



S.A.No.379 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10.06.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.379 of 2026
and
C.M.P.Nos.12612 and 12615 of 2026

1.Sivakumar

2.Manivasagam

... Appellants

vs.

Kulandaivel (died)

1.Asokan

2.Srinivasan

3.Kasambal

4.Jothi

5.Selvi

6.Unnamalai

Thangaraj (died)

7.Santhi

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the decree and judgment dated 21.02.2019 made in



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A.S.No.86 of 2016 on the file of the Court of the I Additional District Judge, Salem confirming the decree and judgment dated 03.02.2015 made in O.S.no.377 of 2010 on the file of the Court of II Additional Subordinate Judge, Salem.

For Appellants : Mr.Dhanaram Ramachandran
for M/s.D.R.Law Chambers

J U D G M E N T

The unsuccessful plaintiffs are the appellants. They filed a suit seeking partition. The suit was dismissed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the plaintiffs have come before this Court.

2. According to the plaintiffs, the common ancestor of plaintiffs and defendants was one Arumugam Udayar. He had 5 children namely Kulandaivel (1st defendant), Kasambal (4th defendant), Jeyaraman (father of the plaintiffs), Dharmar (father of defendants 5 to 7) and Thangaraj (8th defendant). The plaintiffs are sons of said Jeyaraman. The defendants 2 and 3 are sons of defendants 1 and 4. The defendants 5 to 7 are children of Dharmar, brother of plaintiffs' father.



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3. It is the case of the plaintiffs that the suit properties are ancestral properties. It was stated that the suit properties were partly purchased in the name of their grandfather-Arumugam Udayar and partly in the name of all the defendants. Most of the properties were purchased in the name of 1st defendant as he happened to be eldest male member of the family. Therefore, according to the plaintiffs, they are entitled to 1/4th share and defendants 1 to 4 collectively entitled to 1/4th share, the defendants 5 to 7 have got 1/4th share and 8th defendant has got 1/4th share in the suit properties. Since the demand of the plaintiffs for partition met with a negative response, the instant suit was filed seeking partition of 1/4th share in the suit properties.

4. The 2nd defendant filed a written statement and denied the averment in the plaint as if, the suit properties were ancestral properties. It was the case of the 2nd defendant that the suit properties were self-acquired properties of 1st defendant. The allegation in the plaint regarding plaintiffs' entitlement for 1/4th share and joint possession are specifically denied. It was also pleaded that there was a oral partition in the family in the year 1980 and the same was acted upon. The revenue records like patta was also mutated in the name of respective parties.



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5. The 2nd defendant filed additional written statement, wherein he reiterated the plea of oral partition and had given details of the revenue records stand in the name of various parties as per the oral partition.

6. Before the Trial Court, the 1st plaintiff was examined as PW.1 and one independent witness was examined as PW.2. On behalf of the plaintiffs, 25 documents were marked as Exs.A1 to A25. The defendants 1, 4, 2, 3 and 7 were examined as D.W.1 to DW.5. On behalf of the defendants, 39 documents were marked as Exs.B1 to B39.

7. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the suit properties were already divided among the parties and hence, dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.86 of 2016 on the file of the I Additional District Court, Salem. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the concurrent findings, the plaintiffs have come before this Court.

8. The learned counsel appearing for the appellants/plaintiffs would submit that in the written statement filed by the 2nd defendant, he admitted



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there was oral partition in the family arrangement. However, he miserably failed to establish his oral partition. In such circumstances, both the Courts below committed an error in non-suiting the plaintiffs.

9. It is seen from the typed-set of papers the 1st plaintiff, who was examined as PW.1 in his evidence categorically admitted that his father, 1st defendant and his brothers have been enjoying the suit properties as per the family arrangement and patta for the suit properties are separately issued in the name of respective parties. The independent witness who was examined as PW.2 also admitted that the 1st defendant-Kulandaivel and father of the defendants 5 to 7-Dharmar have been enjoying the properties separately by leasing out the same. He also admitted about the Sale Deed executed by Dharmar in favour of defendants 2 and 3 in respect of his properties. He also admitted that the parties are cultivating their respective shares as per the partition separately. The Courts below also pointed out that PW.1 in his evidence admitted about the erection of filter point deep well in the suit properties.

10. The above said portion of PW.1's evidence has been extracted in the judgment of the First Appellate Court. A perusal of the same would



indicate that there was a family arrangement among the parties earlier and they have been enjoying the properties allotted to them as per the family arrangement. In the light of the categorical admission made by the 1st plaintiff that already there was family arrangement and parties are enjoying their respective shares as per the family arrangement, the present plaintiffs have got no cause of action for filing another suit for partition.

11. It is also pertinent to mention that in the plaint the plaintiffs mentioned that suit properties are ancestral properties and most of the properties were purchased in the name of the 1st defendant as he happened to be eldest male member of the family. However, there is no specific plea in the plaint that the properties purchased in the name of the 1st defendant was purchased out of joint family funds or income earned by the joint family equities.

12. In any event, in view of the categorical admission by the 1st plaintiff as PW.1 that there was family arrangement and parties are enjoying their respective shares as per the family arrangement. The Courts below came to the conclusion that the plaintiffs were not entitled to file a suit for partition in respect of the suit properties and I do not find any legal



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error in the said conclusion reached by the Courts below, which is based on proper appreciation of oral evidence of PW.1 and PW.2. In the absence of any perversity in the findings of the Courts below, I am unable to accept the contention raised by the learned counsel appearing for the appellants to interfere with the judgment and decree passed by the Courts below. Finding no substantial question of law arising for consideration in this second appeal, the same is dismissed.

13. In Nutshell:-

- (i) The Second Appeal stands dismissed.
- (ii) Consequently, the connected civil miscellaneous petitions are closed.
- (iii) In the facts and circumstances of the case, there will be no order as to costs.

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

1.The I Additional District Court,
Salem.

2.The II Additional Subordinate Court,
Salem.

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S.SOUNTHAR, J.

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