



THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S(MD)N3o. 365 of 2025

and

C.M.P(MD)No. 13876 of 2025

A. Abdullah

... Appellant

/Vs./

1. A. SalihaBibi
2. A. KathijaBibi
3. A.AjaraBibi
4. Y.Kamarudin
5. Mohammed Sirajudeen
6. A.Sirajunisha
Ashik Ahmed (Died)
7. RiyasAhamed
8. N.Rajendran
9. S.Soundararaj

...Respondents

PRAYER: Appeal Suit filed under Section 96 of C.P.C., to set aside the Final Decree dated 21.03.2024 made in I.A.No.77 of 2018 in O.S.No.5 of 2016 on the file of the III Additional District Court, Trichy.



For Appellant : Mr.Muthiah

For Respondents : Mr.R.Udhayakumar, for R-1 to R-5

Mr.J.Madhu, for R-6 & R-7

JUDGMENT

The suit is filed for partition to pass preliminary and final decree partitioning the suit property into 8 equal shares in metes and bounds and put the plaintiffs 4/8 shares for their separate possession and ownership.

2. The plaintiffs in the suit are the respondents herein and the 1st defendant in the suit is the appellant respondents herein. For the sake of convenience, the parties are referred as plaintiffs and defendants as per the ranking in the suit.

3. The plaintiffs 1 to 3 are the daughters of Late A.Abdul Rahman Sahib, the 4th plaintiff is the son-in-law and husband of Late Mrs.Mohamada Bibi who is the daughter of Late A.Abdul Rahman Sahib. The 5th plaintiff is the son of 4th plaintiff and Late Mrs.Mohamada



Bibi and grandson of Late A.Abdul Rahman Sahib. The 1st defendant / A.Abdullah and Late. Abdul Muthaleef are the sons of Late A.Abdul Rahman Sahib. Since the said Late. Abdul Muthaleef died, his wife A.Sirajunisha, son A.Mohamed Asik, Minor son A.Mohamed Riyas were added as defendants 2, 3 and 4. The plaintiffs states that the suit properties ought to be divided into 8 equal shares between the plaintiffs 1 to 5 and defendants 1 to 4.

4. The father Late A.Abdul Rahman Sahib had inherited the suit properties through family partition between him and his brother Mr.Abdul Hameed registered vide Doc. No.1984 of 1954 dated 13.08.1954 Sub Registrar Office, Srirangam. During his life time the father enjoyed all the properties, but during father's life time the two brothers made the father to sell 3 acres of valuable land to third parties and the sale consideration was divided only between the two brothers i.e. 1st defendant and Late. A.Abdul Muthaleef. At that time the plaintiffs protested and resisted. In the meanwhile, the father died intestate on 18.05.2009 leaving behind his sons and daughters. Consequent on his



demise, the brothers brought third parties to inspect the suit properties with a view to sell the same. Hence a partition suit in O.S.No.112 of 2009 on the file of Additional District Court, Trichy was filed by the 1st and 2nd plaintiffs and the wife of the 4th plaintiff. During pendency of the aforesaid suit the 4th plaintiff's wife and the 2nd defendant's husband died, instead of filing impleading the legal heirs, the plaintiffs had withdrawn the suit to file fresh partition suit with all necessary parties. The 2nd defendant husband namely Late. A.Abdul Muthaleef died on 29.02.2012 leaving behind his wife and two sons. And 4th plaintiff's wife died leaving behind her 4th plaintiff / husband and 5th plaintiff / son. Hence the partition suit.

5. The 1st defendant had filed written statement stating that the father had executed gift settlement deed dated 23.02.2006 and stated that the suit properties 1 to 4 and 7 and 8 were settled in his favour.



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6. Based on the rival claims, the Trial Court had framed issues and after perusing the pleadings, documents and depositions and the Trial Court had allowed the suit partly and a preliminary decree was passed granting $\frac{4}{8}^{\text{th}}$ share in Item No.5 of the suit schedule property. While the suit was dismissed with respect to Item Nos.1 to 4 and 6 to 8.

7. The plaintiffs had filed final decree application in I.A.No.77 of 2018 and the same was allowed vide order dated 21.03.2014. Aggrieved over the order the present Appeal Suit is filed.

8. The primary ground of appeal that was raised is that as per Muslim Law the daughter would get $\frac{1}{3}^{\text{rd}}$ share and sons would get $\frac{2}{3}^{\text{rd}}$ share. It is seen from the preliminary decree that the daughters were granted 1535 square feet and the sons were granted 3070 square feet ($1535 + 1535$). Further it is seen from the sketch that the land cannot be divided apart from the aforesaid division. Therefore, the said ground raised by the appellant is rejected.



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9. The next contention of the appellant is that he is running a rice mill. Item Nos. 5 and 6 were allotted to the appellant, and Item Nos. 7 and 8 were allotted to another brother. According to the final decree, the appellant was allotted the portion earmarked as 'E, L, Q, F'.

10. The learned counsel for the appellant submitted that he needed a small space to approach the mill and therefore sought a portion of the property allotted as 'G, D, E, F'. However, the learned counsel for the respondents submitted that if such a portion is allowed, the share allotted to the respondents would be diminished. Therefore, the respondents are not inclined to grant any portion.

11. After hearing the rival submissions, this Court is of the considered opinion that a small pathway to the extent of 3 ft. can be created within the appellant's own allotted space. To that extent, the appellant has filed an affidavit stating as follows:

' 3. I respectfully submit that in the portion allotted to me in the said Final Decree, I am desirous of forming a Cart Track for my own usage and fence the same. In future, if I



had laid cart track within the bounds of the portion allotted to me under the said Final Decree, the other Co-shares i.e., the Respondents 1 -7 herein shall not claim any right over the same and interfere with my peaceful possession over the portion allotted to me under the said Final Decree. I shall also be permitted to fence the said portion of Land allotted to me under the said Final Decree. '

12. Therefore, the appellant is directed to create a 6-ft. pathway/cart track within his portion of the land earmarked as 'E, L, Q, F'. He is strictly directed not to encroach even a small portion of the respondents' land. Further, the respondents shall have no right to use the said pathway. The appellant is permitted to fence his allotted space.

13. With these observations, the appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

21.08.2025

Index : Yes / No
NCC : Yes / No
KSA



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TO:

1. The III Additional District Court, Trichy.

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

judgment made in
A.S(MD)No. 365 of 2025

21.08.2025