



A.S. No.50 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.10.2025
Pronounced on: 23.01.2026

CORAM:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S.No.50 of 2018

M.Krishnamoorthi

... Appellant

Vs

K.Thangaraju

... Respondent

PRAYER : This Appeal suit is filed under Section 96 read with Order 41 Rule 1 of C.P.C., against the judgment and decree dated 05.09.2017 passed in O.S.No.50 of 2013 on the file of the learned Additional District Judge, Namakkal.

For Appellant : Mr.S.V.Karthikeyan

For Respondent : Mr.N.Manokaran

J U D G M E N T

This appeal is directed against the judgment and decree dated 05.09.2017 passed by the learned Additional District Judge, Namakkal, in O.S.No.50 of 2013, whereby the suit filed for partition, separate possession and permanent injunction was dismissed.



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2. The plaintiff filed the suit seeking (i) partition of the suit schedule property and allotment of 1/3rd share to him by passing a preliminary decree and thereafter a final decree; (ii) permanent injunction restraining the defendant from interfering with the plaintiff's enjoyment of his alleged 1/3rd share till final partition; and (iii) costs.

3. 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.

4. The case of the Plaintiff: The suit schedule property is situated in Namakkal District, Tiruchengode Taluk, in S.No.344, measuring an extent of about 11.94 acres, with wells, pump sets, houses and trees. The property originally belonged to three brothers, namely Sengoda Gounder (plaintiff's grandfather), Chettiya Gounder (defendant's grandfather) and their brother Aathi Gounder, and was enjoyed jointly without any partition.

5. It is pleaded that Aathi Gounder alienated his 1/3rd share in favour of Chettiya Gounder, as a result of which Sengoda Gounder became entitled to 1/3rd share and Chettiya Gounder to 2/3rd share in the suit property.



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WEB COPY 6. The plaintiff further states that Sengoda Gounder died about 40 years prior to the suit, whereupon his 1/3rd share devolved upon the plaintiff's father. After the demise of the plaintiff's father about 11 years prior to the suit, the share devolved upon the plaintiff, his mother and his brother. By a Release Deed dated 13.03.2008, the plaintiff's mother and brother relinquished their rights in favour of the plaintiff, and thus the plaintiff claims to have become entitled to the entire 1/3rd share.

7. With regard to the defendant's branch, it is pleaded that after the demise of Chettiya Gounder, the 2/3rd share devolved upon the defendant's father, and by Release Deed dated 11.03.1996, the defendant's father and brother relinquished their rights in favour of the defendant, thereby defendant vesting the entire 2/3rd share.

8. According to the plaintiff, thereafter the plaintiff and defendant continued in joint enjoyment of the suit property without partition, carrying on agriculture jointly. It is stated that certain improvements were made and that a common passage was being used for agricultural operations and



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movement of livestock.

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9. The plaintiff alleges that about one year prior to the suit, the defendant started interfering with and obstructing the plaintiff's peaceful enjoyment. When the plaintiff demanded partition by metes and bounds on 06.01.2013, including measurement of the lands, the defendant refused, compelling the plaintiff to file the suit.

10. The case of the Defendant: There was already an oral partition between the plaintiff and defendant on Chithirai 1, 1997, under which the land was divided and each party took separate possession and enjoyment of the portion allotted to him. It is pleaded that a common pathway was arranged, boundary stones were erected, and the parties acted upon the partition by independently developing and enjoying their respective portions.

11. The defendant relied upon circumstances such as separate residence and enjoyment, separate electricity service connections, separate borewells and payment of kist separately. It is contended that the absence of patta subdivision is not decisive, since patta is not a document of title. It is



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further alleged that the plaintiff developed and exploited only the land allotted to him, and that the present suit was filed only to grab the well-maintained land of the defendant. The defendant also contended that the suit was not properly valued and that necessary parties were not impleaded.

12. The trial Court, on the pleadings, framed the necessary issues. The plaintiff was examined as P.W.1. On the defendant's side, the defendant was examined as D.W.1 along with D.Ws.2 to 5. Exhibits A1 to A5, B1 to B4 and C1 and C2 were marked. Upon analysing the oral and documentary evidence, the trial Court dismissed the suit.

13. Aggrieved by the said judgment and decree, the plaintiff has filed the present appeal. The principal grounds urged are that the plea of prior oral partition is doubtful in view of the admitted Release Deed dated 11.03.1996; that an oral partition not proved by metes and bounds cannot be accepted; and that the trial Court erred in treating separate management for convenience as proof of partition. It is further contended that the houses relied upon were pre-existing and only renovated, and that factors such as drip irrigation subsidy obtained on the basis of possession using joint patta and separate



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electricity connections do not establish partition or exclusive title. According to the appellant, joint enjoyment continued, and the assumption of exact 1/3rd and 2/3rd enjoyment without proof of specific extents is unsustainable.

Points for consideration:

14. On the basis of the pleadings, evidence and grounds of appeal, the following points arise for consideration:

(i) Whether an oral partition had already been effected between the plaintiff and the defendant and whether they are in separate possession and enjoyment?

