



THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 06.11.2025

Judgment pronounced on :09.01.2026

CORAM

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

A.S.No.150 of 2023
and CMP. No.5844 of 2023

Ramathal

..Appellant

Vs.

1.Chinnasamy Gounder
2.Balasubramani
3.Shanthi
4.Dharani @ Dhanalakshmi

..Respondents

Prayer: Appeal Suit filed under Section 96 and Order XLI, Rule 1 of CPC to set aside the Judgment and decree dated 15.10.2022 passed in O.S. No.164 of 2017 on the file of 2nd Additional District and Sessions Judge at Tiruppur.

For Appellant : Mr.K.Myilsamy

For Respondent : Mr.P.Valliappan,
Senior Counsel for
Mr.N.S.Suganthan for
M/s.NSS Advocacy LLP for R1 to R3
No Appearance for R4

JUDGMENT



The plaintiff in a suit for partition and separate possession, which has been dismissed by the Trial Court, is the appellant.

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2. PLEADINGS:

2.1.PLAINT IN BREIF:

The plaintiff and the first defendant are sister and brother respectively. Defendants 2 to 4 are the children of the first defendant. The first item of suit property belonged to the father of the plaintiff and the first defendant Krishnasamy Gounder, he having become entitled to the same under the partition deed dated 22.10.1961. The second item of the property belonged to the Krishnasamy Gounder, the father. He had purchased it under sale deeds dated 16.07.1961 and 05.06.1973. The third item of the suit property belonged to Krishnasamy Gounder by way of intestate succession. All these properties are self acquired properties of Krishnasamy Gounder and he was in separate possession and enjoyment of the suit property for three decades before he died in a motor accident and the plaintiff being a daughter and Class-I legal heir, was entitled to an equal 50% share in all the items of the suit property. The plaintiff and the first defendant have been in joint possession of all the properties without partition. The plaintiff requested the first defendant for amicable partition several times. On 10.05.2017, the plaintiff came to know that the first defendant had executed a false document in respect of one of the properties, by



way of sale in favour of his own son, the second defendant. Similarly, he is also entitled to a partition in respect of the third item of the suit property. The plaintiff's half share cannot be taken away by such documents and the plaintiff is not bound by the documents executed by her brother.

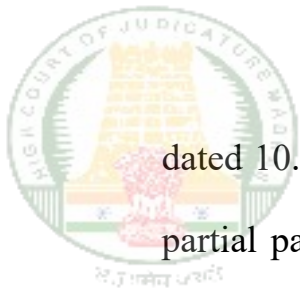
2.2.WRITTEN STATEMENT FILED BY THE DEFENDANTS 1 to 3, IN BREIF:

The relationship between the parties is not denied. The properties are not self acquired properties of Krishnasamy Gounder, but ancestral properties belonging to the first defendant. Rasa Gounder, who was the father of the Krishnasamy Gounder who was owning extensive ancestral lands in Iduvai Village and there was no other source of income, except for the income from the said ancestral properties. The grandfather Rasa Gounder, was irrigating the lands by raising commercial crops like cotton, tobacco, onion, plantain etc. and out of the income accruing from the said ancestral lands, Rasa Gounder, purchased agricultural lands in the name of his sons, viz., Krishnasamy Gounder and Karuppa Gounder. In and by partition deed dated 22.10.1961, Rasa Gounder has entered into a partition along with his sons Krishnasamy Gounder and Karuppa Gounder, where also there is a clear mention that the properties are ancestral properties. Therefore, the claim that the properties standing in the name of Krishnasamy Gounder, are the self acquired properties



is stoutly denied. Krishnasamy Gounder, purchased the second item of the property only out of income from the lands allotted to him under the partition deed dated 22.10.1961 in June, 1970 and therefore, the said properties were also ancestral in nature. The father Krishnasamy Gounder, never treated the properties as self acquired properties at any point of time. Krishnasamy Gounder, himself died 40 years back in the year 1978 and the plaintiff was married even during the lifetime of Krishnasamy Gounder to his elder sister's son and was presented with 50 servings of jewellery during the marriage.

