

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
24.03.2026PRONOUNCED ON
12.06.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**AS No. 388 of 2015 &
CMP.No.25380 of 2024**

1.Adhesh Ravi

2.Abidhu Ravi R

... Appellants

Vs

1.Sundaram Chettiar

2.Chandrasekaran

3.Ravindran

4.Murali

5.Parvathi Ammal

6.Manjula

7.Geetha

8.Sumathi

9.Jayanthi Ammal

10.Minor Vignesh

Rep., by its Guardian Murali, 4th Defendant

...Respondents

PRAYER:- First Appeal filed under Section 96 of the Code of Civil Procedure, to set aside the Judgement and decree dated 11.01.2010 made in O.S.No.15 of 2004 on the file of the Principal District Judge, Villupuram.

For Appellant(s):

Mr.A.Gowthaman

For Respondent(s):

Ms.Hema Sampath Sr., counsel
Asst by Ms.R.Meenal for RR2 and R9



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AS No.388 of 2



No Appearance for RR4,7 & 10

RR1 & R5 – Died

No Appearance for R3 (Served)

Not Ready in Notice RR6 & 8

JUDGMENT

The present appeal suit has been filed to set aside the judgment and decree dated 11.01.2010 passed in O.S.No.15 of 2004

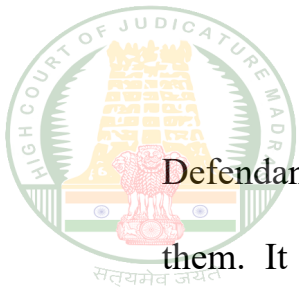
2. The Plaintiffs are the grandchildren of the 1st defendant and the children of the 3rd defendant. The 5th defendant is the wife of the 1st defendant. Defendants 2 to 4 are the sons of the 1st defendant, and Defendants 6 to 8 are the daughters of the 1st defendant. The case of the plaintiffs is that one Mr. Kannu Chettiar and his wife, Mrs. Rathinambal, had seven children including the 1st defendant. The said Mr. Kannu Chettiar died on 10.09.1963, and within a few days thereafter, a partition was effected among his wife Mrs. Rathinambal and all their seven children in respect of the joint family properties. Under the said partition, the properties described in Schedule 'A' therein were given to Mrs. Rathinambal for her lifetime and after her lifetime, the same were to devolve upon and be enjoyed exclusively by the 1st defendant and his two brothers.



3. It is submitted that the 1st defendant acquired certain properties as ancestral properties under the partition and had subsequently alienated some of those properties, while the remaining properties are described in Schedule 'C'.

Further out of the income derived from the aforesaid properties, the first defendant had purchased certain other properties, which are described in Schedule 'D'. It is further submitted that the movable properties belonging to the joint family are described in Schedules 'E' and 'F'. According to the plaintiffs, the properties described in Schedules 'C' to 'F' are joint family properties belonging to Defendants 1 to 4, and therefore the plaintiffs are also entitled to a share therein. The plaintiffs aver that the 1st defendant with an intention to defraud Defendants 2 to 4 and the other family members, had falsely created and fabricated a partition deed dated 17.04.1970 among himself and his children. According to the plaintiffs, under the said alleged partition deed, the shares were not allotted equally among all the parties.

4. It is averred that under the aforesaid partition deed, the 1st defendant had allotted the Schedule 'A' properties to himself and the properties under Schedules 'B' to 'G' to his children, namely Defendants 2 to 4 and Defendants 6 to 8. However, since Defendants 6 to 8 had been married prior to the coming into force of the Tamil Nadu Hindu Succession (Amendment) Act, 1989, they were not entitled to any share in the joint family properties. It is further averred that, though certain properties had been allotted to Defendants 2 to 4 and



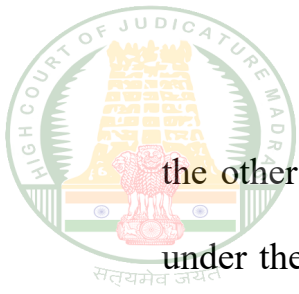
Defendants 6 to 8 under the said partition deed, the same were never enjoyed by them. It is also submitted that the plaintiffs came to know about the said partition deed only in November 2000. The plaintiffs further contend that Defendants 1 to 4 are entitled to $1/4^{\text{th}}$ share in the properties described under Schedules 'C' to 'F', and that the other defendants have no share therein. Therefore, according to the plaintiffs, they are entitled to $2/12^{\text{th}}$ share in the suit schedule properties. Hence, the plaintiffs have instituted the present suit seeking partition and separate possession of their $2/12^{\text{th}}$ shares.

