



SA No. 384 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-06-2026

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

**SA No. 384 of 2023
and
CMP.No.12057 of 2023**

1. Sundari

Door No. 159/80, Kizh Somarpet,
Krishnagiri Post, Krishnagiri Taluk and
District. and 7 Others

2. C. Madhesh

Door No. 159/80, Kizh Somarpet,
Krishnagiri Post, Krishnagiri Taluk and
District.

3. Poongodi

Door No. 159/80, Kizh Somarpet,
Krishnagiri Post, Krishnagiri Taluk and
District.

4. Beerammal

Door No. 159/80, Kizh Somarpet,
Krishnagiri Post, Krishnagiri Taluk and
District.

5. C. Panner Selvam

Door No. 159/80, Kizh Somarpet,
Krishnagiri Post, Krishnagiri Taluk and
District.

C.Prakash(died)

6. P. Shobana

Door No. 159/80, Kizh Somarpet,
Krishnagiri Post, Krishnagiri Taluk and
District.

7. P. Priyanga (Minor)

Door No. 159/80, Kizh Somarpet,



Krishnagiri Post, Krishnagiri Taluk and District.

(represented by her natural guardian
mother P. Shobana)

8. P.Jayaharsan (Minor)

Door No. 159/80, Kizh Somarpet,
Krishnagiri Post, Krishnagiri Taluk and District.

(represented by his natural guardian
Mother P. Shobana)

Appellant(s)

Vs

1. Raja

Door No. 161/81, Kizh Somarpet,
Krishnagiri Taluk and District.

2. Beerammal

Door No. 161/81, Kizh Somarpet,
Krishnagiri Taluk and District.

3. The Joint -II

Sub-Registrar, Krishnagiri.

4. D.C. Elangovan

Old No. 8, New No. 16, Arunachalam
Street, Dharmapuri Town and District.

5. E. Meena

Old No. 8, New No. 16, Arunachalam
Street, Dharmapuri Town and District.

6. Sathiyaraj

Door No. 161/81, Kizh Somarpet,
Krishnagiri Taluk and District.

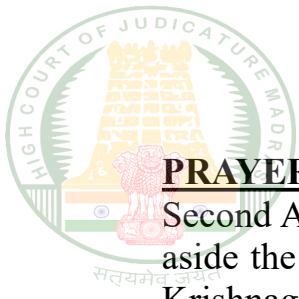
7. Vidhya

Door No. 161/81, Kizh Somarpet,
Krishnagiri Taluk and District.

8. Beerraj

Door No. 161/81, Kizh Somarpet,
Krishnagiri Taluk and District.

Respondent(s)



PRAYER

Second Appeal filed under Section 100 of Code of Civil Procedure, prays to set aside the judgment and decree passed by the learned Additional District Judge, Krishnagiri in AS No.21 of 2021 dated 16-11-2021 confirming the judgment and decree passed by the learned Principal Sub Judge, Krishnagiri in OS No.54 of 2010 dated 25-02-2021.

For Appellant(s): Mr.Surya Narayanan
For Mr.Rahul Balaji

For Respondent(s): Mr.V.Raghavachari
Senior Counsel
For M/s N.Umapathi
for R4 and R5
Mrs.R.Anitha, Spl.G.P. For R3
No Appearance - R1,R2, R6 to
R8

JUDGEMENT

The appellants have filed this appeal to set aside the judgment and decree passed by the learned Additional District Judge, Krishnagiri in AS No.21 of 2021 dated 16-11-2021 confirming the judgment and decree passed by the learned Principal Subordinate Judge, Krishnagiri, in OS No.54 of 2010, dated 25-02-2021.

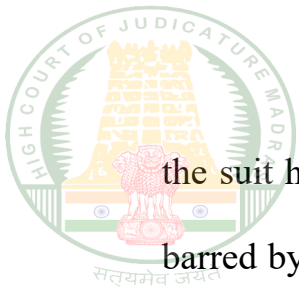
2. For the sake of convenience, the parties herein are referred to as they are ranked in the suit.

3. Challenging the concurrent findings of the courts below, the plaintiffs have preferred this second appeal. Before the trial Court, the original plaintiff,



Chinnakuppan, who is now deceased, filed a suit for partition against his brother, the first defendant, and his legal heirs, claiming $\frac{1}{2}$ share in the suit properties. He also sought a declaration to declare the settlement deed executed by the first defendant in favour of his wife, the second defendant, dated 31.10.1999, as null and void. Consequently, he further sought a declaration to declare the sale deeds dated 26.12.2012 executed by defendants 1 and 2 and their legal heirs in favour of defendants 4 and 5 as null and void. During the pendency of the suit proceedings, the original plaintiff Chinnakuppan died and his legal heirs were impleaded as plaintiffs 2 to 7. The defendants contested the suit by filing their written statements before the trial Court.

