Defendants

(Appellants 3 to 6 are brought on record as Lrs of the deceased 1st appellant vide Court order dated 01.04.2025 made in CMP.(MD)No.5779 of 2025 in AS.(MD)No.176 of 2019)

Vs.

T.Duraipandi

... Respondent / Plaintiff



AS.(MD)No.176 of 2019

WEB COPY

PRAYER : First Appeal filed under Section 96 of the Code of Civil Procedure and 41 Rule 1 of CPC against the Judgment and Decree dated 19.03.2018 passed in O.S.No.80 of 2013 on the file of VI Additional District Judge, Madurai.

For Appellants : Mr.M.R.Srinivasan

For Respondent : Mr.J.Barathan

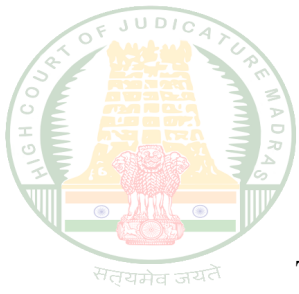
JUDGMENT

(Judgment of this Court was delivered by **M.JOTHIRAMAN J.**)

Unsuccessful defendants have preferred the appeal. The suit is filed for partition and for separate possession of $\frac{1}{2}$ share in the suit schedule properties. The trial Court partly decreed the suit by granting $\frac{1}{2}$ share to the plaintiff in respect of item 1 to 5 and dismissed the suit in respect of item 6 to 8.

2.For the shake of convenience, the parties are referred to as per their rank before the trial Court.

3.The brief Case of the plaintiff is as follows:-



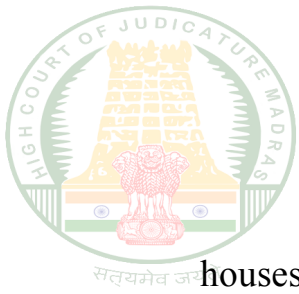
AS.(MD)No.176 of 2019

WEB COPY

The first defendant is the elder brother of the plaintiff and their father is Thonthi Karuppanan, who died when they were end leaving behind his wife Elamiammal, the plaintiff and the first defendant as his legal heirs. The second defendant is the son of the first defendant. The said Elamiammal used to reside at the residence of the plaintiff and the first defendant. During her lost days, the plaintiff alone had been looking after her. Elamiammal died on 02.01.2011 intestate. Item 1 to 4 of the suit properties are the ancestral properties. Other items stand in the name of his mother. After demise of Elamiammal, the plaintiff and the first defendant jointly inherited the suit properties. The plaintiff sent a legal notice on 20.04.2013 and the defendant sent a reply notice on 04.05.2013. In response to the same, the plaintiff sent a rejoinder notice on 21.05 . 2013. Hence, the suit.

4.The brief case of the defendant is as follows:-

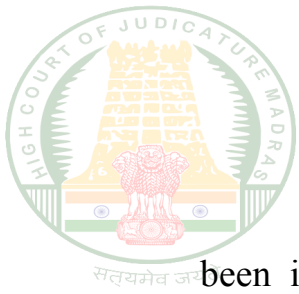
The item 1 to 3 are the ancestral properties. After demise of their father, their mother Elamiammal maintained the minor children and out of her hard earned money. She purchased items 4 to 8 and the property to an extent of 5 cents in R.S.No.216/9 at Pudhur, Madurai and constructed



AS.(MD)No.176 of 2019

WEB COPY

houses therein. She also purchased the land to an extent of 1 cent at Vellalapatti village. While so, during her life time, she orally partitioned the suit properties in the year 1983 between the plaintiff and the first defendant. As per the said partition items 4 to 8 were allotted to the first defendant. Items 1 to 3 and 1 cent property at Vellalapatti village and 5 cents property at Appanthiruppathi and 5 ½ cents property at TWAD colony, Thiruppalai and 27 cents of Valaland in S.No.738/6A, 6C at Vellalapatti village were allotted to the plaintiff. After the said partition both have been in separate possession and enjoyment of their respective share of properties over 30 years by paying necessary tax. The plaintiff created forged sale deed in the name of his son Sudhakaran to an extent of 5 cents in S.No.216/9 at Pudur, Madurai from the said Elamiammal. The aforesaid Pudur and second item of the suit property were not brought into the said partition and those properties had been in possession and enjoyment of the said Elamiammal. While so, the said Elamiammal and the first defendant jointly executed settlement deed dated 21.02.2007, in favour of the second defendant in respect of item No.4 of the suit property. The said Elamiammal executed settlement deed in favour of the second defendant in respect of item 6 to 8 and thereafter, the second defendant has



AS.(MD)No.176 of 2019

WEB COPY

been in peaceful possession and enjoyment of the item 4 and 6 to 8 properties.

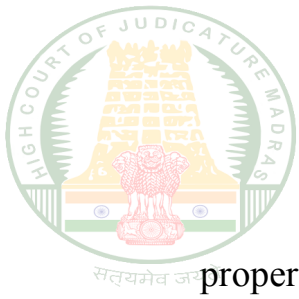
5. Based on the above pleadings, the trial Court framed the following issues:-

- i) Whether oral partition took place in the year 1983?
- ii) Whether the settlement deed dated 21.02.2007 in respect of suit items 4, 6, 7 and 8 in favour of the second defendant are true and valid?
- iii) Whether the plaintiff is entitled for partition as prayed for?
- iv) What other relief the plaintiff is entitled?

