



A.S.No.41 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 07.11.2025
PRONOUNCED ON : 25.06.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

A.S. No.41 of 2019

- 1.G.Jayalakshmi, (Died)
W/o.Goverthan,
Madam Village,
Mazhaiyur (Via),
Vandhavasi Taluk,
Thiruvannamalai District.
- 2.S.Sivagamasundari (Died)
W/o.Shanmugam,
217/1, Amman Kovil Street,
Sevoor Village, Arni Taluk,
Thiruvannamalai District.
- 3.P.Meenatchi,
W/o.Pitchandi,
No.5, Subramaniya Mudaliyar Street,
Saidapet, Arni,
Thiruvannamalai District.
- 4.T.Abitha,
W/o.Thirunavukkarasu,
No.6/1D, C.V.Naidu Salai,
Thiruvallur, Thiruvallur District.
- 5.V.Ponni,
W/o.Vijayarangam,
No.6, Selvaperumal murali street,
Sholingar, Vellore District.



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6.P.Kamatchi,
W/o.Panneerselvam,
No.13, Ayyasami Iyyar Street,
Nehur Nagar,
Chrompet, Chennai.

7.Gokulakrishnan,
S/o.Goverthan,
No.33, Sannathi Street,
Madam Village,
Thiruvannamalai District.

8.Sivagamasundari,
D/o.Goverthan,
No.17, Pranaam Residency Ff02,
2nd cross, A sector, Amruthanagar,
Bangalore North, Sahakaranagar P.O.,
Bangalore North, Karnataka – 560 090.

9.G.Chinnathambi, S/o.Goverthan,
No.309, SF, Vandhana, SS Lake View,
Nadamma Layout, Kodichikkanahalli,
Bangalore South, Karnataka – 560 076.

(A1 Died. A7 to A9 are brought on record as L.R.s
of the deceased A1 vide order of court dated
21.06.2024 made in C.M.P.Nos.5720, 5733 and 5740
of 2024 in A.S.No.41 of 2019 (TKRJ))

10.Shanmugam,
S/o.Sami Alalasundaram Mudaliar,
No.217/1-20, Amman Koil Street,
Arni TK, Sevoor, Tiruvannamalai District – 632316.

11.Kalpana,
W/o.Vadivel, No. 31,
Anaikatty Ganapathy Street,
Pichanur Gudiyatham, VTC Gudiyatham,
Vellore District – 632 602.



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12.Sumathy,
W/o.Nithyanandam, 11/5, Madam Street,
Sathuvachari, Vellore District 632 009.

13.Suresh,
S/o.Shanmugam SA,
No.6A-1H, Coral Enclave,
Rajendra Prasad Road,
Nehru Nagar, Chrompet,
Kancheepuram 600 044.

(A2 Died.A10 to A13 are brought on
record as Lrs of deceased A2 vide
court order dated 25.10.2025 made in
C.M.P.Nos.23503, 23506 & 23508
of 2025 in A.S.No.41 of 2019)

..Appellant(s)

Vs.

1.T.Karpagam,
W/o.Thanigaivel,

2.Minor T.Shivani,
D/o.Thanigaivel
Represented by her mother T.Karpagam

Both are residing at No.235A/1,
Amman Koil Street, Sevoor Village,
Arni Taluk, Thiruvannamalai District.

3.B.Kalaivani,
W/o.Balasundaram,
Sevoor Village, Arni Taluk,
Thiruvannamalai District.

4.The Sub Registrar,
Office of the Sub Registrar, Arni,
Thiruvannamalai District.



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5.The Thasildar,
Taluk Office, Arni,
Thiruvannamalai District.

6.The Village Administrative Officer,
Sevoor Village, Arni Taluk,
Thiruvannamalai District.

...Respondents

PRAYER: Appeal suit filed against the Judgment and decree dated 28.09.2018 made in O.S.No.38 of 2017 on the file of the Court of the Additional District (FTC) Judge, Arni.

For appellant : Ms.V.Divi Bharathi.

For respondent : Mr.J.Aravind for Mr.D.R.Arunkumar
for R1 & R2
R3 – No appearance.
R4 to R6 – Given up.

J U D G M E N T

The appeal filed by the defendants against the judgment and decree dated 28.09.2018 passed in O.S.No.38 of 2017 by the Additional District Judge/Fast Track Court, Arni, whereby the suit for declaration and permanent injunction was decreed.