(ii) Whether the plaintiff is entitled to permanent injunction?

(iii) Whether the judgment and decree of the trial Court are liable to be set aside?

Points Nos.1 and 2:

15. The origin of the suit property and the entitlement of the plaintiff to 1/3rd share and the defendant to 2/3rd share are admitted by both sides. The plaintiff asserts that the suit property continued to be enjoyed jointly without any valid partition, whereas the defendant contends that an oral partition was effected in the year 1997, pursuant to which the property was divided by metes and bounds and enjoyed separately. In support of this plea,



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the defendant annexed a sketch along with the written statement showing the manner in which the suit property was divided and the approach pathways provided.

16. When the defendant pleads an earlier oral partition, the burden of proof lies upon him. The sketch annexed to the written statement was not disputed by the plaintiff. On the contrary, during cross-examination, P.W.1 admitted the topography shown in the sketch as well as the pathways indicated therein. The sketch discloses that the suit property was divided into four strips from north to south, and in each strip, portions were alternately allotted to the plaintiff and the defendant. Three pathways were also formed to enable access to the respective portions.

17. P.W.1 has admitted in his evidence that he is enjoying about 1/3rd portion of the suit property and that the remaining 2/3rd portion is under the enjoyment of the defendant. He further admitted that each party has constructed houses in their respective portions and is residing therein, that agricultural operations are carried on separately, and that kist is paid separately. He also admitted that all four sides of the agricultural lands have



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passages for access, that there are separate borewells in the respective portions, and that separate electricity service connections have been obtained and used independently. These admissions clearly indicate separate enjoyment of the property for a considerable length of time.

18. Ex. A1 Release Deed dated 13.03.2008, executed by the plaintiff's mother and brother in favour of the plaintiff, recites that they were releasing their rights in respect of an extent of 3 acres and 98 cents along with one well, electricity service connection No.82 and a 5 HP motor. Significantly, the document does not refer to the entire suit property, but only to the said specific extent and fixtures. This recital shows that the plaintiff and his family treated and enjoyed only 3.98 acres out of the total extent as their separate property, thereby lending support to the plea of prior partition.

19. The defendant examined the Assistant Director of Horticulture as D.W.3, who deposed that the plaintiff had applied for drip irrigation in respect of land claimed by him, mentioning the extent as 1.61.50 hectares, which approximately corresponds to 3 acres and 99 cents. This again shows that the plaintiff treated the land in his possession as a separate property. Had



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the entire suit property been in joint possession, the plaintiff would not have applied independently for drip irrigation.

20. On the defendant's side, the defendant's brother was examined as D.W.5, who spoke about the oral partition. In cross-examination, in response to a suggestion, he stated that after he and his father executed the Release Deed in favour of the defendant, there was no partition. Though the plaintiff strongly relied on this answer, evidence cannot be read in isolation. When the evidence is considered as a whole, the overwhelming documentary and circumstantial evidence, particularly Ex. A1, outweighs the isolated oral statement of D.W.5.

21. The plaintiff sought not only partition but also permanent injunction restraining the defendant from disturbing his enjoyment of the alleged 1/3rd share. This itself indicates that the plaintiff claims to be in possession and enjoyment of a defined portion. While the plaintiff alleges obstruction in the passage during the preceding one year, in evidence P.W.1 admitted that the defendant did not restrain him from using the passage. In such circumstances, no cause of action is made out for grant of permanent



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injunction.

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22. The defendant relied upon the decisions reported in **Venkatasamy v. Annamalai and others** (Madras High Court, MANU/TN/3287/2017) and **Mukhram Rai and others v. Chandradeep Rai and others** (AIR 1936 Patna 68), wherein it has been held that in cases of alleged oral partition, the conduct of parties, long and separate possession, and exercise of ownership rights over defined portions can justify a presumption of partition.

23. In the present case, the long-standing separate enjoyment, construction of houses, separate borewells, independent electricity connections, formation of pathways, and independent application for drip irrigation clearly establish that the suit property had already been partitioned and was being enjoyed separately according to the respective shares of the parties.

24. From the above evidence, it is clear that the plaintiff and the defendant have been enjoying the suit property separately in a divided manner as reflected in the sketch appended to the written statement. Both



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parties have developed their respective portions and there is no interference by the defendant in the plaintiff's enjoyment of his allotted share.

Accordingly, Points Nos.1 and 2 are answered in favour of the defendant.

Point No.3:

25. In view of the findings on Points Nos.1 and 2, the judgment and decree of the trial Court in O.S.No.50 of 2013 do not call for interference and are liable to be confirmed.

26. In the result, the judgment and decree dated 05.09.2017 passed by the learned Additional District Judge, Namakkal, in O.S.No.50 of 2013 are confirmed. The appeal is dismissed with costs. Consequently, the connected Civil Miscellaneous Petitions, if any, are closed.

23.01.2026

dpq

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

To

1. The Learned Additional District Judge,
Namakkal.

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DR. A.D. MARIA CLETE, J.

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Pre-Delivery Judgment in

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