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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27-03-2026
CORAM THE HON'BLE MR.JUSTICE S. SOUNTHAR
SA No. 243 of 2026
and CMP Nos.8172 and 8173 of 2026

**Senthil Kumar (Died) represented by his
legal heirs**

1. Lavanya
2. Minor Mithilesh
Rep. by his Natural Guardian and mother
Lavanya,
3. Shyam Sudar
Appellants 1 to 3 are residing at No.3/19,
Pillaiyar Kovil Street,Kandigai Village,
Budur Post, Chennai-67.
4. Venkatachalam, S/o. Radhakrishnan,
Res. at No.1/82, Perumal Kovil Street,
Arumandhai Village, Arumandai,
Chennai-67.

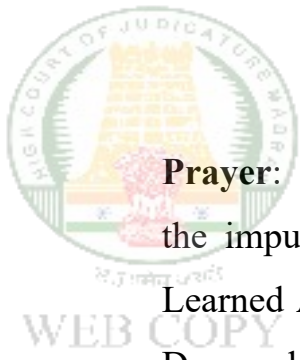
..Appellant(s)

Vs

Koteeswaran (Died) Rep. by his Legal Heirs.

1. Hemalatha
2. N.Radhika
3. M.Vinodkumar
Respondents 1 to 3 are residing at No.123,
Perumal Kovil Street, Arumandhai Village,
Arumandai, Chennai-67.

..Respondent(s)



Prayer: Second Appeal has been filed under Section 100 of CPC to set aside the impugned order dated 14.11.2025 passed in AS No. 45 of 2018 by the Learned Additional Subordinate Judge, Ponneri, confirming the Judgment and Decree dated 21.08.2018 passed in OS No. 486 of 2008 by the Learned District Munsif Judge, Ponneri

For Appellant(s): Mr.R.Venkat Raman
for M/s TATVA Legal

JUDGMENT

The legal heirs of the first defendant and the 2nd defendant are the appellants herein.

2. The predecessor in interest of the respondent/deceased sole plaintiff filed a suit in O.S.No.486 of 2008 seeking partition of his half share. The suit was dismissed by the Trial Court. The first appeal filed by the plaintiff in A.S.No.45 of 2018 was allowed by the first appellate court. Aggrieved by the same, the appellants have come before this court. Both the sole plaintiff and the first defendant died pending first appeal and hence, their Legal Representatives were brought on record.

3. According to the plaintiff, 72 cents of lands in S.No.143/2 of Arumandhi Village belonged to joint family consisting of plaintiff's father



Radhakrishnan, plaintiff and his brother Venkatachalam, the 2nd defendant in the suit. The plaintiff's father Radhakrishnan sold 22 cents of land on the western side of the property in favour of the 1st defendant. Thereafter, it was agreed between the sharers that the 22 cents of land sold by Radhakrishnan should be treated as his share and the remaining 50 cents shall be treated as share of the plaintiff and the 2nd defendant equally. After the death of plaintiff's father Radhakrishnan, the plaintiff has been in possession and enjoyment of the remaining 50 cents as a co-owner and during November 2007, the first defendant raised some objections regarding enjoyment of the suit property by the plaintiff. On enquiry, the plaintiff came to know that the first defendant purchased the suit property i.e. remaining 50 cents of land in S.No.No143/2 from the 2nd defendant/plaintiff's brother. Further, in the sale deed executed by the 2nd defendant in favour of the 1st defendant, a false recital was included, as if there was a oral partition between the plaintiff and the 2nd defendant and there under, the suit property was allotted to the share of the 2nd defendant. Denying the said oral partition, the plaintiff contended that the 2nd defendant had no right to sell the entire property to the first defendant and laid the present suit seeking partition of his half share in the suit property. Initially, the said suit was filed only against the first defendant, the purchaser of the suit property and subsequently, on objection by the first defendant regarding non joinder of necessary party, the 2nd defendant was added as party to the suit.



