



IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGEMENT RESERVED ON : 22.10.2025

JUDGEMENT PRONOUNCED ON: 06.02.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

S.A.No.376 of 2014

1. Kaliyammal

2. Pachaiyammal

... Plaintiffs/Appellants/Appellants

Vs

1. Valliammal

2.Kaliyaperumal

3. Ramar

... Defendants/Respondents/Respondents

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 23.05.2011 passed in A.S.No.30 of 2010 on the file of the Subordinate Judge, Kallakurichi, Villupuram District.

For Appellants :Mr.M.Ganesan
Ms.V.Sasi Rekha

For Respondents : Mr.N.Ramesh



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JUDGEMENT

This Second Appeal is directed against the judgment and decree of the learned Subordinate Judge, Kallakurichi, passed in A.S.No.30 of 2010, confirming the judgment and decree of the learned III Additional District Munsif, Kallakurichi, in O.S.No.1359 of 2004.

2. The plaintiffs in O.S.No.1359 of 2004 are the appellants herein. For the sake of convenience, the parties are referred to as they were arrayed before the trial court.
3. Facts in Brief: The suit properties are admittedly ancestral properties originally belonging to one Thangavel Udaiyar, husband of the first plaintiff and father of the second plaintiff and the first defendant. The first defendant was born through Thangavel Udaiyar's first wife, Arukaani. Thangavel Udaiyar died intestate on 05.01.1989. Defendants 2 and 3 are purchasers under the first defendant. The relationship between the parties as co-heirs of Thangavel Udaiyar is not in dispute.



4. The suit properties consist of agricultural lands and house sites situated at Kongarayapalayam Village, Kallakurichi Taluk, described in the plaint schedule under Patta Nos.737 and 1044.

5. Plaintiffs' Case: According to the plaintiffs, after the demise of Thangavel Udaiyar, an oral partition allegedly took place on 25.09.2000, in which only 0.35 cents was allotted to the first defendant and the remaining properties were allotted to the plaintiffs. It was pleaded that an unregistered partition chit was also prepared on the same date and that the plaintiffs have been in exclusive possession thereafter. Alleging interference by the defendants, the suit was filed for bare permanent injunction.

6. Defendants' case: The first defendant denied the alleged oral partition of 2000 and pleaded a different oral partition said to have taken place in the year 2001, under which half share was allotted to her. Defendants 2 and 3, as purchasers from the first defendant, contended that the suit properties continued to be joint family properties and that a suit for bare injunction against co-owners was not maintainable.



7. Both the Trial Court and the First Appellate Court, on a detailed analysis of pleadings and evidence, concurrently held that: the oral partition pleaded by the plaintiffs was not proved; the plaintiffs' own evidence was inconsistent as to the year of partition; no panchayatdars were examined; the alleged partition chit was not marked; revenue records and tax receipts only reflected management and convenience, not partition or exclusive possession; the oral partition pleaded by the first defendant was also not proved, as she did not enter the witness box; consequently, the suit properties continued to be joint family / co-owned properties.

8. On the above findings, the suit for permanent injunction was dismissed, holding that injunction cannot be granted against co-owners or persons claiming under a co-owner.

9. At the time of admission, the following substantial questions of law were framed:

(i) Having held that the plea of oral partition raised by both the parties has not been established, whether the Courts below were right in refusing injunction on the



ground that defendants 2 and 3 are co-owners along with the plaintiff, more so, when the sale deed in their favour of the defendant 2 & 3 does not deal with an undivided share of the first defendant ?

(ii) Whether the Courts below were right in concluding that defendants 2 & 3 who are purchasers of specific items from the first defendant could be termed as co-owners along with the plaintiff and cannot be enjoined from interfering with the possession of the plaintiffs?

10. Learned counsel for the appellants submits that both the Courts below failed to properly appreciate the appellants' case of an oral partition and their settled possession, and therefore erred in non-suiting them in a suit for permanent injunction; it is contended that there was an oral partition in the family and that the appellants have been in continuous peaceful possession and enjoyment, which is also reflected through revenue entries and receipts produced, but the Courts below improperly appreciated such evidence and treated the 1st defendant as a co-sharer in respect of the appellants' share.



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11.Learned counsel would further submit that an adverse inference ought to have been drawn against the 1st defendant for not entering the witness box, invoking the principle under Section 114(g) of the Indian Evidence Act, 1872, and that the appellants' possession deserved protection against interference by the purchasers/strangers.