2.3. The defendants also plead an oral family arrangement in the year 1979, in which the plaintiff and others agreed for allotting the entire properties of the family to the first defendant. Hence, it is only the first defendant who is the owner of the suit properties and the subsequent sale and partition deed are valid and binding on the plaintiff. The claim of the plaintiff is barred by limitation. The first defendant has developed the properties by expending substantial monies including digging wells, irrigating the lands, putting up construction, wired fences around the property etc. The claim of joint possession and valuation under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1975 is improper. The suit is also bad for non-joinder of plaintiff's husband and son who were parties to the partition deed dated 10.05.2000. Other properties which were subject matter of the partition deed



dated 10.05.2000 have also not been included and hence even on the ground of partial partition, the suit is liable to be dismissed. The 4th defendant remained ex-parate.

2.4. ISSUES:

Trial Court framed the following issues originally:

- (1) Whether the plaintiff is entitled to get relief of Partition as prayed for?
- (2) To what relief the parties are entitled?

2.5. Thereafter, the following additional issues were framed:

- (1) Whether the Suit Properties are Separate Properties of late Krishnasamy Gounder, the Father of Plaintiff and 1st Defendant?
- (2) Whether the Partition Deed dated 10.05.2000 is valid and binding on the Plaintiff?
- (3) Whether Sale Deed dated 20.08.2008 stands in the name of 2nd Defendant is valid and binding on the Plaintiff?
- (4) Whether the Suit is bad for Non-Joinder of Necessary parties and Partial Partition?

2.6.TRIAL:

On the side of the plaintiff/appellant, two witnesses were examined and Ex.A1 to Ex.A7 were marked. On the side of the defendants 1 and 2, three witnesses were examined and Ex.B1 to Ex.B9 were marked on the side of the defendants 1 and 2. No oral and documentary evidence were adduced on the



side of the third defendant.

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2.7. THE FINDINGS AND DECISION OF THE TRIAL COURT:

The Trial Court finding that the suit was bad for partial partition, non joinder and also on the ground of limitation, dismissed the suit in toto. Aggrieved by the said judgment and decree, the plaintiff is before this Court.

3. I have heard Mr.Myilsamy, learned counsel for the appellant and Mr.P.Valliappan, learned Senior Counsel for Mr.N.S.Suganthan, for M/s.NSS Advocates LLP Advocacy for the respondents 1 to 3. There is no appearance on the side of the fourth respondent who has remained exparte even before the Trial Court.

4. CONTENTIONS OF THE APPELLANT:

4.1.The learned counsel for the appellant would submit that it is an open and shut case where the daughter, a Class-I legal heir of Krishnasamy Gounder, who died in the year 1978, claims her legitimate half share in the property. He would contend that apart from the plaintiff and the defendant, there are no other legal heirs and the properties were admittedly standing in the name of the father of the parties viz., the plaintiff and the first defendant. The properties have to be treated only as their father's self acquired and separate properties. Succession



on his demise in the year 1978 would open under Section 8 of the Hindu Succession Act, 1956, thereby entitling, the plaintiff to a one half share in the suit properties.

4.2. Mr.Myilasamy, learned counsel would further contend that as regards the third item of the property being partitioned amongst Krishnasamy Gounder, his brother and father Rasa Gounder, the properties that were allotted to the share of the plaintiff's father, Krishnasamy Gounder became his absolute properties and lost the character of ancestral property. Insofar as the second item also similar arguments are advanced by Mr.K.Myilsamy, learned counsel contending that when the properties were purchased only by Krishnasamy Gounder himself in his own name, the said property cannot be given a colour of having ancestral nucleus and termed as ancestral property to deprive a Class-I legal heir viz., daughter in the present case, of her legitimate right and entitlement.

4.3. Learned counsel would further submit that though the first defendant has specifically pleaded a family arrangement, in and by which, the plaintiff and the mother of the plaintiff and the first defendant had allegedly relinquished their rights, the first defendant has failed to establish the said defence of oral family arrangement during trial and therefore, it should be presumed that the



defendant admitted the right and entitlement of the daughter viz., the plaintiff and in the absence of any evidence to the contra, the plaintiff as a Class - I legal heir should have been granted the decree for partition by declaring her half share in all the items of the properties. He would also submit that the Trial Court has erroneously held by referring to the partition deed entered into subsequently under which, the plaintiff's mother-in-law got a share and contended that it had nothing to do with the claim of the plaintiff and it was only the separate entitlement and share of the plaintiff's mother-in-law who happened to be her paternal aunt and therefore, it would not in any manner impead or encroach upon the rights of Krishnasamy Gounder or the plaintiff, to dis-entitle the plaintiff from making a claim for partition.