On the side of the plaintiff, the plaintiff himself examined as P.W.1 and one Selvam examined as P.W.2 and Ex.A1 to Ex.A18 were marked. On the side of the defendants, the first defendant himself examined as D.W.1, one Mohammed Abdul Jaffer was examined as D.W.2, one Murugesan was examined as D.W.3 and Ex.B1 to Ex.B7 were marked.

6. Findings of the trial Court:-

The properties purchased by the Elaniammal cannot be considered as, which was purchased as Kartha of the family. She maintained the



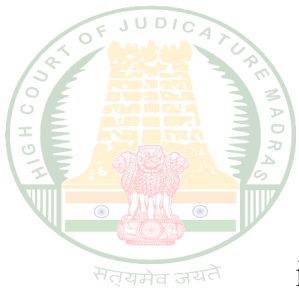
AS.(MD)No.176 of 2019

properties being the guardian of the minor plaintiff and the first defendant.

The plaintiff and the defendants are the joint family members and hence, the plaintiff and the first defendant are entitled only in respect of item 1 to 5. Ex.B1 is the compromise deed during pendency of the suit and hence, the recitals of the said compromise deed cannot be considered as admission. Further, there is no averment regarding particulars of the property allotted to the members of the family. Further, in pursuant to the said partition mutation of records have not taken place. In Ex.A3 recitals refers only about self acquired property of Elamiammal and she did not refer that it was allotted to her in pursuant to the partition held between the plaintiff and the first defendant. Though, it is referred in Ex.A8 dated 21.02.2007, that the said properties was allotted to her in pursuant to the said partition, the said Elamiammal did not refer about oral partition in Ex.A3 & Ex.A9. No particulars about date of oral partition, witnesses of oral partition disclosed. Ex.A9 sale deed valid one and items 6 to 8 are not liable for partition.

7.Points for determination arises in this appeal are as follows:

i)Whether oral partition took place in the year 1983?



AS.(MD)No.176 of 2019

WEB COPY

ii)Whether Ex.B1 compromise deed is true and valid?

8.The learned counsel appearing for the appellants / defendants would submit that in the present appeal under challenge with regard to suit items 4 and 5 alone. He would submit that oral partition took place between the plaintiff and the first defendant in the year 1983. As per the said oral partition, suit items 4 to 8 were allotted to first defendant. Similarly, suit items 1 to 3, 1 cent of house property and and 27 cents of land at Vallalapatti village, 5 cents of property at Appanthiruppathi, 5 ½ cents property at Thiruppalai were allotted to the plaintiff. The said oral partition came to be confirmed subsequently also under Ex.B1 dated 07.07.2014 between the parties. He would submit that there is no complaint given by the plaintiff that Ex.B1 was obtained under coercion or under influence. There is no prohibition to effect a partition in oral understanding and the same is valid under law. To strengthen his contention, he has relied upon judgment of the Hon'ble Supreme Court of India in a case of ***H.Vasanthi Vs. A.Santha (Dead) through Lrs. And Ors in Civil Appeal No.7374 OF 2008 dated 16.08.2023*** dated to show that there is no prohibition to effect a partition otherwise than through an



AS.(MD)No.176 of 2019

WEB COPY

instrument in writing by duly complying with the requirement of law and in other words, the division may also be effected under a settlement or oral understanding. The learned counsel further would submit that some of the properties left out in the suit schedule. Though the plaintiff claiming title over the valuable house and shop properties situated at Pudur and the sale deed executed to that effect was not supported by any valid consideration.

9.Per contra, the learned counsel appearing for the respondent / plaintiff would submit that the suit properties 1 to 4 are ancestral properties and other items are purchased by the mother of the plaintiff through sale deed. The properties purchased by the mother of the plaintiff one Elamiammal sold the property to the plaintiff's son for a sum of Rs. 4,95,000/-. The property purchased by the said Elamiammal is the absolute property and she has every right to sell the same. There was no oral partition taken place in the year 1983 as alleged by the defendants. The trial Court after considering the evidences and documents comes to a conclusion that the plaintiff is entitled for partition as prayed for in the suit.



AS.(MD)No.176 of 2019

WEB COPY

10.It is pertinent to mention that the suit dismissed with regard to the suit schedule item 6 to 8. Aggrieved over the same, no appeal has been preferred by the plaintiff.

11.The suit schedule consisting of 1 to 8 items. It is an admitted fact that suit schedule 1 to 3 items are ancestral properties and the suit item 4 and 5 were purchased by Elamiammal in the name of her minor children namely the plaintiff and the first defendant. Suit item 6 to 8 were purchased by the said Elamiammal.

12.As per Section 14 of the Hindu Succession Act, 1956, any property possessed by a female hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. In view of the Section 14 of the Act, the property purchased by the Elamiammal are absolute properties of her. D.W.1 in his cross examination categorically admits that the plaintiff and D.W.1 are having equal right over the suit items 4 and 5 separately. D.W.1 deposed that an oral partition was held in the year 1983, may be in the month of September or October. He does not remember the date of oral partition.



