



WEB COPY

AS No. 51 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-02-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

AS No. 51 of 2021

and

CMP Nos.3602 of 2021 & 1524 of 2026

1. R.Raja Mansingh (died) S/o Late P.Rajarathinam,
2. R.Raja Beerpal (died) S/o Late P.Rajarathinam,
3. Pankajam W/o. Late.P. Raja Mansingh,
4. R. Rajavasanthi, D/o. Late. R. Raja Mansingh
5. R.Raja Illangovan,S/o. Late. R. Raja Mansingh
6. R. Raja Priya, D/o. Late. R. Raja Mansingh
7. R.Lingeswari, W/o late R.Raja Beerpal
8. R.Gandhimathi, W/o R.Ravichandran
9. R.Pushpalatha D/o late R.Raja Beerpal



10. R.Rajashekari, W/o Jayasundar

11.R.Rajasekar, S/o late R.Raja Beerpal

.. Appellants

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(Appellants 3 to 6 are brought on record as LR's of the deceased first appellant, R.Raja Mansingh and appellants 7 to 11 are brought on record as LR's of the deceased second appellant, R.Raja Beerpal vide order of this Court dated 27/06/2023 made in CMP.Nos.4615,4623,4618,4624,4619 and 4625 of 2023 in AS.No.51 of 2021)

Vs

1. R..Rajeswari (died), W/o T.Ramsingh,
2. R.Rajamani, W/o D.Panja,
3. Vedhanayagi, W/o. Santhosh Kumar,
4. Poongodi.M, W/o. Manivannan,
5. Tirupurasundari.R W/o. Pugazendhi,
6. Indira Thirumalai W/o. Thirumalai,

... Respondents

(Respondents 3 to 6 are brought on record as LRS of deceased first respondent, R.Rajeswari, vide court order dated 27.01.2026 made in CMP.No.1660/2026 in AS.No.51/2021

This Appeal filed under Section 96 of CPC to To set aside the preliminary decree and the judgment dt. 08/11/2019 rendered in O.S.No. 37 of 2016 on the file of the Third Additional District Judge, Tiruvallur at Ponamallee by allowing this appeal.



For Appellant(s): Mr. Elizabeth Ravi

For Respondent(s): R1-died

Mr. N.C.Thirumalai Balaji
For R2 to R6

JUDGMENT

(Judgment of the Court was delivered by N.Sathish Kumar J.)

Challenging the decree and judgment of the Trial Court granting a preliminary decree holding that the plaintiffs are each entitled to 1/4th share in the suit property and also granting permanent injunction restraining the defendants from alienating the unsold property to the third parties, the present appeal has been filed by the unsuccessful defendants.

2. For the sake of convenience, the parties are referred to as per their rankings before the Trial Court.

3. The brief facts of the case of the plaintiffs are as follows :-

The suit property was originally purchased by one Salammal vide sale deed dated 23.03.2017. Her only son is Rajarathinam, who is the father of the



plaintiffs and the defendants. The said Rajarathinam died intestate on 13.11.1982, leaving behind the plaintiffs and the defendants as his legal heirs.

The mother of the plaintiffs and the defendants, namely, Seniyammal, also died intestate on 25.06.1997. The defendants are in possession of the suit property in the capacity of Co-owners and are attempting encumber the suit property. Hence, according to the plaintiffs, the plaintiffs and defendants are each entitled to 1/4th share in the suit property. Therefore, the plaintiffs sought partition and permanent injunction restraining the defendants from alienating or encumbering the suit property to any third party or putting up any construction in the suit property.

4. The defendants admitted the relationship between the parties and the property originally belonged to their grandmother. It is the contention of the defendants in the written statement that during the life time of their father, an oral family arrangement was made by their father, late Rajarathinam, and the suit property was allotted in favour of the defendants and they are in possession of the property. Further, it is the contention of the defendants that the other property allotted to the plaintiffs was settled by way of settlement deed. The defendants are in separate possession for more than 35 years and the suit has been filed after 35 years. Hence, it is barred by limitation and therefore, opposed.



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5. Based on the above pleadings, the Trial Court has framed the following issues :-

I) Whether the plaintiffs are entitled for the relief of preliminary decree for partition by allotment of 1/4th share each in the suit property ?

ii) Whether the plaintiffs are entitled for permanent injunction restraining the defendants from alienating the suit property?

Iii) To what other relief?

6. On the side of the plaintiffs P.W.1 and P.W.2 were examined and Exs.A1 to A5 were marked. On the side of the defendants, DW1 was examined and Exs.B.1 to B.5 were marked.