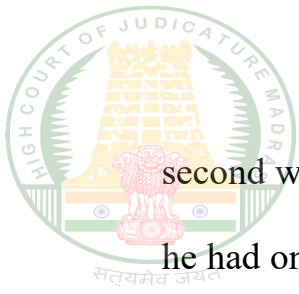
4. On considering the oral and documentary evidence available on record, the learned trial Judge framed the necessary issues and finally held that the suit properties had already been partitioned among the brothers, namely the plaintiff, the first defendant, and one Periyakuppan, the son born through the first wife of their father, about 40 years earlier, and that such oral partition had been established by the defendants. Accordingly, the trial Court held that there was no property available for division. The trial Court also held that the suit properties were no longer joint family properties. Consequently, the relief of partition was dismissed. The relief of declaration was also rejected on the ground that the challenge to the settlement deed dated 31.10.1999 ought to have been made within three years from the date of execution of the document. Since



the suit had been filed after nearly ten years, the Court held that the claim was barred by limitation. Accordingly, all the reliefs sought in the suit were rejected and the suit was dismissed in entirety.

5. Aggrieved by the same, the plaintiffs preferred A.S. No.21 of 2021. The learned first appellate Judge framed separate points for consideration and, upon reappreciating the oral and documentary evidence, concurred with the findings of the trial Court. The first appellate Court held that an oral partition had already taken place among the plaintiff, the first defendant, and Periyakuppan, and that the patta standing in the names of the respective parties clearly established prior division of the properties. The appellate Court further noted that in O.S. No.356 of 2007, filed by the first defendant against the plaintiffs herein, there was a specific reference regarding the earlier partition, which had not been denied by the plaintiffs. Therefore, the appellate Court confirmed the finding that there had already been partition and that there was no property available for further division. Accordingly, the appeal was dismissed. Aggrieved over the concurrent findings of both the Courts below, the plaintiffs have preferred the present second appeal.

6. The brief facts of the case are as follows: The suit properties described in the plaint schedule comprise both dry and wet lands along with a well. The plaintiffs and the first defendant are brothers and sons of one Beeran through his



second wife, Kaliasammal. Beeran had a first wife, namely Thippi, through whom he had one son, Periyakuppan. During the lifetime of Beeran, Periyakuppan was allegedly allotted his share separately and left the family. According to the plaintiffs, the remaining extent of the properties described in the plaint schedule continued to be enjoyed jointly by the plaintiff, his father Beeran, and the first defendant without any partition by metes and bounds. Though the house sites were divided among themselves and separate constructions were put up, the dry and wet lands were not partitioned and continued to be enjoyed jointly.

7. According to the plaintiffs, the first defendant clandestinely obtained patta in respect of certain properties, including the more valuable portions. Patta for the dry lands stood in the name of the plaintiff Chinnakuppan. Taking advantage of the revenue records, the first defendant executed a settlement deed in favour of his wife and subsequently attempted to alienate the properties, which compelled the plaintiff to institute the suit in the year 2010. It is their further case that the plaintiffs came to know that, in the year 1999, the first defendant had executed a settlement deed in favour of the second defendant, and based on the same, she subsequently sold the properties in favour of defendants 4 and 5 during the pendency of the suit in the year 2012, and they were thereafter impleaded as parties to the proceedings. The plaintiffs contended that since there had been no partition in respect of the suit properties, the settlement deed and the subsequent sale deeds would not bind them. Hence,

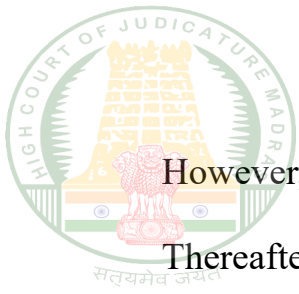


they claimed ½ share in the suit properties and also sought declaration declaring the settlement deed and sale deeds as null and void.

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8. The first and second defendants filed their written statement and additional written statement contending that there was no joint family properties as alleged by the plaintiffs. According to them, the suit properties were never jointly enjoyed as claimed by the plaintiffs. They further stated that their father Beeran had purchased the first item of the suit property in the year 1971 and the second item in the year 1974, which facts had been suppressed by the plaintiffs. They further contended that an oral partition had already taken place in the family nearly 40 years earlier, under which 80 cents had been allotted to Periyakuppan, the son born through the first wife of Beeran, and the remaining properties were divided between the plaintiffs and the first defendant. Patta had also been granted separately in the names of the respective sharers.