5. The 1st defendant filed a written statement, which was adopted by Defendants 2 and 4, wherein it is stated that the 1st defendant had earlier instituted a suit in O.S. No.29 of 1952 before the Sub Court, Cuddalore, against his father Mr. Kannu Chettiar and others for partition, pursuant to which he had obtained certain properties. It is further averred that the income derived from the aforesaid properties was insufficient for the maintenance of the family and therefore, the 1st defendant carried on business and maintained the family out of his own earnings. It is also stated that the 1st defendant had inherited certain properties from his mother's side and had also acquired some properties under a Will executed by his maternal uncle, from and out of which he had been maintaining his family.



6. It is submitted that on 17.04.1970, the 1st defendant effected a partition among himself, his sons, and daughters. Since some of his children were minors at that relevant point of time, the 5th defendant, being their mother, represented them in the said partition. The 1st defendant further averred that, having responsibilities towards the education, marriage, and other welfare needs of his children, he was allotted a larger share in the partition. The specific case of the 1st defendant is that, subsequent to the partition, the defendants after attaining majority took possession of their respective shares individually and had been enjoying the same separately. It is further submitted that some of his sons and daughters, had alienated the properties allotted to them under the partition in favour of third parties. It is also submitted that, at the time of the partition, neither the 5th defendant nor any of the sons and daughters of the 1st defendant raised any objection to the same.

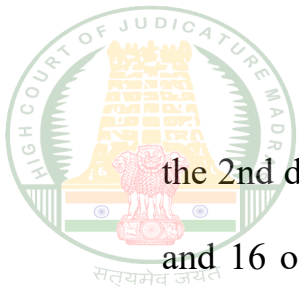
7. It is further submitted that the 3rd defendant, who is the father of the plaintiffs, had already instituted separate litigation in respect of partition of a building property, wherein the 3rd defendant had sought for 1/3rd share in the said property, and the same was still pending. Therefore, the plaintiffs have no independent right to institute the present suit. It is further contended that the 3rd defendant had attained majority in the year 1973 itself, whereas the present suit came to be instituted only after a lapse of about 22 years. Hence, according to the defendants, the present suit is barred by limitation. It is submitted that, while



the other defendants had enjoyed and alienated the properties allotted to them under the partition, the 3rd defendant alone cannot now make false allegations against the 1st defendant alleging fraud and unequal allotment of shares under the partition deed.

8. The 1st defendant further denied the contention of the plaintiffs that his daughters, namely Defendants 6 to 8, were not entitled to shares in the partition. It is further contended that the plaintiffs are members of the joint family of the 3rd defendant and therefore, if at all they had any grievance regarding their share of property, they ought to have instituted proceedings against the 3rd defendant and not against the 1st defendant. It is further submitted that the mother of the plaintiffs had earlier instituted a suit in O.S. No.79 of 1983 before the Sub Court, Thiruvannamalai, against the 1st defendant along with the wife and daughters of the 1st defendant, namely Defendants 5 to 8, wherein it was held that neither the 1st defendant nor the 5th defendant was in possession of any jewels belonging to the plaintiffs' mother.

9. It is further submitted that Item Nos.2, 3 and 6 of Schedule 'D' do not belong to the 1st defendant and are the separate properties of the 5th defendant, over which neither the 1st defendant nor the other defendants can claim any right. Further, with regard to Schedule 'E', it is contended that Item No.2 belongs to the wives of Defendants 2 and 4; Item No.3 belongs to the wife of



the 2nd defendant and Defendants 4 and 5; and Item Nos.2, 4, 5, 6 to 11, 13, 15 and 16 of Schedule 'E' do not belong to the family of the 1st defendant. It is further submitted that the 1st defendant is not in possession of any jewels belonging to the plaintiffs' mother. The defendants also denied the claim relating to the deposit of Rs.27 lakhs described as Item No.14 in Schedule 'E'. It is also submitted that Item No.5 in Schedule 'D' is the separate property of the 4th defendant. Hence, the defendants prayed for dismissal of the suit.