AS.(MD)No.176 of 2019

WEB COPY

13.It is pertinent to mention that the suit item 1 to 3 properties originally belonged to the plaintiff's father Thonthi Karuppanan. The said Thonthi Karuppanan died when the plaintiff and the first defendant were young leaving behind his wife Elamiammal. Thereafter, the said Elamiammal maintained the said ancestral properties being the natural guardian of the minor plaintiff and the first defendant. The properties purchased by the said Elamiammal cannot be taken into account as such, which was purchased as Kartha of the Hindu Joint Family. When item 4 and 5 of the properties purchased in the name of the plaintiff and the first defendant by the said Elamiammal, when they were minor, for the welfare of the family. Therefore, such kind of property became joint family properties.

14.It is relevant to refer the decision of the Hon'ble Supreme Court reported in *AIR 2011 SC 2344 – Rangammal v. Kuppuswami* wherein it has been held that “when a person is bound to prove the existence of any fact, it is said that burden of proof lies on that person. Thus, the burden of proving fact always lies upon the person who asserts it. Unless such burden is discharged, the other party is not required to be called upon to prove his case.”



AS.(MD)No.176 of 2019

WEB COPY

15.It is the specific case of the defendants that during the life time of the said Elamiammal, she orally partitioned the suit properties in the year 1983 between the plaintiff and the first defendant and the same came to be confirmed in Ex.A8 settlement deed dated 21.02.2007. It is also main contention of the defendants that Ex.B1 consent deed dated 07.07.2014 reflects the earlier oral partition, wherein, the plaintiff and the first defendant are signed and their sons are also signed as witnesses.

16.If the above contention of the defendants in connection with Ex.B1 consent deed dated 07.07.2014, is accepted, then the defendants ought to have filed a petition to record the compromise before the trial Court. Admittedly, no steps was taken by the parties to settle the issue. Moreover, Ex.B1 came to be existence after filing of this suit, in such circumstances, there cannot be a full reliance on the document alone. In order to prove the oral partition, witnesses D.W.2 and D.W.3 are examined. D.W.2 Mohammed Abdul Jaffer, in his cross examination, states that he did not know about what they have spoken before the partitioning the properties and did not know how they are enjoying the properties. D.W.3 Murugesan in his cross examination, states that he does

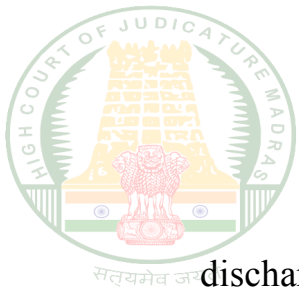


AS.(MD)No.176 of 2019

WEB COPY

not know where the plaintiff and the first defendant working. He was a cultivating tenant under the defendant from 2002 to 2005. It is seen from the records, D.W.3 was examined on 26.10.2017 wherein the deposition the age of D.W.3 is mentioned as 48 years. When D.W.3 speaks about the oral partition said to have been held in the year 1983 hardly at that point of time, D.W.3 might have been the age of 14 or 15. From the evidence of D.W1 to D.W.3 reveals that they could not substantiate particulars about the date of oral partition and the manner in which they have orally partitioned the properties.

17.The said Elamiammal referred in Ex.A3 sale deed dated 27.01.2006 about the properties that it was her self acquired property and she did not refer that it was allotted to her in pursuant to the partition held between the plaintiff and the first defendant. A perusal of Ex.A8 settlement deed dated 21.02.2007 shows that the property was allotted pursuant to the partition held between the plaintiff and the first defendant. However, the said Elamiammal did not refer anything about the oral partition in Ex.A3 dated 27.01.2006 and Ex.A9 settlement deed dated 21.02.2007, as mentioned in Ex.A8. The burden lies on the defendants not



AS.(MD)No.176 of 2019

WEB COPY

discharged to prove the oral partition. The defendants not chosen to examine panchayathars who were present at the time of entering oral partition. The properties purchased by the said Elamiammal is the absolute properties of her and she has every right to deal with the same independently and any alienations made by the said Elamiammal cannot be questioned. We are of the view that the trial Court upon considering the evidences and documents arrived conclusion that the plaintiff is entitled $\frac{1}{2}$ share in item 1 to 5. There is no reason to interfere with the findings of the Court below and there is no merits in this appeal and the same is liable to be dismissed.

18. In the result, this first appeal is dismissed and the judgment and decree dated 19.03.2018 passed in O.S.No.80 of 2013 on the file of VI Additional District Judge, Madurai is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (M.J.R., J.)
30.04.2025

NCC : Yes / No
Index : Yes / No
gns



AS.(MD)No.176 of 2019

WEB COPY

To

VI Additional District Judge, Madurai



WEB COPY



AS.(MD)No.176 of 2019

G.R.SWAMINATHAN,J.
and
M.JOTHIRAMAN, J.

gns

Pre-Delivery Judgement made in
A.S.(MD)No.176 of 2019

30.04.2025