2. For the sake of convenience, the parties are referred to in this judgment in the same rank as they were arrayed before the Trial Court



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3. The plaintiffs' case is that the suit schedule property situated at Sevoor Village, Arni Taluk, comprised in Survey No.218/1, measuring 0.74 acres, originally belonged to Rajamanickam, who was in possession and enjoyment of the same for several decades. The 1st plaintiff is the wife of Thanigaivel, son of Rajamanickam through his second wife Kabilambal, and the 2nd plaintiff is the minor daughter of Thanigaivel and the 1st plaintiff.

4. According to the plaintiffs, Rajamanickam effected an oral partition in the year 1976, under which several valuable properties were allotted to defendants 1 to 7, who are the daughters of Rajamanickam through his first wife. The suit property was allotted jointly to Kabilambal and Thanigaivel, and they were in joint possession and enjoyment of the same. In support thereof, the plaintiffs rely upon Joint Patta No.1178 and the joint patta notice dated 04.09.1995.

5. It is further pleaded that Kabilambal executed a registered Release Deed dated 04.02.2004 in favour of Thanigaivel, thereby releasing her right in the suit property. Thereafter, Thanigaivel became the absolute owner and was in possession and enjoyment of the suit property.

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Subsequently, Thanigaivel executed a registered Gift Settlement Deed dated 14.10.2011 in favour of the plaintiffs, and by virtue of the said deed, the plaintiffs claim to have become the absolute owners of the suit property.

6. The plaintiffs state that they have been in lawful, peaceful and continuous possession and enjoyment of the suit property, which includes the site, rice mill, power loom building, superstructure, machinery, electricity service connection and other appurtenances described in the plaint schedule. They further contend that portions of the property have been let out to tenants and that they have been paying necessary taxes.

7. The grievance of the plaintiffs is that defendants 1 to 7, though they have no right, title or interest over the suit property and though they had already been allotted separate properties, are attempting to interfere with the plaintiffs' possession by relying on forged and manipulated documents. The plaintiffs also apprehend that defendants 1 to 7 may attempt to alienate the property through the 8th defendant/Sub-Registrar and may seek transfer of patta, chitta and adangal through defendants 9 and 10.

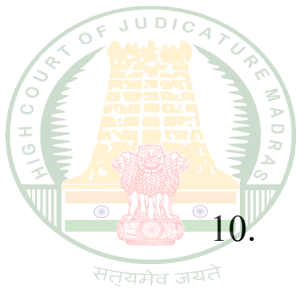


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8. Hence, the plaintiffs have filed the suit seeking declaration of their title over the suit schedule property, permanent injunction restraining defendants 1 to 7 from interfering with their peaceful possession and enjoyment, permanent injunction restraining the 8th defendant from registering any conveyance deed in respect of the suit property at the instance of defendants 1 to 7, and permanent injunction restraining defendants 9 and 10 from issuing patta, chitta or adangal in favour of defendants 1 to 7, along with costs and other reliefs.

9. Defendants' Case :The written statement filed by the 2nd defendant was adopted by defendants 1, 3, 4, 5, 6 and 7. The defendants admit the relationship between the parties, but state that the suit property originally belonged to Rajamanickam Mudaliar. Rajamanickam had first married Annamal, through whom defendants 1 to 7 were born as daughters. After the death of Annamal, he married Kabilambal as his second wife, and Thanigaivel was born through Kabilambal. It is the specific case of the defendants that Rajamanickam died intestate in the year 1977, and therefore all his legal heirs, namely defendants 1 to 7, Kabilambal and Thanigaivel, are jointly entitled to the properties left by him.

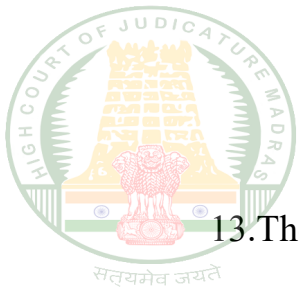


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10. The defendants specifically deny the plaintiffs' plea of oral partition in the year 1976. According to them, no such oral partition took place during the lifetime of Rajamanickam, and the alleged allotment of properties to defendants 1 to 7 is false. They further deny that the suit property was allotted exclusively to Kabilambal and Thanigaivel.