10. The 2nd defendant filed an additional written statement, wherein it was averred that the plaintiffs cannot seek partition in respect of Item Nos.7 to 11 of Schedule 'D'. It is contended that Item Nos.7 and 8 are the separate properties of the 1st defendant, which had been purchased by him independently. With regard to Item No.10, it is stated that the 2nd defendant is entitled to 1/3rd share therein and the 1st defendant is entitled to 1/2 share and, therefore, the plaintiffs have no share in the said property.

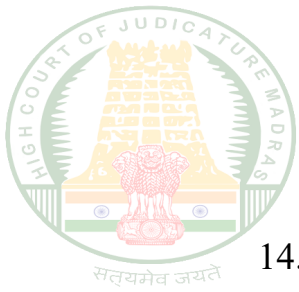
11. The 5th defendant also filed an additional written statement, wherein it is averred that Item Nos.2, 3 and 6 of Schedule 'D' are the separate properties of the 5th defendant. It is further stated that the movables described under Item Nos.6 to 20, 22 and 25 of Schedule 'E' are no longer available and that the silver articles weighing about 10 kilograms belonging to the 5th defendant are now in the possession of the wives of Defendants 2 and 4. It is further



contended that, during the partition, the 5th defendant had acted as guardian for her minor children. However, upon attaining majority, the children ought to have challenged the partition immediately if they had any grievance. Since no such objection was raised, the suit is barred by limitation. It is further contended that the plaintiffs have instituted the present suit without properly stating all the material facts and, therefore, the suit is liable to be dismissed.

12. The 6th defendant filed a written statement, which was adopted by Defendants 7 and 8, wherein they denied all the allegations made by the plaintiffs. Adopting the written statements filed by Defendants 1 and 5, Defendants 6 to 8 further stated that the 6th defendant had sold the share allotted to her under the partition to one Mr. Kali Gounder; the 7th defendant had appointed the 1st defendant as her power agent and had sold her share to one Mr. Vellu Gounder; and the 8th defendant had sold her share to one Mr. Rajamani. Hence, they prayed for dismissal of the suit.

13. The 9th defendant also filed a written statement adopting the written statements filed by Defendants 1 and 5. The 9th defendant, who is the wife of the 2nd defendant, averred that the property described under Item No.4 of Schedule 'D' exclusively belongs to her and that the same had been given to her at the time of her marriage and the plaintiffs are not entitled to have any rights over the same.

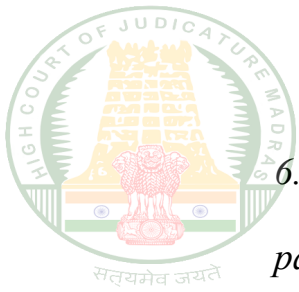


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14. The 10th defendant also filed a written statement adopting the written statements filed by Defendants 1 and 5. The 10th defendant, being the son of the 4th defendant, averred that the property described under Item No.5 of Schedule 'D' is the self-acquired property of his father, namely the 4th defendant. Therefore, according to him, the plaintiffs have no right over the said property. Hence, he prayed for dismissal of the suit.

15. Based on the above Pleadings the learned Trial Court had framed the following issues for consideration :-

- 1. Whether the partition effected on 17.04.1970 was unequal and fraudulent?*
- 2. Whether the partition deed dated 17.04.1970 was accepted and acted upon by the concerned parties?*
- 3. Whether the contention in the written statement that the plaintiffs have no manner of right over the D and E Schedule properties and that the same are the separate properties of Defendants 2, 4 and 5 is correct?*
- 4. Whether the contention in the written statement that the F Schedule property is not a joint family property is correct?*
- 5. Whether the contention that the suit properties have not been properly valued is correct?*



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6. *Whether the plaintiffs are entitled to claim 2/12 share by partition in the C to F Schedule properties?*

