



THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Judgment reserved on : 15.12.2025

Judgment pronounced on :20.02.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S. No.981 of 2024
and CMP. No.26442 of 2024

1.Subramani
2.Raji

..Appellants

Vs.

1.Maragathavalli
2.Saravanan
3.Sivagami
4.Hari Krishnan
5.Sankar Ganesh

..Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree passed on 05.10.2020 in O.S. No.255 of 2020 on the file of the 1st Additional District and Sessions Judge at Thiruvallur (FAC) dismissing the suit and to allow the present appeal.

For Appellants : Mr.Naveen Srinivas for
Mr.M.Naresh Babu

For Respondents : Mr.K.Balaji



WEB COPY

JUDGMENT

The plaintiffs in a suit for partition aggrieved by dismissal of the suit are the appellants.

2. PLEADINGS:-

(a) Complaint in brief:

The suit properties belonged to late Venkatasamy. His three sons Thulasiraman, Subramani and Raji were in joint enjoyment and possession of the suit properties along with late Venkatasamy. The said Venkatasamy, died in 1995 and his wife, Kuppammal, the mother of the plaintiffs died in the year 2018. The suit items 1 to 14, are joint family properties. The suit items 15 and 16 were purchased in the names of Thulasiraman and Subramani respectively. However, the purchases were made from and out of joint family funds. The defendants are legal representatives of Thulasiraman. Item 17 of the suit property is a house put up by the three brothers, during the lifetime of their parents and the said house site is undivided. Items 18 and 19 are also house sites which are lying vacant. The second plaintiff filed a suit against his two brothers viz., Thulasiraman and Subramani in O.S. No.84 of 2000, before the Sub Court, Thiruvallur. The said suit was dismissed for default. In the said suit,



certain items of properties were omitted and proper and necessary parties were also not added. In order to have an effective partition, the plaintiffs demanded for partition by causing a lawyer's notice on 11.02.2020. Despite receipt of the said notice, the defendants did not come forward to comply with the demand for partition. Hence, the suit.

(b) Written Statement filed by the 2nd defendant and adopted by the other defendants in brief:

The second defendant has filed written statement which was adopted by the other defendants. The plaintiffs have suppressed material facts. They are not entitled to any relief, much less the relief of partition. The self serving claims that the father Venkatasamy was in joint possession and enjoyment of the suit items along with his sons is stoutly denied. The allegation that items 15 and 16 were purchased in the names of Thulasiraman and Subramani, from and out of joint family funds is also stoutly denied. The claim that three brothers put up separate house construction and that the parties are in joint possession of Item No.17 is also denied. The claim that items 18 and 19 are vacant sites available for partition is also denied. The suit filed in O.S. No.84 of 2000 by the second plaintiff was dismissed for default. The second plaintiff had issued a notice on 03.04.2000, without even mentioning any particulars with regard to death of



Venkatasamy. The properties available for partition were already partitioned in the year 1985 and the parties have been in separate possession of their respective allotted shares for 35 years and the plaintiffs are estopped from claiming any further share in the suit properties. Thulasiraman, under whom the defendants claimed, had filed a written statement in O.S. No.84 of 2000, setting out how the plaintiffs have dis-entitled to any relief or claim for partition. The said written statement was filed on 05.12.2003 and even thereafter, for 17 long years, there has been no claim for partition and the suit is hopelessly barred by limitation. The plaintiffs have also deliberately omitted the properties available in Survey. No.666, besides other properties and therefore, for partial partition as well, the suit is liable to be dismissed. The present litigation is a second round indulged in by the plaintiffs. The plaintiffs have suppressed the reply notice dated 23.03.2020 issued by the defendants. Valuation of the buildings is also improper. Hence, the defendants pray for dismissal of the suit.

(c) Issues:

Based on the pleadings available before the Trial Court, the Trial Court has framed the following issues:-

(i) Whether the suit properties item Nos.1 to 19 are joint family properties as claimed by the plaintiffs?



WEB COPY

(ii) *Whether the suit item No.4 is not the joint family property as claimed by the defendants?*

(iii) *Whether the suit properties were already partitioned in the year 1985?*

(iv) *Whether the plaintiffs are entitled for partition and separate possession?*

(v) *To what share are the plaintiffs entitled to?*

(vi) *To what other relief are the plaintiffs entitled to?*

(d) Trial:-

At trial, the second plaintiff, examined himself as P.W.1 and first plaintiff examined himself as P.W.2. On the side of the plaintiffs, Ex.A1 to Ex.A5 were marked. On the side of the defendants, second defendant examined himself as D.W.1 and two independent witnesses, Mr.Babu and Mr.Parthasarathi were examined as D.W.2 and D.W.3 and on the side of the defendants, Ex.B1 to Ex.B6 were marked.