11. The defendants contend that Kabilambal had no exclusive right or title to execute the alleged Release Deed dated 04.02.2004 in favour of her son Thanigaivel in respect of the family properties. Consequently, they also contend that Thanigaivel had no right to execute the alleged Gift Settlement Deed dated 14.10.2011 in favour of the plaintiffs. Hence, according to the defendants, both the Release Deed and Gift Settlement Deed are invalid. According to the defendants, the plaintiffs are put to strict proof of the alleged Gift Settlement Deed dated 14.10.2011 and the Release Deed dated 04.02.2004.

12. The defendants further deny the allegation that they attempted to dispossess the plaintiffs or interfere with their possession. They also deny the alleged cause of action and state that the suit has been filed only due to recent misunderstanding between the family of the plaintiffs and the defendants. Therefore, the defendants pray for dismissal of the suit with costs.



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13. The trial Court framed the following issues for consideration:

1. Whether the plaintiffs are entitled to declaration of title over the suit schedule property and consequential permanent injunction restraining defendants 1 to 7 from interfering with their alleged peaceful possession and enjoyment of the suit property?
2. Whether the plaintiffs are entitled to permanent injunction restraining the 8th defendant from registering any conveyance deed in favour of defendants 1 to 7, and restraining defendants 9 and 10 from issuing patta, chitta and adangal in favour of defendants 1 to 7 in respect of the suit property?

14. Before the trial court, on the side of plaintiff, 1st plaintiff was examined as PW1, Kabilambal was examined as PW2 and marked Ex.A1 gift settlement deed dated 14.10.2011, Ex.A2 release deed dated 04.02.2004, Exs.A3 to A5 revenue and patta records, Ex.A6 encumbrance certificate, Exs.A7 to A13 tax receipts, Ex.A14 death certificate of Rajamanicka Mudaliyar dated 29.11.1996, Ex.A15 electricity receipt, and Ex.A16, release deed dated 01.08.2003 by the defendants in respect of other property. On the side of defendants 6th defendant Ponni was examined as DW1 and marked Ex.B1 sale deed dated 15.12.1958.

15. On appreciation of the oral and documentary evidence the Trial Court held that the plaintiffs had established their title and possession



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over the suit schedule property. The Court relied upon Ex.A3 and Ex.A4 patta records dated 04.09.1995 standing in the names of Kabilambal and Thanigaivel, Ex.A5 patta dated 16.06.2014 in the name of Thanigaivel, Ex.A2 Release Deed dated 04.02.2004 executed by Kabilambal in favour of Thanigaivel, and Ex.A1 Settlement Deed dated 14.10.2011 executed by Thanigaivel in favour of the plaintiffs.

16. The Court also observed that defendants 1 to 7 did not specifically deny that the other properties mentioned by the plaintiffs were in their enjoyment. The Court relied upon Ex.A16, under which defendants 1 to 3 and 5 to 7 had released their rights in favour of the 4th defendant in respect of another property. Since Thanigaivel and Kabilambal were not parties to Ex.A16, the Court inferred that defendants 1 to 7 were separately dealing with and enjoying other properties of Rajamanickam among themselves.

17. The Court further relied upon the admission of D.W.1 that Rajamanickam intended the suit property to go to Kabilambal and Thanigaivel, and that Kabilambal was in possession after Rajamanickam's death. It found that defendants 1 to 7 failed to prove their title or possession over the suit property.

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18. Accordingly, the Trial Court decreed the suit, declared the plaintiffs' title, granted permanent injunction against defendants 1 to 7, restrained the 8th defendant from registering any deed executed by defendants 1 to 7 in respect of the suit property, and restrained defendants 9 and 10 from issuing patta, chitta and adangal in favour of defendants 1 to 7. The suit was decreed without costs.