7. *Whether the plaintiffs are entitled to seek the relief of reopening the partition dated 17.04.1970, which had not been disputed by the plaintiffs' father?*

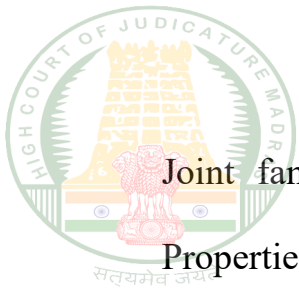
8. *To what other reliefs are the plaintiffs entitled?*

Additional Issue

1. *Whether the 9th item in the D Schedule property had absolutely vested with the 1st defendant by virtue of purchase?*

16. In this suit, one witness each was examined on behalf of the plaintiffs and defendants. On the side of the plaintiffs, 8 documents were marked as Ex.A1 to Ex.A8, and on the side of the defendants, 37 documents were marked as Ex.B1 to Ex.B37.

17. Upon hearing both the sides and after perusing the materials available on record the Learned Trial Court *vide* its judgment dated 11.01.2010, had determined the aforesaid issues. As far as the Issue No.5 is consider, the learned Trial Court observed that the Court Fee has observed that the Court Fee has been paid for the Schedule C to F properties under the Section 37(2) of the Court Fee Stamp Act. But the Suit Schedule Properties were not proven to be a



Joint family Properties and therefore it was held that the Suit Schedule Properties were not valued properly. Therefore it was held that the no correct value of the court fee was paid for the suit Schedule Properties and accordingly Issue No.5 was answered.

18. Insofar as Issue Nos.1, 2 and 7 are concerned, the contention of the plaintiffs was that, under the partition deed dated 17.04.1970 marked as Ex.A3, the 3rd defendant, namely the father of the plaintiffs, had been allotted a lesser share of the properties with an intention to defraud him. Upon perusal of the evidence adduced on the side of the defendants, the learned Trial Court found that several defendants had alienated the properties allotted to them under the partition deed dated 17.04.1970. The learned Trial Court further observed that the defendants had not only sold certain properties allotted to them, but had also purchased other properties and had, in effect, enjoyed the properties allotted to them under the said partition. Hence, the learned Trial Court held that the partition dated 17.04.1970 was acted upon by all the parties and that the shares allotted thereunder were accepted by them. The Trial Court further held that, when the 3rd defendant himself had never objected to the said partition during his lifetime, the plaintiffs were not entitled to seek reopening of the partition. Accordingly, Issue Nos.1, 2 and 7 were answered against the plaintiffs.



19. Insofar as Issue No.3 and Additional Issue No.1 are concerned, upon perusal of the evidence adduced on the side of the defendants, the learned Trial Court found that, as evidenced by Exs.B29 and B30, Item No.4 of Schedule 'D' belongs exclusively to the 9th defendant. Similarly, the learned Trial Court held that Item No.5 of Schedule 'D' exclusively belongs to the 10th defendant, as the same was the self-acquired property of his father, namely the 4th defendant. Further, the learned Trial Court observed that the plaintiffs had not verified whether the movables described under Schedule 'E' were actually available at present, and from the materials on record it appeared that none of the properties described under Schedule 'E' were in the possession of the defendants. Upon consideration of the oral and documentary evidence available on record, as well as the various depositions made by the parties, the learned Trial Court answered Issue No.3 and Additional Issue No.1 against the plaintiffs.

20. Insofar as Issue Nos.4, 6 and 8 are concerned, upon perusal of the oral and documentary evidence available on record, along with the depositions made by the parties, the learned Trial Court held that the plaintiffs had not approached the Court with *bonafide* intentions. The learned Trial Court further held that the properties described under Schedule 'F' are not the joint family properties of the defendants. The learned Trial Court also held that the partition deed dated 17.04.1970 is valid and binding on the parties. Therefore, the plaintiffs are not entitled to claim 2/12th share in the Suit Schedule 'C' to Schedule 'F' properties.