(e) Decision of the Trial Court:-

The Trial Court found all the issues against the plaintiffs and dismissed the suit.

3. THE PRESENT APPEAL:-



WEB

Mr.Naveen Srinivas, learned counsel for the appellants would submit that the Trial Court has erroneously dismissed the suit, without noticing that the earlier suit for partition had not been dismissed on merits and after contest, but only for default. He would further contend that the Trial Court had failed to consider the evidence that there was an oral partition amongst the legal heirs of Venkatasamy, which was admitted by the defendants themselves. Specifically inviting my attention to Paragraph No. 8 of the written statement, the learned counsel for the appellants would contend that the defendants had admitted that there was a partition in the year 1985 and the parties have been in absolute possession and enjoyment. The learned counsel for the appellants would further contend that the plaintiffs was not making any independent claim, contrary to the oral partition which was admitted by the defendants and they only wanted a formal document to establish their rights. He would therefore state that Trial Court ought not to have dismissed the suit.

4. Per contra, learned counsel appearing for the respondent, Mr.K.Balaji, would state that the defendants are legal representatives of one of the sons of Venkatasamy, by name Thulasiraman. An attempt was made in O.S. No.84 of 2000, by one of the present plaintiffs/appellants seeking partition and separate possession and according to the learned counsel for the respondents, the said



Thulasiraman as defendant in the said suit had filed a written statement denying the entitlement of the plaintiff for partition and specifically stating that the property been partitioned in the year way back 1985 and the parties are in separate possession and enjoyment ever since. It is therefore contended that even after the filing of such written statement, even assuming the second suit for partition can be maintained, without admitting, the plaintiffs have lost their right to challenge the oral partition already effected, allotting the properties to the legal heirs of late Venkatasamy. He would further state that the Trial Court has rightly considered the oral and documentary evidence available on record and dismissal of the suit does not warrant any interference.

5. Based on the pleadings, oral and documentary evidence adduced by the parties, the discussion of the Trial Court and findings on the issues framed, I proceed to formulate the following points for consideration:

- (i) Whether the suit properties are available for partition and if so, whether the plaintiffs are entitled to a preliminary decree?
- (ii) Whether the plaint is barred by law of limitation?

6. Points for consideration (i) and (ii):-



WEB COURT

The relationship between the parties is not in dispute. It is the case of the plaintiffs that the properties are joint family properties which belonged to the father Venkatasamy, along with his three sons, viz., Thulasiraman, Subramani and Raji. The sons Subramani and Raji are the plaintiffs. The legal representatives of the other son, Thulasiraman are the defendants. It is an admitted fact that the second plaintiff Raji, filed a suit for partition against his two brothers, viz., Thulasiraman and Subramani, in O.S. No.84 of 2000 before the Sub Court, Thiruvallur. No doubt, the said suit was dismissed for default. It is contended by the learned counsel for the appellants that since the suit was decided on merit, there is no bar for the present suit being filed, especially, claiming right of partition in joint family properties. The learned counsel for the appellant would also take me through the individual items of property, to contend that the properties were purchased jointly in the names of the parties. Items 4, 15 and 16, being jointly purchased by the father and defendants themselves and even till today, as can be seen from the evidence, the parties are residing under common roof and the Trial Court, without even discussing the oral evidence adduced by the parties has proceeded to dismiss the suit.

7. In this regard, I have gone through the oral and documentary evidence adduced by the parties. The plaintiffs claimed that the properties are all joint



family properties and consequent to the demise of the father and the mother, the three sons entitled to a 1/3rd share each in all the suit items. Ex.A1, is copy of the summons in the Court of Subordinate Judge at Tiruvallur filed by the second plaintiff in O.S. No.84 of 2000. In the said suit, 15 items of property were listed out and claimed to be joint family properties. The judgment and decree in O.S. No.84 of 2000, have also been exhibited as Ex.B3 and Ex.B4. Though the suit was originally filed in respect of 15 items, subsequently, the plaint was amended to include items 16 to 23. The same is evident from the decree marked as Ex.B4. There is absolutely no explanation on the side of the plaintiffs as to why the present suit does not comprise all the items of property that were available for partition was according to them in the earlier round of litigation.