4.4. The learned counsel would further state that the Trial Court has also erroneously referred to the said partition deed and held that the husband and son of the plaintiff would have to be necessarily impleaded and that the other properties in the partition deed also ought to have been included in the suit. He would therefore state that the grounds of non joinder and partial partition have been erroneously mis-applied to reject the claim for partition made by the plaintiff.

4.5. As regards limitation, the contention of Mr.Myilsamy, learned counsel is that it is settled law that there is no limitation for filing a suit for



partition and in the admitted facts and circumstances of the present case, the Trial Court ought not to have applied Section 27 of the Limitation Act to hold that the suit is barred. As regards the sale executed by the first defendant in favour of the second defendant, who are none else than the father and son, referring to the admissions of the defendants that there was no sale consideration for the sale by the father and the son, Mr.Myilsamy, learned counsel would contend that the said sale was a void document and therefore, the sale cannot be put against the plaintiff to deprive her of her legitimate half share in the suit property.

4.6. Mr.Myilsamy, learned counsel would further contend that merely because the mutation of revenue records have taken place in the name of the first defendant, her brother, it will not take away the vested right of the plaintiff in the suit properties and when there is no limitation in law to seek the enforcement of the claim for partition, mere mutation of revenue records cannot be put against the claim for partition. He would also refer to the recitals in the partition deed in the year 2000 as well as in the sale deed under which first defendant has alienated certain properties to his son, the second defendant and state that the recitals are totally silent with regard to the alleged family arrangement. He would therefore state that if really there was any family arrangement, it would have found place in these two documents and therefore,

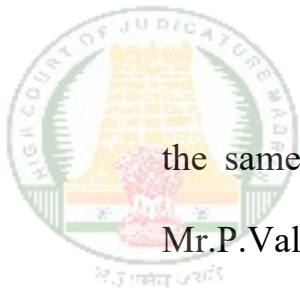


even though the defendants have not established the family arrangement pleaded in the written statement even otherwise, from reading of the sale deed and the partition deed, it is evident that there was no such family arrangement as alleged by the defendants. The learned counsel would therefore pray for the appeal being allowed.

5. CONTENTIONS OF THE RESPONDENT:

5.1.Mr.P.Valliappan, learned Senior Counsel would first and foremost submit that admittedly, all the properties are ancestral properties and taking me through the partition deed in the year 1961 and also taking me through the contents of Ex.A1, Mr.P.Valliappan, learned Senior Counsel would submit that there is a clear and specific mention regarding the nature and character of the property being ancestral and the plaintiff's total silence and inaction for close to 40 years also clearly goes to show that the plaintiff never had any right and it is only at the instigation of one A.Balasubramaniam, Iduvai Village who is the brother of the father-in-law of the second defendant, the suit has been filed.

5.2. Mr.P.Valliappan, learned Senior Counsel, also took me through the portions of depositions where there is a clear admission regarding the property, having been developed pursuant to the death of father, Krishnasamy Gounder, by the first defendant independently out of his own income and enjoyment of



the same for more than two decades even on the date of filing of the suit.

Mr.P.Valliappan, learned Senior Counsel would further state that based on the claim for partition on which the plaintiff approached the Court, without the presence of the plaintiff's husband and son and also other properties which were part of the partition deed dated 10.05.2000, the plaintiff's claim cannot be tested in the absence of proper and necessary parties as well as all properties that were available for partition being included. He would therefore contend that the Trial Court has not committed any error in dismissing the suit on the ground of non-joinder of parties, also on the ground that the plaintiff has sought for partial partition leaving out other properties which were also available for partition.

5.3. Mr.P.Valliappan, learned Senior Counsel would also submit that the defendants had clearly pleaded ouster in the written statement and they had also established the plea at trial and therefore, the plaintiff, even assuming the defendant had not proved the family arrangement, was estopped from claiming any share in the suit property. He would also justify the findings arrived at dismissing the suit on the ground of limitation. In support of his contentions, Mr.P.Valliappan, learned Senior Counsel has relied on the following decisions:-

(i) *Moreshtar Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) thr. LRs and others*, reported in (2022) SCC Online SC 1307;



(ii) *A.Ramachandra Pillai Vs. Valliammal*, reported in

Manu/TN/0654/1983;

WEB COPY (iii) *Puniyavathi and another vs. Pachaiaammal and others*, reported in

2022 (2) CTCOL 151 (Mad).