19. Aggrieved by the Judgment and Decree of the trial court, the defendants preferred this appeal contending that Rajamanickam Mudaliar died intestate and, therefore, his properties devolved upon all his Class-I legal heirs under Section 8 of the Hindu Succession Act, 1956. The appellants, being the daughters of Rajamanickam through his first wife Annamal, claim equal shares in the suit property. They contend that the Trial Court erred in accepting the plaintiffs' plea of oral partition/settlement without independent or sufficient evidence and wrongly relied upon Ex.A16, which according to them is neither proof of oral partition nor directly relevant to the suit property. It is further urged that Kabilambal had no right to release more than her lawful share in favour of Thanigaivel under the Release Deed dated 04.02.2004, and consequently Thanigaivel had no valid title to execute the Gift Settlement

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Deed dated 14.10.2011 in favour of the plaintiffs in respect of the entire suit property. The appellants also contend that the revenue records were mutated in favour of Kabilambal and Thanigaivel without notice to them, and that the plaintiffs failed to prove exclusive title, possession, oral partition or ouster of the appellants.

20. The learned counsel for the appellants/defendants contended that the Trial Court decreed the suit mainly on assumptions and without proper proof of the alleged oral partition of the year 1976. It was argued that in a suit for declaration, the plaintiffs must succeed on the strength of their own title and cannot rely upon the weakness of the defendants' case. The plaintiffs had not produced any independent witness, elder, mediator, or contemporaneous document to prove the alleged oral partition, nor had they produced records from 1977 to 1994 to show possession pursuant to such partition. The appellants relied upon *Ganesan v. Asupathy*, CDJ 2022 MHC 1598, to contend that oral partition must be specifically pleaded and proved by clear evidence and cannot be presumed and that a mere arrangement for convenient enjoyment of properties cannot be treated as oral partition.



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21. It was further submitted that the Trial Court wrongly relied upon

Ex.A16release deed dated 01.08.2003, which relates to another property and has no direct nexus with the suit property in Survey No.218/1. According to the appellants, Ex.A16release deed dated 01.08.2003 cannot be treated as proof of oral partition or settlement in respect of the suit property. The Trial Court also erred in relying upon patta and revenue records, since such records are not documents of title and can only indicate possession for revenue purposes. The appellants further contended that the Trial Court misread the evidence of D.W.1 by treating a stray statement as an admission. For this proposition, they relied upon Kumarasamy v. Rajkumar and others, CDJ 2011 MHC 6175, to contend that one stray sentence cannot be treated as an admission when the evidence as a whole does not support such inference.

22. The appellants also argued that the evidence of P.W.1 and P.W.2 did not support the plaintiffs' case, as P.W.1 admitted that she was not aware of the alleged oral partition or the properties said to have been allotted to defendants 1 to 7, and P.W.2's evidence was contrary to the pleaded case. Therefore, according to the appellants, the plaintiffs failed to prove exclusive title, valid oral partition. The defendants are in the constructive possession of the suit property in respect of their 1/9th share

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each and no injunction could be granted against co-owners .On these grounds, the appellants sought setting aside of the Trial Court judgment and decree.

23. The learned counsel for the respondents/plaintiffs submitted that the appellants, having not filed any counter-claim for cancellation of the Release Deed dated 04.02.2004 or the Settlement Deed dated 14.10.2011, nor sought declaration of their own title or partition, cannot in appeal seek a better relief than what they claimed before the Trial Court. It was contended that oral partition/family arrangement is valid in Hindu law and can be proved by conduct, long possession, separate enjoyment, revenue recognition and subsequent intra-family conveyances. Reliance was placed on Pappi @ Nagarajan and others v. Ramasamy Naidu and others, 2025 (5) CTC 167, wherein, following H. Vasanthi v. A. Santha, 2023 SCC OnLine SC 998, it was held that oral partition/family settlement is legally valid if supported by sufficient evidence, and that subsequent conduct of parties is relevant to determine its validity. The respondents further submitted that D.W.1's admissions regarding Rajamanickam's intention, the factum of family arrangement, and delivery of possession shifted the burden on the appellants, which they failed to discharge. It was also argued that the appellants, who admittedly

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did not seek recovery of possession or counter-claim for declaration, cannot resist the decree merely by raising vague pleas of co-ownership.

For this proposition, reliance was placed on *Anathula Sudhakar v. P. Buchi Reddy*, (2008) 4 SCC 594, particularly paragraph 13.2, to contend that a person out of possession must seek possession and cannot merely defend or claim injunction without seeking appropriate relief. The plaintiffs also submitted that the appellants/defendants' reliance on *Ganesan v. Asupathy* and *Kumarasamy v. Rajkumar* is misplaced, as those decisions are factually distinguishable and do not apply to a case where oral partition is supported by conduct, revenue records, registered release deed, settlement deed, long possession and admissions. Therefore, the respondents/plaintiffs prayed for dismissal of the appeal and confirmation of the Trial Court decree.