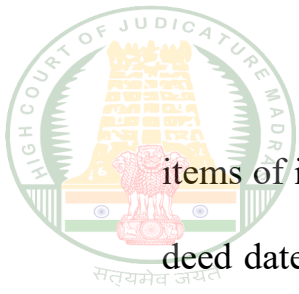


It was further held that, if the plaintiffs' father, namely the 3rd defendant herein, had any objection with regard to the partition dated 17.04.1970, he ought to have taken appropriate legal steps to challenge or set aside the said partition deed within three years after attaining majority. However, no such steps had been taken by the 3rd defendant.

21. Therefore, the learned Trial Court concluded that the plaintiffs are not entitled to any of the reliefs sought for in the suit. Accordingly, Issue Nos.4, 6 and 8 were answered against the plaintiffs. Consequently, the suit came to be dismissed with costs payable to Defendants 1 and 5, *vide* its judgement had decree dated 11.01.2010. Aggrieved by the aforesaid judgment the plaintiffs had preferred the present appeal suit and had impleaded the defendants as respondents.

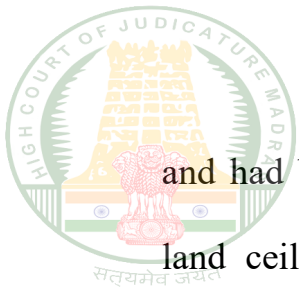
22. Heard Mr.A.Gouthaman, learned counsel appearing on behalf of both the appellants and Ms.Hema Sampath, learned Senior Counsel assisted by Ms.R.Meenal appearing on behalf of the respondents 2 to 9.

23. The learned counsel appearing on behalf of the appellants would submit that the learned Trial Court failed to appreciate that, pursuant to the decree passed in O.S. No. 29 of 1952 marked as Ex.A1, the 1st defendant was allotted a 1/4th share in the 'B' Schedule properties comprising as many as 433



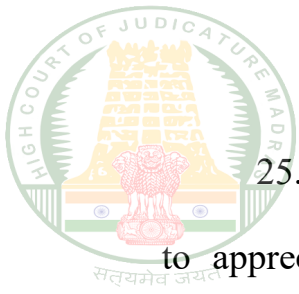
items of immovable properties. He would further submit that under the partition deed dated 09.11.1963 entered into between the 1st defendant and his brothers, the 1st defendant was allotted an extent of 14.88 acres of land. He further submits that the properties allotted to the 1st defendant herein under the Ex.A1 and properties got by him under the partition deed executed between Rathinambal and others marked as Ex.A6 are the joint family properties of the 1st defendant. It is contended that the 1st defendant had obtained valuable agricultural lands under the decree in O.S. No. 29 of 1952, thereby establishing the existence of a substantial ancestral nucleus and consequently all subsequent properties were purchased from the joint family income. It is further submitted that the learned Trial Court failed to see that the aforesaid properties were gotten by the joint family of defendants 1 to 4 and therefore certain alienations had subsequently been made from the properties comprised in the 'C' Schedule

24. The learned Counsel further submits that the learned Trial Court had erred in coming to the conclusion that the 5th defendant had purchased the Items Nos.2,3 and 6 of the Schedule 'D' of the properties out of the funds provided by her parents, whereas no evidence has been produced to substantiate the same. He contends that the Learned Trial Court had failed to see that the defendants 1 to 4 are the members of the joint family. The learned counsel would further submit that the learned Trial Court failed to appreciate that the alleged partition deed dated 17.04.1970 marked as Ex.A2 was neither genuine nor acted upon