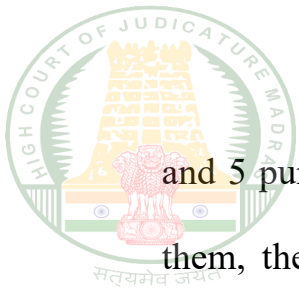
9. The defendants further contended that their mother Kaliasammal owned separate properties at Bethalapalli Village, which had been sold by the plaintiffs, and the plaintiffs had appropriated the entire sale proceeds. According to them, under the oral partition, the first item of the suit property had been allotted to the first defendant, who had become the absolute owner thereof. Out of love and affection, he settled the same in favour of his wife, the second defendant, in the year 1999, and the same was well within the knowledge of the plaintiffs.



However, the plaintiffs did not challenge the settlement deed immediately.

Thereafter, separate pattas were issued in the names of the plaintiffs and the first defendant. Therefore, according to the defendants, there was no property available for partition as on the date of filing of the suit. They further contended that if at all the plaintiffs were aggrieved by the settlement deed of the year 1999, they ought to have challenged the same within three years. Since the suit had been filed only in the year 2010, the same was clearly barred by limitation. They further stated that on 26.12.2012, the second defendant sold the property in favour of the fourth defendant for valid sale consideration. It was also contended that the plaintiffs were not in possession of the suit properties and, therefore, the court fee paid under Section 37(1) was not proper. Hence, they prayed for dismissal of the suit.

10. The purchasers, namely defendants 4 and 5, filed their written statement contending that the properties had already been divided among the 1st plaintiff, the first defendant, and their brother Periyakuppan long ago, and under such partition, specific survey numbers had been allotted to the first defendant. On verification of the revenue records, they found that the first item of the suit property stood in the name of the first defendant and patta had also been granted in his favour. Therefore, believing that the first defendant was the absolute owner of the property, he executed the settlement deed in favour of the second defendant, who thereafter became the absolute owner. From her, defendants 4



and 5 purchased the properties for valid consideration. Therefore, according to them, the plaintiffs had not approached the Court with clean hands and had suppressed the true facts. Hence, they prayed for dismissal of the suit.

11. Before the trial Court, the learned trial Judge framed seven issues for consideration. In respect of the plaintiffs' claim for partition of the suit properties, the trial Court held that since the first defendant had specifically contended that an oral partition had already taken place about 40 years earlier, the burden was upon him to establish the same. In support of his case, the first defendant relied upon Exs.B2 to B4, namely the sale deeds executed by one Periyakuppan in favour of the second and third plaintiffs in respect of the suit survey Nos.111/4 to 111/7. In the recitals of the said sale deeds, it had been specifically stated that, as per village customary partition, the properties had already been divided and the said properties had fallen to the share of Periyakuppan, which were thereafter sold by him to the purchasers. On the basis of the said documents, the trial Court concluded that there had already been a partition between the first defendant and Periyakuppan, the son born through the first wife of Beeran.

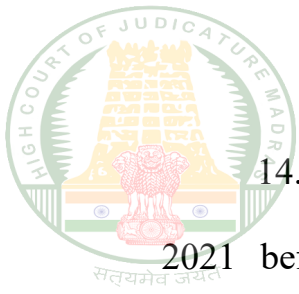
12. The trial Court further considered Exs.A1 and A2. Under Ex.A1, patta stood in the name of the first plaintiff in respect of item Nos.4 and 5 of the suit properties. Under Ex.A2, patta stood in the name of the second defendant in



respect of item Nos.1 and 2. On the basis of the said revenue records, the trial

Court held that separate pattas standing in the names of the respective parties clearly indicated that the suit properties had already been orally partitioned among them. Accordingly, the trial Court concluded that the first defendant had established the earlier oral partition and that the suit properties were no longer joint family properties.

13. The trial Court further held that the settlement deed executed by the first defendant in favour of the second defendant in respect of item Nos.1 and 2 of the suit properties was valid, since those properties had already fallen to the share of the first defendant under the oral partition. Consequently, the subsequent sale in favour of defendants 4 and 5 was also held to be valid. Therefore, the relief of declaration sought by the plaintiffs was rejected. The trial Court further held that the settlement deed had been executed in the year 1999 and that the plaintiffs were fully aware of the said document. If the plaintiffs intended to challenge the same as null and void, they ought to have approached the Court within three years. Since the suit had been filed nearly ten years thereafter, the claim was held to be barred by limitation. Accordingly, all the issues were decided against the plaintiffs and the suit was dismissed on merits.



14. Aggrieved by the said findings, the plaintiffs preferred A.S. No.21 of 2021 before the learned Additional District Judge, Krishnagiri. The first appellate Court framed separate points for consideration, reappreciated the oral and documentary evidence available on record, and ultimately confirmed the findings of the trial Court. The first appellate Judge also relied upon Exs.B2 to B4, the sale deeds executed by Periyakuppan in favour of the second and third plaintiffs, wherein it had been clearly recited that the properties had already been divided earlier and that the share allotted to him was being alienated. The appellate Court held that the said recitals were sufficient to conclude that partition had already taken place among the 1st plaintiff, the first defendant, and Periyakuppan long ago.