24. During the pendency of the appeal, the second appellant, S. Sivagamasundari, died on 22.02.2024. By order dated 23.09.2025, this Court recorded that no steps had been taken to bring her legal representatives on record and that the appeal stood abated as against the second appellant. The consequential effect of such abatement was left open to be considered at the time of final hearing.

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Points for determination

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25. The following points arise for determination in this appeal:

1. Whether, by reason of the death of the second appellant and the failure to bring her legal representatives on record, the appeal has abated; and if so, whether such abatement is only as against the deceased appellant or as against the appeal as a whole?
2. Whether the plaintiffs have proved the alleged oral partition/family arrangement of the year 1976, under which the suit property was allegedly allotted to Kabilambal and Thanigaivel?
3. Whether Ex.A2 Release Deed dated 04.02.2004 executed by Kabilambal in favour of Thanigaivel and Ex.A1 Gift Settlement Deed dated 14.10.2011 executed by Thanigaivel in favour of the plaintiffs are valid and sufficient to convey absolute title over the entire suit property to the plaintiffs?
4. Whether the Trial Court was right in granting declaration of absolute title and permanent injunction in favour of the plaintiffs in respect of the suit property?
5. To what reliefs are the parties entitled?



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Point No.1

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26. The second appellant, S. Sivagamasundari, died during the pendency of the appeal and her legal representatives were not brought on record. Therefore, the appeal stands abated as against her. However, the abatement need not result in dismissal of the appeal as a whole. In *State of Punjab v. Nathu Ram*, AIR 1962 SC 89, the Supreme Court held that the effect of abatement depends upon whether the appeal can be effectively decided in the absence of the deceased party without resulting in contradictory or inconsistent decrees.

27. In the present case, the appeal can be effectively decided, since all the surviving appellants stand on the same status. Hence, there is no possibility of passing inconsistent orders. Accordingly, Point No.1 is answered.

Point No.2

28. The plaintiffs' case is that in the family arrangement/oral partition of the year 1976, several properties were allotted to defendants 1 to 7, while the suit property was allotted to Kabilambal and Thanigaivel. Oral partition or family arrangement is legally recognised. In *Kale v. Deputy*
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Director of Consolidation, AIR 1976 SC 807, the Supreme Court held

that a family arrangement may be oral and, if acted upon, the parties are bound by it. Similarly, in *H. Vasanthi v. A. Santha*, 2023 SCC OnLine SC 998, the Supreme Court observed that partition may be effected through settlement or oral understanding when supported by evidence and conduct.

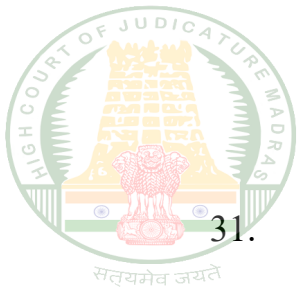
29. In the present case, the plaintiffs have not relied upon a bare plea of oral partition alone. Their case is supported by subsequent conduct and documentary circumstances. Ex.A3 and Ex.A4, the joint patta and patta notice of the year 1995, stand in the names of Kabilambal and Thanigaivel. Ex.A5 patta stands in the name of Thanigaivel. Ex.A2 Release Deed was executed by Kabilambal in favour of Thanigaivel, and thereafter Ex.A1 Gift Settlement Deed was executed by Thanigaivel in favour of the plaintiffs. The tax receipts and electricity records also support long enjoyment by the plaintiffs' branch.