12.It is also argued that even assuming an undivided interest, the purchasers can only work out their remedy by seeking partition and demarcation, and cannot disturb the appellants' possession; in support, reliance is placed on the decisions in *Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh reported in 1990 AIR SC 854* and *Kartar Singh v. Harjinder Singh 1953 AIR SC 487*, to contend that a vendee of an undivided share may seek partition, but cannot claim a right to forcibly interfere with possession.

13.Learned counsel relies upon Section 44 of the Transfer of Property Act, 1882, to submit that a co-owner cannot validly transfer an undivided share in a dwelling house to a stranger, and therefore the alleged transfer set up



by defendants 2 and 3 cannot defeat or dilute the legitimate rights of the appellants over the suit property.

14.Learned counsel for the respondents submits that the plaintiff has miserably failed to prove the alleged oral partition, and that the so-called unregistered receipts said to evidence such oral partition are neither genuine nor legally dependable. It is contended that the very foundation of the plaintiff's claim namely the oral partition is unproved, and therefore any subsequent mutation in revenue records said to have been effected on the basis of such partition is wholly unsustainable.

15.According to the learned counsel, the mutation did not occur pursuant to any partition, but only after a quarrel between them, and the revenue entries were thereafter manipulated/alterd; hence, such revenue records cannot confer or establish title or lawful exclusive possession in favour of the plaintiff.

16.Learned counsel further submits that the suit for bare permanent injunction is not maintainable as against a co-sharer, since a co-owner cannot



ordinarily be enjoined from enjoying joint property, and the proper remedy, if at all, is to seek partition. Reliance is placed on the decision ***T. Ramalingeswara Rao (Dead) Thr. Lrs. v. N. Madhava Rao reported in 2019 (4) SC 608***, to support the contention. It is also argued that the evidence of P.W.2 is purely hearsay and cannot be relied upon to prove partition or possession.

17.Learned counsel would therefore submit that both the courts below, on proper appreciation of oral and documentary evidence, have concurrently held that there was no oral partition, and the plaintiff, if advised, can only work out his rights by filing a suit for partition and not by seeking injunction.

18.Learned counsel for the respondents submits that the 1st defendant, being a co-sharer, was competent to alienate his undivided share, and therefore the sale in favour of defendants 2 and 3 can validly be effected; and once such sale is held to be valid, the sale deed would stand and bind to the extent of the vendor's share, with the result that defendants 2 and 3, as subsequent purchasers stepping into the shoes of the vendor, are entitled to claim



possession/joint possession and to work out their rights in accordance with law.

19.The concurrent findings that no oral partition was proved are pure findings of fact based on evidence and do not warrant interference under Section 100 CPC.

20.Once partition is not established, the suit properties necessarily retain their character as joint family properties. The first defendant's interest, therefore, remained an undivided share. Any alienation made by her, even though the sale deeds describe specific items with boundaries, can legally operate only to the extent of her undivided interest.

21.The purchasers, namely defendants 2 and 3, merely step into the shoes of the first defendant and acquire the status of co-owners to that extent. They cannot be treated as strangers or trespassers. Whether the sale exceeds the vendor's share or whether the purchasers are bona fide or otherwise are matters relevant for partition and adjustment of equities, and not for a suit seeking bare injunction.



22. In law, possession of one co-owner is referable to possession on behalf of all co-owners unless ouster or hostile exclusion is specifically pleaded and proved. Mere payment of kist, patta entries, or assertions of management do not establish exclusive possession so as to sustain a decree for injunction against another co-owner or a person claiming under a co-owner.

23. The proper remedy for the plaintiffs, if aggrieved by the alienations, is to seek partition and separate possession, and not a suit for bare injunction.

24. Under Section 44 of the Transfer of Property Act, 1882, a transferee who purchases the undivided share of a co-owner merely succeeds to the rights of the transferor and acquires no interest superior to that of the vendor. Such a transferee may either seek partition of the property or hold and enjoy it jointly along with the other co-owners, subject, however, to the statutory restriction applicable in the case of a dwelling house. It is equally well settled that neither a co-owner nor a transferee can be compelled to initiate legal proceedings, including the institution of a suit for partition.



25. Both the substantial questions of law are answered against the appellants.

The Courts below were right in refusing the relief of permanent injunction after holding that the alleged oral partition was not proved and in treating defendants 2 and 3 as persons claiming under a co-owner.

26. In the result, the Second Appeal fails and is dismissed. The judgments and decrees of the Courts below are confirmed. No costs. Consequently, connected miscellaneous petition if any, is closed.

06.02.2026

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No



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To

1. The Subordinate Judge, Kallakurichi, Villupuram District.
2. The III Additional District Munsif Court, Kallakurichi

Copy to:

The Section Officer,
VR Section,
High Court, Chennai.



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DR. A.D. MARIA CLETE, J

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