



S.A.No.713 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 09.04.2026**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**S.A.No.713 of 2021**

1.Duraisamy

2.Ponnusamy

... Appellants

vs.

1.K.Rajendran

2.Kuppayammal

... Respondents

**PRAYER:** Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 18.03.2016 made in A.S.No.63 of 2015 on the file of the Principal Subordinate Court, Erode confirming the Judgment and Decree dated 13.08.2015 made in O.S.No.507 of 2009 on the file of Principal District Munsif Court, Erode by allowing the present appeal.

For Appellants : Mr.M.Guruprasad

For R1 : Mr.K.Venkatasubban  
for M/s.sarvabhauman Associates

For R2 : Insufficient Address



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## **J U D G M E N T**

The unsuccessful plaintiffs in the suit are the appellants. They filed a suit for partition claiming half share in the suit property and also for injunction restraining the defendants from disturbing the possession of the plaintiffs over the suit properties till a final partition is effected. The suit was dismissed by the Trial Court. The appeal was filed by the plaintiffs was also dismissed. Aggrieved by the concurrent finding, the plaintiffs have come before this Court.

2. According to the plaintiffs, the 1<sup>st</sup> plaintiff is the brother of the deceased 1<sup>st</sup> defendant. The 2<sup>nd</sup> plaintiff is the son of the 1<sup>st</sup> plaintiff. The 2<sup>nd</sup> defendant is a purchaser of the suit property. The 3<sup>rd</sup> defendant is the wife of the deceased 1<sup>st</sup> defendant.

3. It was the case of the plaintiffs that after death of father of the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant, there was a partition in the family on 25.11.1999. The 'A' Schedule Property in the Partition Deed was allotted to share of mother-Amasaiammal. The 'B' Schedule Property was allotted to



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the 1<sup>st</sup> defendant and 'C' Schedule Property was allotted to the plaintiffs.

According to the plaintiffs, father of 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant-Karuppanna Gounder owned 29 cents of land in R.S.No.412/6A and in the above said partition, 10 cents each was allotted to the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant. The balance 9 cents was kept as a common property and it was mutually agreed that both the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant shall enjoy the same. Recently, the plaintiffs came to know that the 1<sup>st</sup> defendant executed a Sale Deed in favour of the 2<sup>nd</sup> defendant in respect of 18 cents in S.F.No.412/6A over and above 10 cents allotted to him in the suit survey number. According to them, 9 cents kept as a common property has been sold by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant including the share of the plaintiffs. Therefore, the instant suit has been filed seeking the above said reliefs.

4. The defendants filed written statement and resisted the suit on the ground that the 1<sup>st</sup> defendant was allotted 18 ½ cents in the suit survey number including entire suit property. The allegation in the plaint, as if 9 cents in the suit survey number was kept as a common property was specifically denied. Therefore, the defendants sought for dismissal of the suit on the ground that 9 cents in the suit survey number was not a common



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property and hence, the plaintiffs were not entitled to maintain a suit for partition.

5. Before the Trial Court, the 2<sup>nd</sup> plaintiff was examined as PW.1 and 2 documents were marked on the side of the plaintiffs as Exs.A1 and A2. The defendants 2 and 3 were examined as DW.1 and DW.2 respectively and 2 documents were marked on their side as Exs.B1 and B2.

6. The Trial Court on appreciation of evidence available on record, came to the conclusion that the plaintiffs failed to establish their case that 9 cents in suit survey number was kept as a common property and hence, dismissed the suit. Aggrieved by the same, the plaintiffs preferred first appeal in A.S.No.63 of 2015 on the file of Principal Subordinate Court, Erode. The First Appellate Court affirmed the findings of the Trial Court and dismissed the first appeal. Aggrieved by the concurrent finding, the plaintiffs have come before this Court.

7. The learned counsel appearing for the appellants would submit that the 1<sup>st</sup> defendant was entitled to only 10 cents in the suit survey number and hence, he is not entitled to sell over and above 10 cents to 2<sup>nd</sup> defendant. It is further submitted that at the time of partition, the entire extent in the suit



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property was not partitioned and the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant were allotted to only 10 cents each in the suit survey number and the remaining 9 cents was kept as a common property and the present suit has been laid for partition of the property which was kept as a common property in the earlier partition.

8. A perusal of the Ex.A1-Partition Deed dated 25.11.1999 entered between the 1<sup>st</sup> plaintiff, 1<sup>st</sup> defendant and their mother would establish that in the suit survey number namely R.S.No.412/6A, the 1<sup>st</sup> plaintiff was allotted 10 cents and the 1<sup>st</sup> defendant was allotted 10 cents. There is no reference about 9 cents allegedly kept as a common property in the above mentioned Partition Deed. The present suit has been filed by the plaintiffs only in respect of 9 cents allegedly kept as a common property at the time of partition.

9. In the absence of any reference in the Partition Deed regarding excess 9 cents kept as a common property, the plaintiffs have got no cause of action for maintaining the suit for partition in respect of 9 cents allegedly kept as a common property. Both the Courts below on proper appreciation of recitals in Ex.A1-Partition Deed, came to the conclusion that the plaintiffs



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failed to prove that 9 cents in the suit survey number was kept as a common property and hence, the plaintiffs were not entitled to maintain a suit for partition. I do not find any perversity in the conclusion reached by the Courts below.

10. **In Nutshell:-**

(i) The Second Appeal is dismissed.

(ii) In the facts and circumstances of the case, there will be no order as to costs.

**09.04.2026**

Index : Yes / No  
Speaking order : Yes / No  
Neutral Citation : Yes / No  
dm



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To

- 1.The Principal Subordinate Court,  
Erode.
- 2.The Principal District Munsif Court,  
Erode.



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**S.SOUNTHAR, J.**

dm

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