7. Upon hearing the arguments and perused the materials, the Trial Court decreed the suit. Challenging the same, the present appeal has been filed by the unsuccessful defendants.



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8. The learned counsel appearing for the appellants/defendants would submit that the plaintiffs, having admitted that there was some oral partition in respect of their grand father's property, conveniently omitted to admit the oral partition in respect of the suit property. Therefore, according to the appellants, once the plaintiffs have admitted the allotment of their grand father's property, it has to be presumed that there was an oral partition in respect of the suit property also. It is further submitted that the suit has been filed after a long delay of 35 years and hence, the suit is not maintainable and therefore, the appellants pray for dismissal of the suit.

9. Per Contra, the learned counsel appearing for the respondents/plaintiffs would submit that though there was some allotment in respect of the grandfather's property earlier, the fact remains that the suit property belongs to their grandmother. D.W.1 himself has admitted that there was no partition whatsoever in respect of the suit property. Hence, it is submitted that the Trial Court was right in decreeing the suit.



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10. In the light of the above submission, now the following points arise for consideration in this appeal:-

1. Whether there is any family arrangement allotting the suit property to the defendants?
2. Whether the suit filed by the plaintiffs is barred by limitation ?

11. We have considered the matter in the light of the submissions made on both sides and perused the materials available on records carefully.

12. **Points 1 and 2**

There is no dispute with regard to the relationship between the parties. The plaintiffs are the sisters of the defendants. The property is originally belonged to their grandmother Salammal, by virtue of the sale deed dated 23.03.1917. Admittedly, the purchase by the said Salammal is under Ex.A1 dated 23.03.1917. These facts are not in dispute. It is also the admitted case of both sides that the said Salammal died leaving behind one Rajarathinam as her legal heir. There is no dispute with regard to the fact that the plaintiffs and the defendants are the children of the said Rajarathinam. There is also no dispute



with regard to the fact that the said Rajarathinam died intestate on 13.11.1982 and his wife, namely, Seniyammal, the mother of the plaintiffs and defendants, died on 25.06.1997.

13. The only contention of the defendants is that there was an oral partition during the life time of their father, Rajarathinam and the suit property was allotted to the defendants. It is relevant to note that as far as oral partition is concerned, initially entire burden lies upon the person, who pleads such oral partition, to establish the same in a convincing manner. Mere pleading will not substitute the proof of oral partition.

14. Further, it is to be noted that there are absolutely no pleadings, whatsoever in the entire written statement, as to when such oral partition took place. Except making general allegations in the written statement that during the life time of their father, there was a family arrangement and oral partition, no other particulars, whatsoever, have been pleaded in the written statement.

15. Further, the defendants 1 and 2 have not even chosen to examine themselves as witnesses. Instead, DW1, who is son of the first defendant, was examined, and he was only a minor in the year 1981, during the lifetime of his



grandfather, Rajarathinam. Further, in his evidence, he has clearly admitted in cross-examination that as far as the suit property is concerned, there was no partition whatsoever in the family. The admission of the DW1 in the cross-examination clearly shows that even after the death of the original owner Salammal, there was no partition whatsoever in respect of the suit property.

16. Having admitted so, DW1 has clearly stated that there was no partition in respect of the suit property. Therefore, merely on the basis of the averments made in the written statement, oral partition cannot be presumed. Though the plaintiff in her examination admitted that as far as the grandfather's property is concerned, there was some division between the plaintiffs and the defendants, she has specifically denied that there was any partition in respect of the suit property. Such being the position, the defendants have failed to establish the alleged oral partition and the same cannot be presumed merely on the basis of the pleadings.

17. Further, it is not the case of the defendants that they had asserted hostile title over the suit property to the knowledge of the plaintiffs and the plaintiffs were totally excluded from the suit property. The plea of ouster has not been pleaded. In such view of the matter, merely because the suit has been



filed belatedly, the same will not give rise to any absolute right in favour of the defendants.

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18. Even assuming that the defendants are in possession of the property, the possession of one co-owner is deemed to be the possession of all the co-owners. In such view of the matter, we do not find any merit in this appeal .

19. In the result, this Appeal stands dismissed and the judgment and decree passed by the Trial Court are confirmed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

(N.S.K.,J.) (R.S.V.,J.)
24-02-2026

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

MRP

To

The Third Additional District Court,

Tiruvallur at Poonamallee



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N.SATHISH KUMAR, J.

AND

R.SAKTHIVEL, J.

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