(iv) *R.Rayappan (Died) through LRs vs. Rajammal (Died) through LRs*, reported in *2025 (1) CTC 407*.

(v) *A.R.Krishnan (died) through LRs and others Vs. T.D.Vasantha and others*, in *A.S. (MD). No.165/2009 and 43 of 2010 and Cros.Obj.(MD). No.54 of 2009, dated 23.02.2024*.

6. POINTS FOR CONSIDERATION:-

Considering the arguments advanced by the learned counsel for the appellant and the learned Senior Counsel appearing for the respondents, the following points are framed for consideration:-

(1) Whether the properties are ancestral properties at the hands of the father of Krishnasamy Gounder or his self acquired properties and consequently, whether the plaintiff is entitled to claim partition?

(2) Whether the claim for partition is hit by non-joinder of necessary parties and also on the ground of partial partition?

(3) Whether the suit for partition is barred by provisions of the Limitation Act?



7. If decision on Point No.3 is arrived at, then there may not be any necessity to go into the other issues and hence, the question of limitation is taken up as the first issue. It is the argument of the Mr.Myilsamy, learned counsel for the appellant that the claim for partition by the plaintiff is in the capacity of being a daughter, Class-I legal heir of her father Krishnasamy Gounder in whose name the first and second items of the properties stood and in respect of properties to which, he became entitled by way of intestate succession viz., third item. It is therefore the contention of Mr.Myilsamy that there can be no embargo placed, that too by way of limitation to defeat the claim for partition made by such a daughter.

8. Per contra, it is the contention of Mr.P.Valliappan, learned Senior Counsel that the provisions of Section 3, Section 27 and Article 110 of the Limitation Act, 1963 (in short 'Limitation Act/Act') would certainly come into play in the facts of the present case and dis-entitle the plaintiff from making a claim for partition. Admittedly, the father Krishnasamy Gounder, died in the year 1978. It is the case of the plaintiff that she has been in joint possession and enjoyment of the suit items ever since the demise of her father, along with her brother, the first defendant. No doubt, as rightly contended by Mr.Myilsamy, learned counsel for the appellant ordinarily when there is mutation of revenue



records in the name of one co-owner or co-sharer, it will not take away the right of the other co-owner or co-sharer to seek for partition. However, the claim has to be viewed in the over all facts and circumstances of the each of the case.

9. It is the specific contention of the defendants that the properties are ancestral in nature. There is a clear reference even in the sale deed Ex.A1 that the sale in favour of Krishnasamy Gounder was only applying funds available from ancestral nucleus. Similarly, even under Ex.A2 and Ex.A3, it is clear that the properties that were partitioned and purchased were ancestral properties in nature. Therefore, the properties could not have been treated by Krishnasamy Gounder as his separate and self acquired properties. One of the properties has been dealt with by the first respondent, first defendant by way of sale in favour of his own son who was the second respondent, second defendant. There has also been a partition in Ex.A5 on 10.05.2000, in Doc. No.1504 of 2000 pertaining to item 3 of the suit properties. It is to this partition deed that the mother-in-law, husband and son of the plaintiff were admittedly parties. It is not the case of the plaintiff that she was living separately. In fact, there is a clear admission in evidence that the plaintiff was living happily with her family in the matrimonial home. The partition deed in Ex.A5 was clear notice to the plaintiff that there has been a division of properties. If really the plaintiff was aggrieved by such division, though it may relate to only one of the items of the suit properties, when the claim of the plaintiff in respect of all these items of



properties is under one common cause of action. Ex.A5 was clearly constructive notice and plaintiff cannot plead ignorance of the partition deed in respect of item 3 of the suit property. Even assuming that the partition in respect of the other son of Rasa Gounder alone was subject matter of partition under the said document, even then the properties which were allotted to the defendants 1 & 2 under the said document were taken as their separate properties, there has been mutation of revenue records including Patta in their names. The first defendant has also established that he has been paying property taxes and has been in exclusive enjoyment of the same.