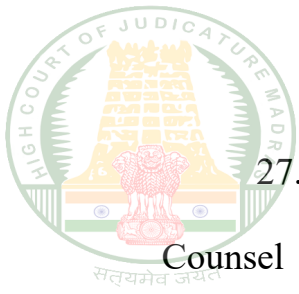
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and had been brought into existence only to circumvent the provisions of the land ceiling laws and the Agricultural Income Tax enactments. He further contends that several of the alleged sharers were minors at the time of the said partition and that the parties continued to remain in joint possession and enjoyment of the properties even thereafter. He would further contend that the Trial Court failed to note that equal shares had not been allotted under Ex.A2 and that the inequality and partiality of the partition are evident from the valuation of the shares recited therein. Consequently, according to the learned counsel, the members of the joint family were entitled to challenge the said partition. The learned counsel would further submit that the learned Trial Court failed to appreciate that the alleged partition deed dated 17.04.1970 marked as Ex.A2 was neither genuine nor acted upon and had been brought into existence only to circumvent the provisions of the land ceiling laws and the Agricultural Income Tax. It is contended that several of the alleged sharers were minors at the time of the said partition and that the parties continued to remain in joint possession and enjoyment of the properties even thereafter. He would further contend that the Trial Court failed to note that equal shares had not been allotted under Ex.A2 and that the inequality and partiality of the partition are evident from the valuation of the shares recited therein. According to him, consequently the members of the joint family were entitled to challenge and seek reopening of the said partition.



25. The learned counsel would further submit that the Trial Court failed to appreciate that a coparcenary extends to lineal descendants within the recognised degrees of relationship and that the plaintiffs being members of the smaller joint family acquired an interest by birth in the share of the 3rd defendant. Therefore, they were each entitled to claim 1/3rd share in the 3rd defendant's 1/4th share and were competent to maintain the suit seeking reopening of the partition. The learned counsel would further contend that an adverse inference ought to have been drawn against the defendants since the 1st and 5th defendants despite being the principal parties to the dispute, had not entered the witness box.

26. The learned counsel would further submit that the evidence available under Exs.A1 to A6 clearly demonstrates that the 1st defendant had consistently taken a dominant role in the affairs of both the larger and smaller joint families and had engaged in litigation even against his own father, brothers and sisters for securing personal advantage. He would also point out that Smt. Srilakshmi, the wife of the 3rd defendant, had instituted O.S. No. 79 of 1982 before the Subordinate Court, Tiruvannamalai, in *forma pauperis* seeking recovery of her jewels allegedly retained by her in-laws and that ultimately, only a diamond "Attigai" was returned to her. According to the learned counsel, the said circumstances would further establish the conduct of the defendants and support the plaintiffs' claim.



27. *Per contra*, countering the aforesaid arguments the learned Senior Counsel appearing on behalf of respondents 2 to 9 would submit that the judgment and decree passed by the learned Trial Court are lawful and have been rendered upon due appreciation of the oral and documentary evidence available on record. She would contend that the properties allotted to the 1st defendant under the partition of the larger joint family yielded only a meagre income and therefore, the plea of the plaintiffs/appellants that the subsequent suit properties were acquired from and out of the income derived from the joint family properties has not been substantiated by any evidence. The learned Senior Counsel would further contend that the partition deed dated 17.04.1970 marked as Ex.A2, entered into between the 1st defendant and his children, namely defendants 2 to 4 and defendants 6 to 8, is a valid and binding partition deed which has been acted upon by the respective sharers. According to her, the mere fact that some of the sharers were minors at the time of the partition would not render the partition invalid.

28. It is submitted that all the sharers had taken possession of and enjoyed the properties allotted to them under the said partition. The learned Senior Counsel would further submit that the father of the appellants, namely the 3rd defendant, who was a party to and sharer under Ex.A2, attained majority in the year 1973 and yet neither questioned nor challenged the partition deed for more than twenty-seven years. Having accepted the allotment made under the



aforsaid partition deed and enjoyed the properties allotted to his share, it is deemed that the 3rd defendant to had accepted the partition as binding upon him.

It is therefore contended that the appellants cannot challenge or question the said partition when their own father had never chosen to challenge it. It is further contended that, after the partition, the 3rd defendant and the appellants constituted a separate joint family *inter se* and, therefore, the appellants ought to have worked out their rights only in respect of the properties allotted to the 3rd defendant under Ex.A2.