8. No doubt, considering the fact that the earlier suit was dismissed for default, the principles of res judicata cannot be applied to non suit the plaintiffs when they seek for partition, which is a continuing right. In fact, in the earlier suit, the mother of the plaintiffs Kuppammal herself had filed a written statement which was marked as Ex.B5. the Written Statement filed by her son Thulasiraman, that is the father of the defendants was marked as Ex.B6. In the said written statements, both the mother and brother of the plaintiffs have



category pleaded an oral partition in the year 1985 and that pursuant to the same, the defendants are in separate possession and enjoyment of the properties allotted to Thulasiraman. The Trial Court has considered the revenue records exhibited on the side of the plaintiff/appellants and rightly found that the same does not lend any support to the claim of the plaintiff that mutation of records evidence joint family status of all the suit items of the property. In fact, in respect of one of the items in Survey No.120/2, which was shown as Item No.4 in the earlier suit in O.S. No.84 of 2000. Thulasiraman, in his written statement marked as Ex.B6, has specifically stated that the said item 4 belongs to a third party and neither the plaintiffs nor the defendants had the right over the same.

9. Further, a specific plea has been taken in the said written statement that specific extents of properties were allotted to the three sons under an oral partition and the parties were in separate enjoyment of the various properties, allotted to their respective shares. In fact, the second plaintiff has impleaded his mother Kuppammal as the third defendant in O.S. No.84 of 2000. The defendants have also specifically pointed out that the property comprised in Item 12, viz., Survey No.527/2C has been omitted from the list of suit properties. Thulasiraman, in Ex.B6, written statement has also specifically stated that items 16, 18 to 23 of O.S. No.84 of 2000, are his self acquired



properties and that he was a Teacher and had sufficient funds to acquire these properties. Strangely, despite staking a claim in all these Items in O.S. No.84 of 2000, the present suit which does not comprise these items. The omission to include these items is also not explained either in the plaint or at trial.

10. Another relevant circumstance is the fact that in the earlier suit, the second plaintiff as the sole plaintiff, sought for partition of 23 properties. However, in the present suit, the items are restricted to 19 in numbers. Again, there is no explanation as to why the other properties have not been included in the present suit for partition. As rightly contended by the learned counsel for the respondents, if at all, the plaintiffs are really having any right or share in the suit items, atleast when Thulasiraman and their own mother Kuppammal had filed their written statement denying their share in larger items of 23 properties, the suit for partition should have been laid atleast within a period of three years. It has come out in evidence that written statement of Thualsiraman, Ex.B6, was filed on 05.12.2003. Therefore, no steps were taken by the second plaintiff who was the sole plaintiff in O.S. No.84 of 2000 to restore the suit or to file a fresh suit for partition by the plaintiffs/appellants for close to 16 long years after the repudiation of entitlement of the plaintiffs by Thulasiraman, under whom the defendants claim. Therefore, the plaintiffs have clearly lost their right to seek for partition.



WEB COPY

11. No doubt, in a suit for partition, the claim cannot be barred, as long as the right for partition survives and continues, especially being a continuing right. However, when the defendants have resisted and refuted the claim of the plaintiffs in the earlier suit and clearly pleaded that there was an oral partition in the year 1985 and that the parties have been in separate possession and enjoyment of the same ever since, the plaintiffs should have been vigilant in bringing the fresh suit for partition within a period of three years from such repudiation of the right of the plaintiffs. The documents exhibited on behalf of the plaintiffs do not lend any support to the claims of the plaintiff that the properties are still joint family properties., Though the learned counsel for the appellants contended that the parties are even today residing under a common roof, there is absolutely no shred of evidence to establish the same. In fact, even from the memorandum of grounds of the First Appeal, I find that the plaintiffs themselves are relying on the oral partition effected after the demise of father, Venkatasamy. If at all, the grievance of the appellants that the legal heirs of Thulasiraman, did not come forward to execute any formal document to evidence the oral partition, the reliefs should have been otherwise. They could not have maintained the suit for partition, having admitted an oral partition, having taken place in the family already.



WEB COPY

12. In the light of the above, I do not see how the plaintiffs are entitled to sustain their claim for partition on the ground that the properties remained undivided, after admitting to the factum of oral partition which was pleaded by the defendants. I do not see any grounds to interfere with the findings of the Trial Court dismissing the suit for partition. Points (i) and (ii) are answered against the appellants.

13. In fine, the First Appeal is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. Considering the relationship between the parties, there shall be no order as to costs.

20.02.2026

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

To

1. The 1st Additional District and Sessions Judge at Thiruvallur (FAC).
2. The Section Officer, V.R. Section, High Court of Madras.



WEB COPY



P.B.BALAJI.J.

rkp

Pre-delivery judgment made in
A.S. No.981 of 2024
and CMP. No.26442 of 2024



WEB COPY



20.02.2026