15. The appellate Court further took note of O.S. No.356 of 2007 filed by the first defendant herein in respect of the common well. In the said suit, it had been specifically pleaded that partition had already taken place about 37 years earlier and that only the well continued to be enjoyed in common. Though the said suit was not ultimately pressed, the appellate Court observed that the same related only to the common well and that withdrawal of the said suit would not improve the plaintiffs' case. On such appreciation of the evidence, the appellate Court held that the properties belonging to Beeran had already been divided among his three sons, except the common well, and therefore the trial Court had rightly concluded that there was no property available for further partition. The



dismissal of the suit in respect of partition as well as declaration was accordingly confirmed. Aggrieved by the concurrent findings of both the Courts below, the plaintiffs have preferred the present second appeal.

16. The learned counsel appearing for the appellants/plaintiffs raised the following grounds. According to the learned counsel, the Courts below failed to properly appreciate that the alleged oral partition had not been proved by the defendants through acceptable evidence. Since the burden squarely rested upon the defendants to establish the oral partition, the Courts below ought not to have accepted the plea merely on the basis of insufficient material. Therefore, the finding that an oral partition had already taken place in respect of the properties belonging to Beeran is erroneous one as such is liable to be set aside.

17. The learned counsel further submitted that patta is only a revenue record and not a document of title and the same by itself would not be sufficient to establish partition. However, both the Courts below erroneously relied upon the pattas standing in the names of the first plaintiff and the second defendant and concluded that partition had already been effected in the family. According to the learned counsel, such finding amounts to a clear misapplication of law and facts and is therefore liable to be interfered with. He further argued that certain properties had been allotted to the step-brother Periyakuppan, while the remaining properties continued to be jointly enjoyed by the first plaintiff, first



defendant, and their father Beeran during his lifetime. This material aspect had not been properly appreciated by the Courts below. Hence, the findings are perverse in nature and liable to be set aside.

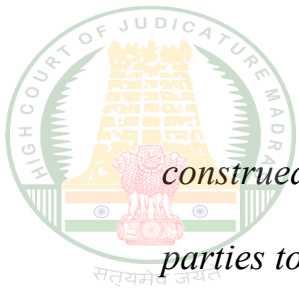
18 The learned counsel also contended that the Courts below failed to take note of the fact that the suit properties continued to remain in joint and constructive possession and therefore the court fee paid by the plaintiffs was proper. However, the Courts below erroneously held otherwise. He further argued that Exs.B2 to B4 had not been properly interpreted. Merely because the house sites had earlier been divided, it could not automatically lead to the conclusion that the agricultural lands were also partitioned. According to the learned counsel, the lands continued to remain undivided and the common well also remained in joint enjoyment. There is no acceptable proof to show that an oral partition had taken place 40 years earlier. Therefore, the findings of both the Courts below, based on vague allegations, are liable to be set aside.

19. The Second Appeal was admitted on 14.06.2023, on the following substantial questions of law:

(i). Whether the respondents / defendants have not discharged their burden to prove oral partition as a defence?

ii) Whether patta alone could be relied upon as proof of oral partition?

iii) Whether the recitals in Ex.B2, B3 and B4 could be interpreted or



construed to mean that an oral partition was already effected as amongst the parties to the present case?

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iv) Whether, after the exit of one co-sharer in a joint family property along with the allocated properties, the other co-sharers can maintain a suit for partition in relation to the remaining properties against each other?

v) Whether the suit was filed within the limitation period?

vi) Whether the appellants were right in paying court fee under Section 37(2) of the Tamil Nadu Court-fees and Suits Valuation Act, 1955?

20. By way of reply, the learned counsel appearing for respondents 4 and 5 submitted that the contesting respondents are bona fide purchasers of the suit properties. During the pendency of the proceedings, both the first plaintiff and the first defendant died and their legal heirs were brought on record. The learned counsel appearing for respondents 4 and 5 submitted that there was no property available for partition, since nearly 40 years earlier the properties belonging to Beeran had already been divided among his three sons, namely Periyakuppan, Chinnakuppan, and Raja.

21. The learned counsel further submitted that the second and third plaintiffs themselves had purchased properties from Periyakuppan under Exs.B2 to B4 during the years 1983 to 1985. In the recitals of those documents, it had been specifically stated that partition had already taken place in the family.



