



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 44 of 2026

1. **KANNAN PADAIYATCHI(died)**
S/o.Govinda Padayachi, Eswarakanda Nallur
Post, Sriupuliyur Village,
Ulunderpet Taluk, Villupuram District.
2. Kaveri Kannan, W/o.Kannan,
3. Venkatesan, S/o.Kannan,
4. Ravichandran, S/o.Kannan,
5. Sathya, W/o.Ramkumar,
6. Sankari, W/o.Arumugam

(sole appellant died and A2 to A6 are brought
on record as L.Rs of the deceased sole appellant
vide court order dated 24/03/2026 made in
CMP Nos.6938,6954 and 6956 of 2026 in
S.A.No.44 of 2026)

..Appellant(s)

Vs

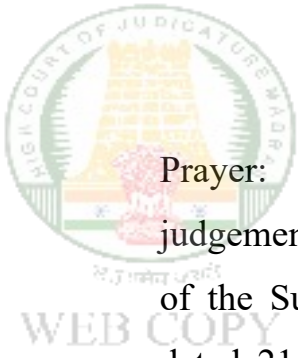
1. Kodivel, S/o.Govinda Padayachi, Eswarakanda
Nallur Post, Sirupuliyur Village,
Ulundurpet taluk, Villupuram District.
2. **Ranganathan Padayachi (died)**
S/o.Govinda Padayachi, Eswarakanda Nallur
Post, Sirupuliyur Village,
Ulundepat Taluk, Villupuram District.



3. Jeyalakshmi, W/o.Viswanathan,
Eswarakanda Nallur Post, Sirupuliyur Village,
Ulundepat Taluk, Villupuram District.
4. Sammantham, S/o.Subramania Padayachi,
Eswarakanda Nallur Post, Sirupuliyur Village,
Ulundepat Taluk, Villupuram District.
5. Sankar, S/o.Masilan,
Veeraperuma Nallur,
Panruti Taluk, Cuddalore District.
6. Arumugam, S/o.Chinnadurai,
Eswarakanda Nallur Post, Sirupuliyur Village,
Ulundepattaluk, Villupuram District.
7. Pavazhan, w/o Ranganathan Padayachi.
8. Siva Pushnam, d/o Ranganathan Padayachi.
9. Kumari, d/o Ranganathan Padayachi.
10. Kamachi, s/o Ranganathan Padayachi.
11. Amudha, w/o Sankar
12. Sabitha, d/o Sankar
13. Sathish Babu, s/o Sankar
14. Saratha Babu

(R2 died, R7 to R14 are brought on record as
legal heirs of the deceased R2, vide order
dated 17.04.2026 made in CMP Nos.6977,
6980 and 6981 of 2026 in S.A.No.44 of 2026)

..Respondent(s)



Prayer: Second appeal filed under Section 100 of CPC to set aside the judgement and decree dated 26-03-2018 passed in AS.No.80 of 2017 on the file of the Subordinate Judge, Ulundurpet, confirming the judgement and decree dated 21-10-2016 passed in OS.No.97 of 2009 by the II Additional District Munsif, Ulundurpet.

For Appellant(s): Ms.V.Saraswathi

For Respondent(s): Mr. Gnana Moorthy For R1 (in Sr Stage)

M/s. Muruganatham For R4 (in Sr Stage)

JUDGMENT

The 2nd defendant in a suit in O.S.No.97 of 2009 is the appellant herein.

2. Pending second appeal, the sole appellant died and his legal heirs have been impleaded as appellants 2 to 6. Likewise, 2nd respondent died and his legal heirs have been impleaded as respondents 7 to 14.

3. The first respondent herein/plaintiff filed the above said suit for partition seeking 1/3rd share in the suit property and it was decreed by the Trial Court. Challenging the findings of the trial court, the 2nd defendant filed an appeal in A.S.No.80 of 2017 and the same was dismissed by the first appellate court, confirming the findings of the trial court. Aggrieved by the concurrent findings of the courts below, the 2nd defendant has filed the present second appeal.