10. It has also come out in evidence the trial that the first defendant has even constructed a new house and has assessed the same in his name. In such circumstances, there has been a clear hostile assertion that the properties absolutely belonged to the first defendant. As already discussed, the partition deed in the year 2000 was also admittedly, constructive notice to the plaintiff regarding the plaintiff being kept away from the family properties. Therefore, if really the plaintiff was aggrieved that her share was being denied or refused, then the plaintiff should have made a claim atleast after the partition deed in the year 2000, within the period of limitation. The suit has been filed after 17 years from the date of Ex.A5, partition deed. It is not a mere case of mutation of revenue records alone in favour of the first defendant and from the evidence



adduced by the parties at trial, it is clear that the possession and enjoyment of the properties has been exclusive, at the hands of the first defendant and his family and at no point of time, the plaintiff has asserted her right or claim.

There is absolutely not a shred of documentary evidence to establish joint possession and enjoyment ever since the death of the father, Krishnasamy Gounder in 1978. The Trial Court has therefore rightly come to the conclusion that the claim of the plaintiff for partition was barred by law of limitation.

11. This Court in *Puniyavathi's* case (referred herein supra), held invoking Section 27 of the Limitation Act, the conduct of the plaintiff approaching the Court after 31 years after succession opened and 18 years after division of properties would lead to an inference that the plaintiffs had been ousted and to the knowledge of the plaintiff, the defendants were in enjoyment of the property exclusively and adverse to the plaintiff for more than the period prescribed under Article 65 of the Limitation Act, in fact, I had an occasion to author and speaking for the Division Bench in *A.R.Krishnan's* case (referred herein supra), we have held as follows:

“19(c).As contended by the learned counsel for the appellants, Article 110 of the Limitation Act would also apply to the facts of the present case. Where a person is excluded from a joint family property, to enforce a right to a share in the said joint family property the limit is 12 years from the date of acknowledgment of exclusion. In the instant case, it is not nobody's case including the plaintiffs that the plaintiffs were not aware of the partition that came about in 10.03.1966. The plaintiffs are, in fact, attesting witnesses in the said document. Though the plaintiffs took a plea that their signatures are forged, the



trial Court rightly found from the assessment of the oral and documentary evidence that the attestors are only the plaintiffs and the signatures were not forged. The plea of misrepresentation consequently falls to the ground. Thus, the plaintiffs had full knowledge of the partition deed dated 10.03.1966 and applying the mandate under Article 110 of the Limitation Act, the suit ought to have been filed on or before 09.03.1978."

12. The Hon'ble Division Bench, in *R.Rayappan's* case, (referred herein supra), has also, applying Section 3 of the Transfer of Property Act, 1882 held that a person can be said to have notice, once there is registration of document and applying Section 3 of the Transfer of Property Act, the Hon'ble Division Bench following the ratio laid down in Hon'ble Supreme Court in *Janardhan Prasad vs Ramdas*, reported in 2007 (3) MLJ 721, held that registration of instrument would amount to notice of assertion of hostile and title. In fact, even in the decision of the Hon'ble Supreme Court, it was a case where the suit was filed, like in the present case, without even a pre-suit notice and the alleged co-owner was found to be in possession asserting his hostile title. The Hon'ble Division Bench held that such assertion need not even be expressly informed to the plaintiff, who was admittedly out of possession and considering that the suit was filed 17 years after a partition deed came to be executed amongst other family members viz., the brothers, the Hon'ble Division Bench held that the conduct of the plaintiff coupled with exclusive possession for considerable length of time would be sufficient to establish ouster.

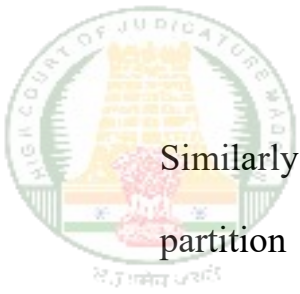


13. In the light of the above, applying the ratio laid down by the two Division Benches of this Court and also in view of the ratio laid down by the Hon'ble Supreme Court expounding the law relating to Section 3 of the Transfer of Property Act, the plaintiffs' claim, after almost four decades, coupled with the fact that the properties have been proved to be in the exclusive enjoyment at the hands of the first defendant and his family, the properties having been developed and not retained the very same character or nature since the death of Krishnasamy Gounder, would all clearly point to the irrefutable conclusion that the plaintiff's claims, if any, stand ousted. The defendants have not specifically pleaded ouster in the written statement. The inference however, that can be drawn from an over all reading of the written statement is that they have indeed pleaded ouster and a bar of limitation consequently thereof. The exact words 'ouster' need not be employed in the written statement. It is sufficient for the Court to hold that the defendants have pleaded ouster from the language employed in the written statement in the present case. The said plea is sufficient to hold that the defendants have entitled to defend the claim for partition on the ground that the plaintiff's right has been ousted. In the light of the above, point 3, is answered in favour of the respondent and against the appellant and the suit is held to be barred in view of Section 3 coupled with Section 27 and Article 110 of the Limitation Act.