Thereafter, separate pattas were also granted in favour of the 1st plaintiff and the first defendant, as evidenced by Exs.A1 and A2. As on the date of filing of the suit, there was no property available for partition. The share allotted to the first defendant had been validly purchased by respondents 4 and 5, and they have been in possession and enjoyment of the first item of the suit property ever since. According to the respondents, the plaintiffs have filed the present suit suppressing the earlier partition only with an intention to claim rights over the valuable properties.

22. The learned counsel further submitted that both the Courts below had rightly concluded that the properties had already been divided and that the first defendant was absolutely entitled to settle and thereafter alienate his allotted share. It was also rightly held that if the plaintiffs had any grievance against the settlement deed dated 1999, they ought to have challenged the same within the period of limitation. Having approached the Court nearly ten years thereafter, the suit is clearly barred by limitation. Therefore, the concurrent findings rendered by both the Courts below do not require any interference. Hence, the learned counsel prayed for dismissal of the second appeal as devoid of merits.

23. On considering the submissions made on either side, the facts reveal that one Beeran had two wives, namely Thippi and Kaliammal. Through his first wife, Thippi, he had one son, namely Periyakuppan. Through his second wife,



Kaliammal, he had two sons, namely Chinnakuppan, the first plaintiff, and Raja, the first defendant. The second defendant is the wife of the first defendant.

During the pendency of the suit proceedings, Chinnakuppan died and his legal heirs were brought on record as plaintiffs 2 to 7. The first defendant also died, leaving behind his wife, the second defendant, and his children, defendants 6 to 8. The third defendant is the Sub-Registrar. Defendants 4 and 5 are the purchasers of the suit properties from defendants 1 and 2. The relationship between the parties is not in dispute. It is also admitted fact that the suit properties originally belonged to Beeran, the father of the 1st plaintiff and the first defendant, by way of purchase.

24. According to the original plaintiff, Chinnakuppan, the suit properties described in the plaint schedule are joint family properties belonging to himself and his brother, the first defendant, and they were jointly enjoyed along with their father Beeran. After the demise of Beeran, the plaintiff sought partition of the suit properties. However, the first defendant evaded the same and subsequently executed a settlement deed in favour of his wife, which came to the knowledge of the plaintiff prior to the filing of the suit. It is the further case of the plaintiffs that the first defendant attempted to alienate the valuable wet lands by taking advantage of the patta standing in his name.



25. According to the plaintiffs, patta in respect of the dry lands, namely item Nos.4 and 5, stood in his name, but no partition by metes and bounds had ever taken place. It is specifically contended that during the lifetime of Beeran, Periyakuppan, the son born through the first wife, demanded division of his share, and accordingly certain properties alone were allotted to him, while the remaining properties continued to be jointly enjoyed by Beeran and his two sons born through the second wife. On the said basis, the plaintiffs claimed $\frac{1}{2}$ share in the suit properties.

26. The first defendant contested the suit by stating that the properties had already been divided long ago and that all the three brothers, namely Periyakuppan (born through 1st wife), the 1st plaintiff, and the first defendant, had been allotted separate shares. Mutation in the revenue records had also taken place. He further contended that the plaintiffs themselves had purchased the share allotted to Periyakuppan through the sale deeds marked as Exs.B2 to B4. Suppressing the earlier partition, the plaintiffs have now come forward with the present suit for partition.

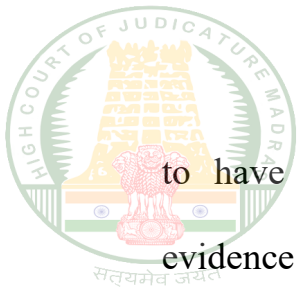
27. It is a settled proposition of law that the party who pleads oral partition is bound to establish the same. In support of such plea, the defendants relied upon Exs.B2, B3 and B4, which were executed by Periyakuppan in favour of the



second and third plaintiffs. Ex.B1 also shows that Survey No.111/4 had originally been purchased by Beeran in the year 1971. Based on Exs.B2 to B4, the first defendant contended that the recitals therein clearly reveal that the properties allotted to Periyakuppan in the village customary partition were sold by him in favour of the second and third plaintiffs. Therefore, having purchased the said properties with full knowledge of the earlier partition, the plaintiffs are estopped from seeking partition once again. He further contended that the plaintiffs had never raised any objection regarding the separate patta granted in favour of the first defendant, indeed they had obtained separate pattas in their favour. Therefore, on all aspects, the plaintiffs are estopped from claiming any right by way of partition. In support of the said contention, reliance was placed upon the decision reported in 2010 (4) CTC 640, stated as follows:

“Evidence Act, 1872 (1 of 1872), Section 115 – Law of Estoppel – Applicability – Mutation in Revenue Records – During Settlement proceedings Revenue entries were mutated in favour of defendant – Plaintiff failed to raise an objection before authorities, even though they had knowledge about mutation of revenue entries – plaintiff ought to have raised objection, otherwise he is estopped from claiming right over property.”