30. Under Ex.A.16 release deed dated 01.08.2003 defendants 1 to 3 and 5 to 7 released their rights in favour of the 4th defendant in respect of property mentioned in the para 10 of the plaint. Admittedly, Thanigaivel and Kabilambal were not parties to Ex.A16. Ex.A16 recites that
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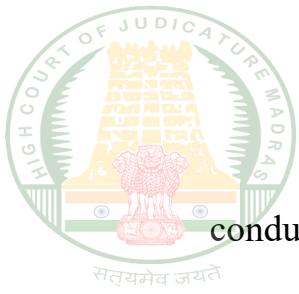
Rajamanickam Mudaliyar had arranged the concerned property as common family property for Annamal and her daughters, and that after the death of Rajamanickam and Annamal, the daughters were enjoying the same as common property. It further recites that, as per the arrangement made before panchayatdars, the executants released their 6/7 share in favour of Meenatchi on receiving consideration. The recital in Ex.A16 shows that there had been some arrangement between the family members with respect to the properties of Rajamanickam Mudaliyar. Though Ex.A16 is different property but it also left by the deceased Rajamanickam , it shows that the daughters born through Annamal were separately dealing with the property mentioned therein and released their 6/7 share in favour of Meenatchi pursuant to an arrangement before panchayatdars, without joining Kabilambal and Thanigaivel. If all the properties of Rajamanickam Mudaliyar had remained joint among all heirs, their exclusion from Ex.A16 would require a satisfactory explanation, which is absent. Therefore, Ex.A16 is a relevant corroborative circumstance supporting the plaintiffs' plea that an earlier family arrangement/oral allotment had been acted upon among the parties.



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31. The appellants/defendants relied on *Ganesan v. Asupathy*, CDJ 2022 MHC 1598, to contend that oral partition cannot be presumed from mere convenient enjoyment. There is no quarrel with that proposition. However, the present case is distinguishable, because the plaintiffs rely not merely on enjoyment, but also proved the oral partition effected during the life time of Rajamanickam which is supported by Ex.A16 release deed dated 01.08.2003.

32. The appellants/defendants relied upon *Kumarasamy v. Rajkumar*, CDJ 2011 MHC 6175, to contend that a stray statement in the evidence of D.W.1 cannot be treated as an admission. There can be no dispute regarding the said proposition. However, in the present case, the evidence of D.W.1 is not relied upon in isolation. In her cross-examination, D.W.1 admitted that she was aware of the statement of her father that, after the birth of Thanigaivel through Kabilambal, the suit property should go to Kabilambal and Thanigaivel. She further admitted that after the death of Rajamanickam, the suit property came into the possession of Kabilambal and, after it was so given to Kabilambal, it remained in her possession. Therefore, the said admission of D.W.1, when read along with Ex.A3 to Ex.A5patta, Ex.A16 release deed dated 01.08.2003, Ex.A2 Release Deed dated 04.02.2004, Ex.A1 Settlement Deed dated 14.10.2011 and the 20/23



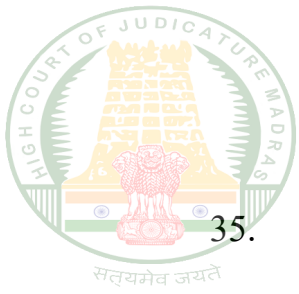
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conduct of the parties, supports the plaintiffs' plea of oral partition/family arrangement. Hence, the evidence of D.W.1 cannot be brushed aside as a mere stray statement.

33. Thus, on a preponderance of probabilities, the plaintiffs have proved that the suit property was allotted to Kabilambal and Thanigaivel under the oral family arrangement and that such arrangement was acted upon for a long period. Point No.2 is answered in favour of the plaintiffs.

Point No.3 to 5

34. In view of the finding rendered on Point No.2, Ex.A2 Release Deed dated 04.02.2004 executed by Kabilambal in favour of Thanigaivel is held to be valid. Consequently, Thanigaivel had valid title to execute Ex.A1 Gift Settlement Deed dated 14.10.2011 in favour of the plaintiffs. Therefore, the reliefs of declaration of absolute title and permanent injunction granted by the Trial Court in favour of plaintiffs in respect of the suit property do not warrant any interference. Point Nos.3 to 5 are answered accordingly.



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35. In the result, the appeal is dismissed, the judgment and decree dated 28.09.2018 passed in O.S.No.38 of 2017 by the learned Additional District Judge, Fast Track Court, Arni, are confirmed. In the circumstances of the case, there shall be no order as to costs. Connected miscellaneous petitions, if any, are closed.

25.06.2026

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Index: Yes/No

Speaking Order /Non-speaking order

Neutral citation: Yes/No

To

1. The Additional District (FTC) Judge, Arni.

2. The Section Officer,
V.R.Records,
Madras High Court.



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DR. A.D. MARIA CLETE, J

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PRE DELIVERY JUDGMENT
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