14. In view of the decisions on point 3, any discussion or answers to points 1 and 2 becomes merely academic. For the purposes of completion, insofar as point no.1, the properties have been clearly established to be ancestral properties at the hands of the father, Krishnasamy Gounder and therefore, it is not open to the plaintiff to invoke Section 8 of the Act and claim that she as a daughter, Class -I legal heir and is entitled to seek for partition as a matter of right. Even in *Vineeta Sharma Vs. Rakesh Sharma and others*, reported in *AIR 2020 SC 3717*, the Hon'ble Supreme Court held that the Explanation to Section 6(5) would be relevant and any registered document prior to 20.12.2004 would be saved. Even from this angle, the partition in the year 2010, though in respect of only one of the items of the properties, the case would fall outside the the ratio laid down in *Vineeta Sharma's* case, (referred herein supra), entitling even a married daughter to seek a claim for partition in ancestral properties as well cannot be applied to the facts of the present case. I do not find any infirmity in the findings rendered by the Trial Court holding that the properties are ancestral in nature and it does not call for interference.

15. As regards partial partition and non-joinder, admittedly, the partition deed in Ex.A5, was pertaining to the properties of Rasa Gounder, the grandfather of the plaintiffs. As a legal heir of Rasa Gounder, the mother-in-law of the plaintiff Ramathal, was also a party to the said partition deed.



Similarly, the husband and son of the plaintiff were also parties to the said partition deed and in such circumstances, when the plaintiff's paternal grandfather's properties were partitioned and allotted to various family members and the plaintiff included these properties as well in the partition deed, going by the plaintiff's case, if really the said partition deed is not binding upon her, then it should have been proper for the plaintiff, to implead the other co-owners, her own husband and son and also included the other properties in the partition deed to have an effective decree for partition being passed.

16. This Court in *Shanmugam's* case, (referred herein supra), held that a question of non joinder of necessary parties in a suit for partition goes to the root of the matter and can be raised at any stage and held that the suit for partition was not maintainable, if it is made in the absence of all co-sharers. The Division Bench of this Court in *A.Ramachandra Pillai's* case, following the decision of the Hon'ble Supreme Court in *Kanagarathanammal Vs. Loganatha*, reported in *AIR 1965 S.C. 271*, held that in a suit for partition, all sharers are necessary parties and the suit is liable to be dismissed for non joinder of any of the parties. In *Moresar Yadaorao Mahajan's* case (referred herein supra), it has been held that a "necessary party", is a person who ought to have been joined as a party and in whose absence, no effective decree could be passed at all by the Court and if such "necessary party" is not impleaded, then the suit is liable



to be dismissed.

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17. Testing the facts of the present case in the ratio laid down by the Hon'ble Supreme Court as well as this Court, on the basis of the pleadings on which the plaintiff came to Court, admittedly she disowns the partition deed in the year 2000, to which her husband and son were signatories. The properties which were subject matter of the partition deed were only the properties belonging to the paternal grandfather, Rasa Gounder. In such circumstances, when the plaintiff stakes a claim in respect of these properties, she ought to have included the other co-sharers and also all the properties that were subject matter of the partition deed. Without doing so, calling for determination of the plaintiff's right in the absence of the necessary parties and all proposals, the suit is also bad for non-joinder of necessary parties and partial partition as well. Points 1 and 2 also answered in favour of the respondent and against the appellant.

18. In fine, this First Appeal dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

09.01.2026

Neutral Citation Case : Yes

21/23



Internet: Yes
Index : Yes



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1. The 2nd Additional District and Sessions Judge at Tiruppur.
2. Section Officer,
V.R. Section,
Madras High Court,
Madras.

P.B.BALAJI.J,

rkp



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Pre-delivery judgment made in
A.S.No.150 of 2023
and CMP. No.5844 of 2023

09.01.2026