28. By way of reply, the learned counsel appearing for the appellants/plaintiffs submitted that mere issuance of separate pattas would not by itself be sufficient to conclude that partition had already taken place in the family. According to the learned counsel, the plea of oral partition requires independent and convincing evidence. More particularly, the defendants ought



to have proved the same by examining independent witnesses. No such evidence was adduced. In the absence of independent proof, both the Courts below erroneously concluded that partition had already taken place merely based on pattas and the recitals found in Exs.B2 to B4. Therefore, the findings are erroneous. In support of the said contention, reliance was placed on the decision reported in 2017 SCC Online Madras 16177, Chitra Vs. Saroja and another, in paragraphs 9 and 10, stated as follows:

“ 9. It is the case of the defendants 1 and 3 that after oral partition took place about 25 years back, pattas have been issued in their favour, marked as Exs.B5 to 87 and the receipts were marked as Exs.B8 to B10. Insofar as Item No. 1 of the suit schedule property is concerned, admittedly pattas stood in the name of grand father of the plaintiff and as well as Ex.B2/Joint Patta standing in the name of Maadhusamy Chetty and Manickam, father of the plaintiff and so also, Ex.B4/patta standing in the name of Maadhusamy Chetty, Thimmappan and Manickam. As regards, Item No. 2 of the suit schedule property is concerned, the contesting defendants placed heavy reliance upon Exs.B7 to B10. DW1-Saroja as well as DW2-Ravi in their testimonies though reiterated their stand that by virtue of the oral partition took place about 25 years back, they have been given separate items of the properties, did not specifically state about the survey number and extent of land allotted to them. The Trial Court has also recorded the fact that under Ex.A9/Sale Deed dated 27.01.2000, the father of the plaintiff, namely Manickam and the defendants 2 and 3 had conveyed certain items of properties, purported to be a joint family properties, which shows that oral partition pleaded cannot be sustained.

10. In Ramulu Ammal v. Ramachandra Reddy [2009-3-L.W. 622], the plea with regard to oral partition by marking of revenue records to sustain the same came up for consideration

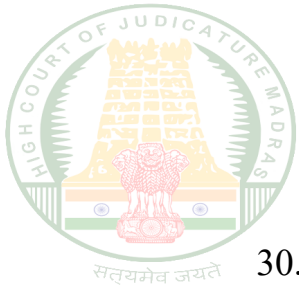


and it is relevant to extract the following paragraphs of the said judgment:

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"23. The onus of proof as well as the onus probandi is on the defendant to prove that there was oral partition before the panchayatars. But it is clear that absolutely there is no evidence much less reliable evidence to uphold the alleged oral partition. No panchayatar was examined on the side of the defendant to prove such panchayat was held and the oral partition took place. In a village, if really a partition had taken place in the presence of panchayatars, certainly some evidence in that regard must be available and the same should have been adduced before the court. But, that was not done so."

29. On consideration of the submissions made on either side and on perusal of the findings of the Courts below, it is seen that both the trial Court and the first appellate Court heavily relied upon the recitals found in Exs.B2 to B4 and concluded that partition had already taken place in the family and that the same had been suppressed by the plaintiffs. A careful reading of the recitals in the said sale deeds reveals that they were executed by Periyakuppan during the years 1983 and 1985 in favour of the second and third plaintiffs. The recitals therein mention that the properties had been allotted to him under the customary village panchayat arrangement and that the same were sold by him through the said sale deeds. The sale deeds also contain clear four boundaries. In Ex.B4, relating to Survey No.114/4 and an extent of 27 cents, the southern boundary has been specifically shown as "Beeran land."



30. According to the plaintiffs, during the lifetime of Beeran, only Periyakuppan, the son born through the first wife, demanded division of his share and therefore, under the village customary panchayat arrangement, certain properties alone were allotted to him, while the remaining properties continued to be enjoyed jointly by Beeran and his two sons born through the second wife, namely the 1st plaintiff and the first defendant.

31. This Court finds considerable force in the said submission. The boundaries described in the sale deeds executed by Periyakuppan clearly show that one of the boundaries is described as Beeran's land. This would prima facie indicate that only a portion of the land had been allotted to Periyakuppan and that the remaining extent continued to remain with Beeran. The suit came to be filed only in the year 2010, whereas the sale deeds executed by Periyakuppan are of the years 1983 and 1984, nearly 25 years prior thereto.

