



WEB COPY



A.S.No.61 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2026

CORAM

THE HONOURABLE MR . JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

A.S.No.61 of 2026

& C.M.P.No.1819 of 2026

S.Senthil Kumar

... Appellant

Versus

1. S.Bakkiyalakshmi

2. S.Gayathri

3. J.Vijalakshmi

4. Minor J.Mirthika, D/o.Late Jeeva

represented by

her natural Guardian and Mother J.Vijalakshmi

No.12/5, Pillayar Koil Street, Thirumazhisai

Chennai – 600 124

5. Minor Dharshan , S/o.Late Jeeva

represented by

his natural Guardian and Mother J.Vijalakshmi

No.12/5, Pillayar Koil Street, Thirumazhisai

Chennai – 600 124

... Respondents

First Appeal filed under Section 96 of CPC to set aside the judgment and decree in O.S.No.416 of 2021 dated 19.11.2025 passed by the II Additional District and Sessions Judge, Tiruvallur @ Poonamallee.

For Appellant

: Ms.A.Niyamth Nisha

For Respondent(s)

**: Mr.R.Lokeshwaran
for R1 to R5**



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JUDGMENT

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Aggrieved over the preliminary decree passed by the trial Court dividing the suit property into 4 equal shares and allotting $\frac{1}{4}$ share to the first plaintiff, $\frac{1}{4}$ share to the second plaintiff and $\frac{1}{4}$ share to plaintiffs 3 to 5 together, the unsuccessful sole defendant filed the present appeal.

2. The parties are referred to as per their rankings before the trial Court.

3. The first plaintiff is the wife of one Sammanthan, second plaintiff is the daughter of Sammanthan, Plaintiffs 3 to 5 are wife, daughter and son of first plaintiff's pre-deceased son S.Jeeva.

4. It is the case of the plaintiffs that Item No.1 of the property was allotted to Sammanthan by way of a partition deed dated 12.02.1992. Item No.2 of the property was allotted to Baalammaal, the mother of said Sammanthan. After her death, there was an oral partition and $\frac{1}{3}$ rd share has been allotted to Sammanthan, the husband of the first plaintiff. Item No.3 of the property was purchased by Sammanthan on 08.03.2007. Hence, it is the contention of the plaintiffs that property is in joint possession of all the legal heirs. It is the further case of the plaintiffs that defendant under the

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influence of alcohol attacked his brother Jeeva in respect of which a police complaint has also been filed. Hence, the plaintiff filed the suit seeking partition of the suit properties.

5. Admitting the relationship and character of the property, it is contention of the sole defendant that there was an oral partition on 23.04.2021 between the parties in which house properties were allotted and the defendant also spent more than Rs.5 lakhs and is in possession of the property. Hence, he disputed the claim of the plaintiffs.

6. Based on the said pleadings, the following issues were framed:

- i) Whether the plaintiffs are entitled to preliminary decree as prayed for?*
- ii) Whether the suit is bad for partition?*
- iii) To what relief?*

7. Before the trial Court, on the side of the plaintiffs, PW1 was examined and Exs.A1 to A15 were marked. On the side of the defendant DWs1 and 2 were examined and Exs.B1 & B2 were marked.

8. Based on the oral and documentary evidence, the trial Court passed the preliminary decree in favour of the plaintiffs declaring their rights in the properties. Challenging the same, the sole defendant has filed the present



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appeal.

9. The learned counsel appearing for the appellant / defendant submitted that there was an oral partition between the plaintiffs and defendant and DW2 also in his evidence spoken about the oral partition. Therefore, the claim for preliminary decree is not maintainable.

10. We have heard the learned counsel and perused the entire materials available on record.

11. Now the point that arises for consideration in this appeal is, whether the oral partition dated 23.04.2021 pleaded by the defendant is proved to deny the partition pleaded by the plaintiffs?

12. The first plaintiff is wife of one Sammanthan. The second plaintiff and defendant are the daughter and son of said Sammanthan. Plaintiffs 3 to 5 are wife and children of first plaintiff's predeceased son Jeeva. The above relationship of the parties is not in dispute and similarly nature of the property, which came into the hands of Sammanthan is also not disputed by the defendant. All the three items of the property in fact stood in the name of Sammanthan. Suit first item was partitioned among the joint owners under Ex.A1. Similarly, under Ex.A14, 'C' schedule properties were purchased by Sammanthan. As far as the Item No.2 of the property is



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concerned, it is the specific case of the plaintiffs that the property was originally allotted under Ex.A1 to one Balammal, mother of Sammanthan.

Later after the death of Balammal, there was an oral partition in the family and Sammanthan became entitled to 1/3rd share in 800 sq.ft. This aspect is also not disputed in the written statement. Therefore, the nature and character of the properties held by Sammanthan is not in dispute. The only contention of the defendant in the entire written statement is that there was oral partition in the family in respect of all the properties and the property situated in S.F.No.182/6 and 194/2 to an extent of 23' from east to west and 27' from north to south admeasuring 621 sq.ft and a terraced building in Item No.1 and the property situated in S.F.No.182/6 and 194/2 to an extent of 18.5' from east to west and 23' from north to south admeasuring 425 sq.ft and a terraced building thereon situated in 1st item and the property situated in S.F.No.182/6 and 194/2 measuring an extent of 14' x 16' measuring an extent of 228 sq.ft and a titled house thereon on the northern side situated in item 1 of the suit property was allotted to the defendant. Similarly other properties were allotted to Jeeva, another son of Sammanthan.



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12. To substantiate the oral partition, except the oral evidence, there is

no material whatsoever available on record. Though DW2 was examined on the side of the defendant, if his entire evidence is carefully perused, it does not show that there was oral partition between the parties. His answer is also evasive in nature. Once a party pleads oral partition, the entire burden lies on him to prove oral partition. Mere pleading will not be sufficient to hold that there was a partition in the family. Even assuming that the parties for convenience are in enjoyment of the certain portion of the properties, the same does not automatically prove an oral partition. Oral partition has to be pleaded and proved by adducing evidence. Having pleaded oral partition dated 23.04.2021, no material whatsoever has been brought on record to show that in pursuant to the partition, the parties are in exclusive possession and mutation has been effected in the revenue records and taxes are paid. In the absence of any material, the plea of oral partition cannot be sustained. Hence, the trial Court decreeing the suit granting preliminary decree and allotting $\frac{1}{4}^{\text{th}}$ share to 1st plaintiff, $\frac{1}{4}^{\text{th}}$ to second plaintiff and $\frac{1}{4}$ share to plaintiffs 3 to 5 together and $\frac{1}{4}$ share to defendant cannot be faulted. Admittedly, the defendant also is entitled to $\frac{1}{4}$ share and he can also work out his share by paying necessary court fees.



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Accordingly, this appeal is dismissed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

[N.S.K.,J.]

[R.S.V.,J.]

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Index: Yes/No

Neutral Citation: Yes

gpa

To

1. II Additional District and Sessions Judge,
Tiruvallur @ Poonamallee

2. The Section Officer
VR Section
Madras High Court



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