4. According to the first respondent/plaintiff, the suit property originally belonged to one Govinda Padayachi and his sons, namely, plaintiff, defendants 1 and 2 and one Ramalingam. On 09.07.1986, there was a partition involving plaintiff, defendants 1 and 2 in respect of the family properties. Later, the legal heirs of Ramalingam filed a suit in O.S.No.118 of 1996 on the file of Principal District Munsif, Ulundurpet seeking partition of $1/4$ share in the family properties. They also challenged the partition deed dated 09.07.1986 as invalid. The said suit was decreed and the legal heirs of the Ramalingam were granted $1/4$ share in the family properties. In the said suit, the partition deed dated 09.07.1986 was also held to be invalid. Therefore, it is the case of the plaintiff that in the remaining $3/4$ share, the plaintiff and the defendants 1 and 2 are entitled to $1/3$ share each and hence, the instant suit has been filed by him in respect of the remaining family properties seeking his $1/3$ share.

5. The appellant/2nd defendant filed a written statement, wherein, he admitted the partition deed between the plaintiff and the defendants 1 and 2 dated 09.07.1986. He also admitted the filing of the suit by legal heirs of Ramalingam. It was the specific case of the 2nd defendant that the suit properties were partitioned 23 years ago and therefore, there was no joint family properties on the date of presentation of the suit. It was also stated by him that the properties allotted to the plaintiff were attached and it was sold in auction for recovery of the loan incurred by the plaintiff. Therefore, according to the 2nd



defendant, the plaintiff had no claim over the remaining properties, after allotment of 1 /4 share to the legal heirs of Ramalingam.

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6. The 4th defendant filed a written statement stating that he purchased 5th item of the suit property from the first defendant for a valid consideration on 04.12.1987 and hence, he was the bonafide purchaser of the suit property.

7. Before the trial court, the plaintiff was examined as PW1 and 16 documents were marked as Ex.A1 to Ex.A16. On the side of the defendants, 4 witnesses were examined as DW1 to DW4 and 10 documents were marked as Ex.B1 to Ex.B10.

8. The trial court on appreciation of evidence available on record, came to the conclusion that the plaintiff was entitled 1/3 share in the suit properties and granted a preliminary decree for partition. The trial court also held that the 5th item of the suit property was sold to the 4th defendant by the first defendant and hence, under the principle of equity, item No.5 of the suit property shall be allotted to the share of the first defendant. Aggrieved by the findings of the trial court, the 2nd defendant filed an appeal in A.S.No.80 of 2017 on the file of Subordinate Judge, Ulundurpet and the first appellate court dismissed the first appeal, affirming the findings of the trial court. Challenging the concurrent findings of the courts below, the 2nd defendant has filed the present second appeal.



9. The learned counsel for the appellants would submit that the plaintiff sold some of the suit properties to third party Arunagiri under Ex.B9 dated 12.01.2009 and after the sale, the plaintiff is not entitled to claim any share in the suit properties. She also submitted that, even pending suit, the plaintiff sold certain properties.

10. The material facts regarding relationship of the parties and the earlier litigations are admitted by the appellant. It is not disputed that the plaintiff, defendants 1 and 2 and one Ramalingam are children of Govinda Padayachi and all are entitled to 1 /4 share in the properties. Of course, in the year 1986, there was a partition involving plaintiff and defendants 1 and 2. Subsequently, the said partition was challenged by the legal heirs of Ramalingam in a partition suit in O.S.No.118 of 1996. The said suit was decreed by granting 1 /4th share in favour of the legal heirs of Ramalingam and the partition made in the year 1986 was also held to be invalid. In such circumstances, in the remaining 3 /4 share, the plaintiff and the defendants 1 and 2 are entitled to 1 /3 share each.

11. The present suit has been filed in respect of the remaining 3 /4th share of the family properties and the plaintiff is entitled to 1 /3 share in the said properties. The main objection raised by the appellants is that the plaintiff sold some of the properties before filing the suit as well as after. In case, the



plaintiff sold any of the suit properties to third parties, the equities can be worked out in the final decree proceedings. Now, preliminary decree has been granted ascertaining the share of the plaintiff and the defendants 1 and 2 as 1 /3 each. As far as the alienation made by the plaintiff is concerned, the said point can be raised in the final decree proceedings by the appellants and the trial court, before passing the final decree, can work out the equities by taking into consideration the alienation made by the parties.

12. With these clarification, the second appeal stands dismissed, affirming the findings of the courts below. There shall be no order as to costs.

17-04-2026
(2/2)

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

MST

To

1. The Subordinate Judge, Ulundurpet.
2. The II Additional District Munsif, Ulundurpet.



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S.SOUNTHAR, J.

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(2/2)**