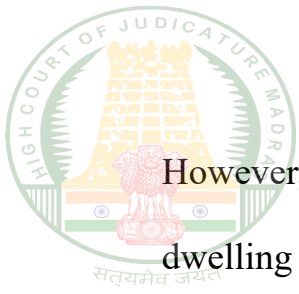
32. When the first defendant specifically pleaded that an oral partition had taken place about 40 years earlier, the burden was clearly upon him to establish the specific allotment made in his favour under such partition. However, except relying upon pattas marked as Exs.A1 and A2, no other documentary evidence was produced by the first defendant. Ex.A1 stands in the name of the 1st plaintiff in respect of the dry lands, whereas Ex.A2 stands in the name of the wife of the



first defendant in respect of the wet lands. Except for these pattas and the sale deeds executed by Periyakuppan, there is no acceptable documentary proof to show that item Nos.1 to 3 of the suit properties had been exclusively allotted to the first defendant and enjoyed by him for the past 40 years. No independent witness was examined on the side of the defendants to prove the alleged oral partition.

33. Further, on a perusal of the settlement deed executed by the first defendant in favour of his wife, the second defendant, in the year 1999, marked as Ex.A3, it is seen that the properties were transferred without specific boundaries. When Periyakuppan was able to convey his share under Exs.B2 to B4 by clearly describing the four boundaries, if really any definite share had been allotted to the first defendant, he would have described the same with proper boundaries. On the other hand, the settlement deed merely refers to an extent of 74 cents without clear boundaries. The recital merely states that the property had been allotted to him under village customary partition. This creates a serious doubt regarding the genuineness of the settlement deed and probabalises the plaintiffs' contention that the document had been created only in favour of the second defendant with an intention to deal with the wet lands.

34. The Courts below held that the plaintiffs ought to have challenged the settlement deed within three years from the date of execution in the year 1999.



However, the specific case of the plaintiffs is that, except with regard to the dwelling house, the agricultural lands continued to be jointly enjoyed and that the first defendant, by taking advantage of the patta, attempted to alienate the wet lands. The plaintiff has specifically pleaded that he came to know about the settlement deed only on 10.05.2010, as found in page No.93 of the records, and immediately thereafter filed the suit within the period of limitation. There is no acceptable evidence on the side of the defendants to establish that the plaintiffs had prior knowledge of the settlement deed executed by the first defendant in favour of his wife. The document being an arrangement between the husband and wife, the burden heavily lies upon the defendants to prove that the plaintiffs had knowledge of the same. In the absence of such proof, the finding of the Courts below that the suit is barred by limitation cannot be sustained. Since the plaintiffs had approached the Court immediately on gaining knowledge of the settlement deed, the suit is maintainable. Accordingly, the findings of the Courts below on the question of limitation are set aside. Consequently, substantial question of law No.5 is answered in favour of the appellants/plaintiffs.

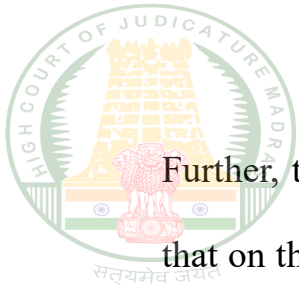
35. As discussed above, the recitals found in Exs.B2, B3 and B4 clearly reflect that only a certain extent of land had been allotted to Periyakuppan, the son born through the first wife, during the lifetime of Beeran, the father of the 1st plaintiff and the first defendant. The same has been satisfactorily established by the plaintiffs. On the other hand, the first defendant has failed to establish



that the entire suit properties had been divided among Beeran and his three sons under an oral partition said to have taken place about 40 years earlier. Except for the recitals found in the sale deeds and the revenue records, there is no direct or independent material evidence on the side of the first defendant to prove such oral partition.

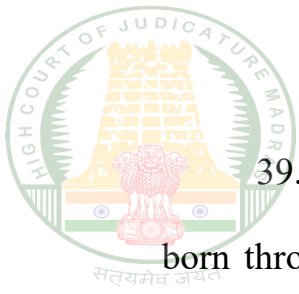
36. Apart from the above, the settlement deed executed by the first defendant in favour of the second defendant itself shows that the property was conveyed without mentioning specific boundaries. This circumstance also probabalises the plaintiffs' case that there was no partition by metes and bounds between the 1st plaintiff and the first defendant. The first defendant has also not offered any satisfactory explanation as to why, under the alleged oral partition, no definite share in the valuable wet lands was shown to have been allotted, while the dry lands alone were separately reflected. Mere mutation of patta by itself is not sufficient to conclude that the properties had already been partitioned among the brothers. In this regard, the authority relied upon by the appellants is applicable to the present case, whereas the decision relied upon by the respondents would not apply to the facts of this case.

37. The burden to prove the oral partition was entirely upon the first defendant. However, he has failed to establish the same by acceptable evidence.