29. The learned Senior Counsel would submit that defendants 2 to 4 were fully aware of the circumstances under which the partition had been effected and had acted upon the allotments made thereunder. Consequently, the appellants cannot now seek to reopen a partition which has been accepted and acted upon by all the concerned parties for several decades. The learned Senior Counsel would further submit that the factum of partition had been duly intimated to the Agricultural Income Tax authorities as well as the Income Tax Department and that the said authorities had taken note of the partition. She would also submit that in O.S. No. 79 of 1983, instituted by the mother of the appellants seeking recovery of certain jewels alleged to be in the custody of defendants 1, 5 and 6 to 8, the suit ultimately was compromised, pursuant to which only the diamond “Attigai” kept in the locker was returned, while the claim in respect of the remaining jewels was not pursued. It is further submitted

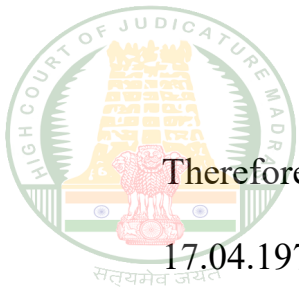


that defendants 6 to 8 have also effected alienations of the properties allotted to them under Ex.A2, thereby further demonstrating that the partition had been acted upon. In view of the above, the learned Senior Counsel would submit that the impugned judgment and decree dated 11.01.2010 have been passed upon a proper appreciation of the facts and evidence on record and do not warrant any interference by this Court. Accordingly, she seeks the present appeal to be dismissed.

30. I have considered the submissions made on both the sides and perused the materials available on record. The issue that looms upon this court is

“Whether the court below was right in rejecting the claim for partition on the issues framed”

31. It is significant to note that the primordial contention of the appellants is that the partition effected between the 1st defendant and his children under the partition deed dated 17.04.1970 had not been acted upon and that the shares allotted thereunder to the 1st defendant and defendants 2 to 4 were unequal. However, a perusal of the documents marked as Exs.B1 to B37 would reveal that the properties allotted to defendants 2 to 4 and 6 to 8 under the said partition deed have been in their respective possession and enjoyment. The evidence on record further discloses that some of the sharers have also effected alienations in respect of the properties allotted to them under the partition.



Therefore, this Court is of the considered view that the partition deed dated 17.04.1970 has indeed been acted upon and is binding upon the parties thereto.

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32. Further, it is to be noted that the partition deed was executed as early as on 17.04.1970 and till date, none of the parties to the said partition have chosen not to challenge it. If the shares allotted under said the partition were unjust or unequal, the parties concerned ought to have questioned the same within a reasonable time. However, despite the lapse of more than several decades no challenge has been made by any of the sharers. As rightly contended by the learned Senior Counsel for the respondents, the 3rd defendant, who was admittedly one of the sharers under the partition deed had not challenged the said partition even after attaining majority. Having accepted and acted upon the allotment made thereunder, the partition is binding upon him. Consequently the appellants, who have the claim only through the 3rd defendant, cannot seek to challenge the said partition.

33. It is further to be noted that, subsequent to the partition, the 3rd defendant and the appellants constituted a separate joint family *inter se*. Therefore, if at all the appellants are entitled to any share, they ought to work out their rights only in respect of the properties allotted to the 3rd defendant under the partition deed dated 17.04.1970, as the larger joint family of the 1st



defendant ceased to exist upon the said partition.

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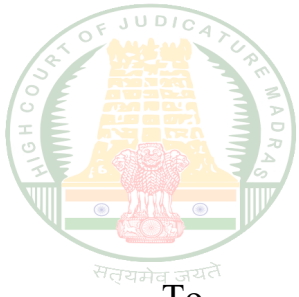
34. In view of the foregoing discussion, this Court is of the considered view that the judgment and decree dated 11.01.2010 passed by the learned Trial Court in O.S. No. 15 of 2004 is just and proper, do not warrant any interference by this Court.

35. Accordingly, the Appeal Suit stands dismissed. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

12.06.2026

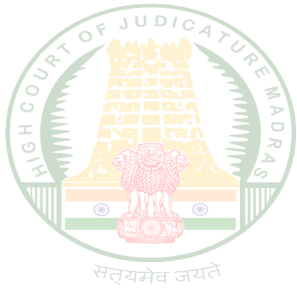
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To
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1. The Principal District Judge, Villupuram
2. The Section Officer,
VR Section,
Madras High Court,
Chennai.



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AS No.388 of 2



K.KUMARESH BABU, J.

PBN

A Pre-delivery judgment made in
AS No. 388 of 2015 &
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