4. The first defendant filed a written statement and contested the suit only on the ground that there was a oral partition between the plaintiff and the 2nd defendant, 15 years back and in the said partition, the suit property, i.e. 50 cents in S.No.143/2 was allotted to the share of the 2nd defendant. It is further stated in the written statement that the first defendant purchased the suit property from the 2nd defendant under a registered sale deed dated 28.01.2008 and it has been in possession and enjoyment of the same. It is also admitted by the first defendant that the suit property jointly stands in the name of the plaintiff, 2nd defendant and their father Radhakrishnan and subsequently, based on the sale deed, the first defendant applied for transfer of patta in his name and since the plaintiff objected for the same, enquiry is still pending. On these pleadings, the first defendant sought for dismissal of the suit.

5. Before the Trial Court, on behalf of the plaintiff, he examined himself as PW1 and 4 documents were marked as Ex.A1 to Ex.A4. On the side of the defendants, the first and 2nd defendants were examined as Dw1 and Dw2 respectively and 4 documents were marked as Ex.B1 to Ex.B4.

6. The Trial Court, on appreciation of evidence available on record, came to the conclusion that the oral partition pleaded by the defendants was true and dismissed the suit. The Trial Court also found that the plaintiff should have



sought for cancellation of sale deed executed by the 2nd defendant in favour of the 1st defendant. The findings of the Trial Court were challenged by the plaintiff in A.S.No.45 of 2018 on the file of Additional Subordinate Judge, Ponneri and the first appellate court reversed the findings of the Trial Court holding that the plea of oral partition raised by the defendants was not proved. The first appellate court also found that the plaintiff not being a party to the sale deed, need not seek cancellation of such sale deed and accordingly, allowed the appeal and granted preliminary decree for partition as prayed for by the plaintiff. Aggrieved by the same, the legal representatives of the first defendant and the 2nd defendant have come before this court by way of this second appeal.

7. The learned counsel for the appellants would submit that the plaintiff, during his examination as PW1 admitted the oral partition, however, the same has been over looked by the courts below. The learned counsel further submits that the sale deed executed by the 2nd defendant in favour of the 1st defendant was not challenged by the plaintiff and therefore, the prayer for partition is not maintainable. In support of his contentions, the learned counsel relied on the following judgments.

i) A Decision of this court in D.Singaravel Vs.Vedavalli and others in A.S.Nos.708, 817 of 2010 and 579 of 2022 dated 28.11.2025.



ii) A decision of Hon'ble Supreme Court in Karuppathal and another Vs. P.Ponnusamy (deceased) and others reported in 2021 SCC online Mad 16569.

iii) A decision of this court in Gothainayaki and others Vs. Arumuga Nainar and others in S.A(MD) No.742 of 2022 dated 10.04.2023.

iv) A decision of Hon'ble Supreme Court in Hussain Ahmed Choudhury and others reported in Habibur Rahman (dead) through L.Rs and others in Civil Appeal No.5470 of 2025 dated 23.04.2025..

8. It is not in dispute that the property measuring to an extent of 72 cents in S.No.341/2 belonged to the family consisting plaintiff, 2nd defendant and their father Radhakrishnan. It is also admitted that 22 cents on the western side of the said property was sold by the father of the plaintiff and the 2nd defendant, namely, Radhakrishnan in favour of the 1st defendant, when he was alive. According to the plaintiff, after death of Radhakrishnan, the plaintiff and the 2nd defendant are entitled to equal share in the remaining 50 cents of the property and hence, the plaintiff sought for partition of his half share in the suit property.

9. The suit was resisted by the defendants mainly on the ground that there was a oral partition 15 years back between the plaintiff and the 2nd defendant, whereunder the entire 50 cents of the property was allotted to the share of the 2nd defendant.



10. The learned counsel for the appellants/defendants, by relying on the evidence of PW1 submitted that the oral partition between the plaintiff and the 2nd defendant was admitted by him. The relevant portion of evidence of PW1 reads as follows:

1984ல் நானும் என் தகப்பனாரும், என் அண்ணனும் பாகம் பிரித்துக் கொண்டோம். தாவா சொத்து அருமந்தையில் உள்ளது. புல எண்.143/2ஏ 23 ஏர்ஸ் ஆகும். 20 ஏர்ஸ் 25 செண்டிற்கு நான் வழக்கு தாக்கல் செய்துள்ளேன். அந்த 72 செண்டில் என் தகப்பனார் பெரியப்பா மற்றும் சித்தப்பாவிற்குப் பாத்தியப் பட்டது என்றால் சரியல்ல. என் தகப்பனார் எனக்கும் என் அண்ணனுக்கும் பாத்தியப்பட்டதாகும். 1984ல் என் தகப்பனார் இறந்துவிட்டார். என் அண்ணன் உயிருடன் தான் உள்ளார். என் தகப்பனார் உயிருடன் இருந்தபோதே 72 சென்டை நாங்கள் வாய்மொழியாகப் பிரித்துக் கொண்டோம். எங்கள் மூவருக்கும் வாய்மொழியாக பிரிவினை ஏற்பட்டதில் கருத்து வேறுபாடு கிடையாது.

11. It is seen from the plaint averments that the plaintiff's father Radhakrishnan sold 22 cents of land on the western side of the property to the first respondent during his life time. It is also stated that there was a family arrangements between the father, plaintiff and the 2nd defendant, whereunder, 22 cents of land sold by Radhakrishnan was treated as the share allotted to him and the remaining 50 cents was treated as the share allotted to the plaintiff and the 2nd defendant equally. The plaintiff in his evidence as PW1, referred about the oral partition entered into among himself, his brother - the 2nd defendant and his



father - Radhakrishnan, while his father was alive. The plaintiff has not admitted anything about the oral partition that allegedly had taken place between himself and the 2nd defendant.

12. In the written statement in paragraph No.3, it was clearly pleaded by the first defendant that there was a oral partition between the sons of Radhakrishnan, namely, the plaintiff and the 2nd defendant, 15 years back and in the said oral partition, the suit property was allotted to the 2nd defendant. The written statement was filed on 03.06.2008. The oral partition referred to in the written statement allegedly had taken place 15 years back, prior to the filing of written statement, as per the averments of the defendants. In such circumstances, the oral partition pleaded in the written statement should have been taken place in the year 1994. However, the plaintiff, in his evidence as PW1, referred about the oral partition that had taken place during the year 1984 involving his father and he has not stated anything about the oral partition between himself and the 2nd defendant. Therefore, the submission made by the learned counsel for the appellants that the plaintiff had admitted about the oral partition between himself and the 2nd defendant and allotment of entire 50 cents of suit property to the 2nd defendant is not acceptable to this court.

13. It is also seen that Ex.A4 patta with regard to the suit property stands in the names of plaintiff's father Radhakrishnan, plaintiff and the 2nd defendant



jointly. Though it is stated by the defendants that there was a oral partition, allotting entire suit property in favour of the 2nd defendant, there is no mutation of revenue records to prove the same. The defendants have not examined any independent witness to support the plea of oral partition. In the absence of any independent oral or documentary evidence, the first appellate court rightly came to the conclusion that the defendants failed to prove the plea of oral partition raised by the defendants. I do not find any reason to interfere with the findings rendered by the first appellate court.

14. As far as the contention raised by the learned counsel for the appellants with regard to the prayer for cancellation of sale deed executed by the 2nd defendant to the first defendant is concerned, we cannot compel the plaintiff to challenge the validity of the said sale deed, when he was not a party to the said document. Therefore, there is no need to the plaintiff to seek a prayer for cancellation of sale deed executed by the 2nd defendant in favour of the 1st plaintiff and since the plaintiff was not a party to the said document, he can very well ignore the same and maintain a suit for partition, without such prayer. In the case on hand, one of the co-owners, namely the 2nd defendant sold the entire suit property to third party, the 1st defendant herein, ignoring the rights of other co-owner, namely plaintiff. If at all the sale by the 2nd defendant is valid only to the extent of his half share. He cannot convey any superior title than what he had at the time of sale. Hence, other co-owner, namely plaintiff,



who was not party to the sale deed executed by the 2nd defendant in favour of 1st defendant, can very well maintain a suit for partition of his half share, without seeking to set aside the sale deed.

15. It is seen from the discussion of the decision of this court in ***D.Singaravelu Vs. Vedavalli and others*** cited by the learned counsel for the appellants that, in the said case, the minor plaintiff was shown as party in the sale deed. Therefore, necessarily, the plaintiff thereon had to seek cancellation of sale deed. However, in the case on hand, the plaintiff was not a party to the sale deed and hence, the said case cited by the learned counsel for the appellants is not applicable to the facts of the present case.