Further, the recital and boundary description found in Ex.B4 specifically show that on the northern side lies the land of Beeran. This clearly indicates that only a portion of the land had been allotted to Periyakuppan and that the remaining extent continued to remain with Beeran during his lifetime. The plaintiffs have thus probalised that Beeran continued to enjoy the remaining extent of land jointly with his two sons born through the second wife. However, the Courts below, without properly appreciating these facts and circumstances, erroneously held that the entire properties had already been divided among the family members. Such findings are clearly erroneous, perverse, and liable to be set aside.

38. It is no doubt true that findings on facts ordinarily do not warrant interference in second appeal. However, where such findings are perverse, based on improper appreciation of evidence, or contrary to the materials available on record, this Court is entitled to interfere. In the present case, the findings of the Courts below regarding prior partition are not supported by acceptable evidence and therefore require interference. Accordingly, it is held that the first defendant has failed to prove that any oral partition had taken place between the parties. Hence, substantial question of law Nos.1, 2 and 3 are answered in favour of the appellants.



39. The materials on record further reveal that Periyakuppan was the son born through the first wife and had demanded partition during the lifetime of Beeran. Considering the family circumstances, the plaintiffs' case that Beeran allotted some extent of land to Periyakuppan and retained the remaining properties jointly with his two sons born through the second wife appears probable and natural. Such an arrangement, considering the family circumstances and customary village practice, appears reasonable and acceptable. Therefore, the plaintiffs' version that Periyakuppan was allotted only a limited extent and that the remaining properties continued in the family is found to be more probable. The Courts below failed to appreciate this aspect in its proper perspective. Accordingly, substantial question of law Nos.4 and 5 are answered in favour of the appellants.

40. The plaintiffs have also established that the suit properties continued to retain the character of joint family properties. It is seen from the materials on record that only the house sites had been conveniently divided among the parties for construction and separate enjoyment, and the same are not the subject matter of the present suit. This aspect is not seriously disputed. It is also seen that in the earlier suit in O.S. No.359 of 2007 filed by the first defendant, a specific plea had been raised that though partition had allegedly taken place, the common well alone remained jointly enjoyed. Subsequently, the said suit came to be withdrawn. Even from the pleadings exchanged in the said proceedings, it



is evident that only the house sites had been divided for convenient enjoyment and construction, whereas the agricultural lands had not been divided among the 1st plaintiff and the first defendant during the lifetime of Beeran. After the demise of Beeran, the 1st plaintiff demanded partition, but the first defendant obtained patta in his name. As already discussed, patta is only a revenue record and cannot by itself confer title. At best, it may be considered only as one piece of evidence regarding possession. Therefore, the plaintiffs are deemed to be in joint possession of the suit properties. Consequently, the court fee paid by the plaintiffs is also proper and sustainable. Accordingly, the substantial questions of law 6 is also answered in favour of the appellants.

41. In the result, the findings of both the Courts below are set aside. It is further seen that during the pendency of the proceedings, defendants 4 and 5 purchased the suit properties from the first defendant and the second defendant. Such alienations cannot bind the lawful share of the plaintiffs. At the most, the purchasers are entitled to work out their rights and equities during the final decree proceedings. The original plaintiff was entitled to $\frac{1}{2}$ share in the suit properties. After his demise, plaintiffs 2 to 7, being his legal heirs, are entitled to the said $\frac{1}{2}$ share. Accordingly, a preliminary decree is passed declaring the plaintiffs' $\frac{1}{2}$ share in the suit properties. The purchasers, namely defendants 4 and 5, are at liberty to work out their remedies and equities in the final decree proceedings in the remaining $\frac{1}{2}$ share belong to 1st defendant in accordance with



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42. Accordingly, the settlement deed executed by the first defendant in favour of the second defendant in respect of item Nos.1 to 3 of the suit properties shall not bind the plaintiffs' share. The plaintiffs are entitled to the relief of declaration in respect thereof. Consequently, the sale deeds executed by the second defendant in favour of respondents 4 and 5 shall also not bind the plaintiffs' share and are declared null and void to that extent. The suit decreed as prayed for. If any final decree application is filed, the trial Court is directed to dispose of the same as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this judgment, considering that most of the parties are senior citizens and the suit itself has been pending from the year 2010.

43. Accordingly, the Second Appeal is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

02.06.2026

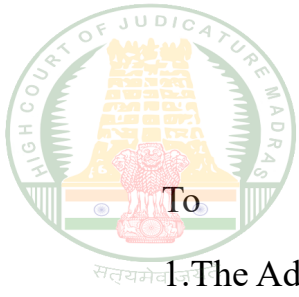
Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No
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To

1. The Additional District Judge,
Krishnagiri.

2. The Principal Sub Judge,
Krishnagiri.

3. The Joint -II
Sub-Registrar, Krishnagiri.

4. The Section Officer, VR Section,
High Court of Madras.



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T.V.THAMILSELVI J.
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