16. In the decision in ***Karuppathal and another Vs. P.Ponnusamy (deceased) and others in 2021 SCC Online Mad. 16569*** relied on by the learned counsel for the appellants, the plaintiffs thereon had released their share in favour of the defendants 1 to 5 thereon. In such circumstances, without seeking a prayer to set aside the release deed, they are not entitled to maintain a suit for partition. In the case on hand, the plaintiff was not party to the sale deed in favour of 1st defendant. Therefore, the said decision is also not applicable to the facts of the present case.



17. In the decision of Madurai Bench of this court in ***Gothainayaki and others Vs. Arumuga Nainar and others in S.A (MD) No.742 of 2022, dated 10.04.2023***, the plaintiffs therein claimed right over the properties of the deceased father, who was arrayed as 1st defendant in the suit. It is seen from the discussion that the deceased father executed a sale deed in favour of the 2nd defendant during his life time. The plaintiff has not chosen to challenge the said sale deed. Since the plaintiff claimed right over the properties, which was conveyed by their father in favour of 2nd defendant, the court held that the suit for partition filed by the plaintiffs, without seeking a prayer to set aside the sale deed executed by their father in favour of the 2nd defendant was not maintainable. However, in the case on hand, the plaintiff is not claiming his right under the 2nd defendant, whereas both the plaintiff and the 2nd defendant are sons of Radhakrishnan and they claim suit property is their joint family property. Hence, they got birth right over the suit property. Further, when the plaintiff is not a party to the said sale deed, there is no necessity for him to challenge the same.

18. In the decision of the Hon'ble Supreme Court in ***Hussain Ahmed Choudhury and others Vs. Habibur Rahman (dead) through LRs and others in Civil Appeal in 5470 of 2025, dated 23.04.2025***, in paragraph No.29, it was observed that if a person, who is not the executant of the deed wants to avoid it, he has to seek declaration that the document was invalid, void and not binding on him. Further, in paragraph No.30, the Apex Court observed as follows.



“ 30. As observed aforesaid, a plaintiff who is not a party to a decree or a document, is not obligated to sue for its cancellation. This is because such an instrument would neither be likely to affect the title of the plaintiff nor be binding on him. We have to our advantage two very old erudite judgments of the Madras High Court and one of the privy council on the subject.”

In the above said decision, no law has been laid down that the non executant shall challenge the document, if he wants to claim any independent right over the property covered by the document. It is seen from the discussion that the right to challenge the document available to the non executant is optional one and even in the absence of challenge to the document, he is entitled to maintain a prayer for partition, based on his independent right (birth right in joint family property).

19. Therefore, all the judgments relied by the learned counsel for the appellants are not applicable to the facts of the present case. The first appellate court rightly came to the conclusion that the plaintiff was not a party to the sale deed executed by the 2nd defendant in favour of the 1st defendant and therefore, there was no necessity for him to challenge the same and therefore, he could maintain a suit for partition independently, based on his right.



20. In view of the discussion made earlier, the submissions made by the learned counsel for the appellants are not appealable to this court and hence, I do not find any question of law much less substantial question of law in this second appeal for consideration.

21. Accordingly, this second appeal is dismissed, confirming the findings of the first appellate court. In view of the judgment and decree passed by the first appellate court, allowing the first appeal, the original suit in O.S.No.486 of 2008 stands decreed and the plaintiff is entitled to the preliminary decree for partition of his half share. In view of the Judgment passed by the Apex Court in *Kattukandi Edathil Krishnan and others Vs. Kattakandi Edathil Valsan and others* reported in *2022 (16) SCC 71*, the Trial Court is directed to fix a date for initiating final decree proceedings, after issuing notice to the plaintiff as well as the defendants, within a period of six weeks from the date of receipt of copy of the order. There shall be no order as to costs. Connected miscellaneous petitions are closed.

27-03-2026

Index: **Yes**

Speaking order

Neutral Citation: **Yes**

MST



To

WEB COPY

1. The Additional Subordinate Judge, Ponneri.
2. The District Munsif, Ponneri



WEB COPY

SA No. 243 of 2



S.SOUNTHAR, J.

MST

SA No. 243 of 2026

27-03-2026