



S.A.No.1082 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.11.2025
Pronounced on	02.02.2026

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.1082 of 2021 and C.M.P. No.20444 of 2021

Rajammal

...Appellant

Vs.

1. Palaniammal

2. Sellammal

3. Palanisamy

...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 r/w against the decree and judgment dated 21.11.2020 passed in A.S. No.05 of 2015, on the file of the Sub Court, Tiruchengode, confirming the Judgment and decree dated 19.09.2014 passed in O.S. No.264 of 2009, on the file of the Additional District Munsif Court, Tiruchengode.

For Appellant : Mr. P. Valliappan, Senior Advocate
for Mr. R. Marudhachalamurthy

For Respondents : Mr. S. Mukunth, Senior Advocate
for Mr.H.Shabeer Ali
of M/s. Sarvabhauman Associates



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JUDGMENT

The present Second Appeal is preferred against the decree and judgment dated 21.11.2020 passed in A.S. No.5 of 2015, on the file of the Sub Court, Tiruchengode, confirming the Judgment and decree dated 19.09.2014 passed in O.S. No.264 of 2009, on the file of the Additional District Munsif Court, Tiruchengode.

2. The parties are described as per the litigative status before the trial court.

3. The material facts that are necessary for deciding the present Second Appeal are hereunder:

3.1. The case of the plaintiff is that, the suit properties are joint family properties situate in Padaveedu village, Tiruchengode Taluk, originally purchased by the common ancestor, Palani Gounder, under registered sale deeds dated 29.06.1930 bearing document numbers 1822/1930 and 1829/1930. The said Palani Gounder had two sons,



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namely Palani Gounder and Sengoda Gounder. The plaintiff is the wife of Sengoda Gounder and the 1st defendant is the wife of Palani Gounder. During pendency of the suit, the plaintiff Karupayee died and her daughter Rajammal was impleaded as her legal heir. Likewise the 1st defendant Pavayee died and her two daughters, namely, Palaniammal and Chellammal and her son Palanisamy were impleaded as the legal heirs of the 1st defendant. The daughter of Karupayeeammal is the appellant herein. According to the deceased plaintiff, though both the branches were cultivating distinct portions for convenience, no oral or written partition ever took place. However, during UDR proceedings, subdivisions were erroneously made and pattas were issued without notice to the plaintiff. On 03.03.2009, the deceased plaintiff demanded for partition which was refused by the deceased defendant. Hence, the deceased plaintiff filed the suit for partition seeking half share in the suit properties.

3.2. The claim of the deceased plaintiff was resisted by the deceased defendant stating that the properties situate at Sanyasipatti village were already divided by means of a registered partition deed dated



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30.08.2001 and the properties at Padaveedu Village, Tiruchengode Taluk was orally partitioned 30 years prior to filing of the suit and the sharers are enjoying their respective shares. Under the UDR scheme, properties were sub divided and pattas were issued in favour of the respective sharers and they are paying the necessary kists to the Government. The plaintiff having suppressed the real facts has come forward with false claim and therefore, the suit is liable to be dismissed.

3.3. The trial court dismissed the suit filed by the plaintiff and the appeal suit filed by the palintiff was also dismissed by the first appellant court, on the basis of the alleged oral partition of 1979 and based on mutation of revenue records. Hence, the present Second Appeal. Pending proceedings, the plaintiff and the defendant died and their legal representatives were impleaded.

4. At the time of admission the following substantial question of law has been framed:

“Whether the courts below are right in coming to the conclusion that there was an oral partition between the



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5. Mr. P. Valliappan, learned Senior Advocate, appearing for Mr.R.Marudhachalamurthy, learned counsel on record for the appellant would submit that once joint family status and joint title are admitted, the party alleging an oral partition should establish the same by proving the date and year of partition, the manner in which it was effected, the presence of elders or witnesses, a clear act of division and subsequent conduct evidencing separation. In the present case, the respondents have failed to prove any of these essential elements. The plea of oral partition being an affirmative defence, the burden lies entirely upon the respondents. The 4th defendant, namely Palanisamy, examined as D.W.1 admits in his cross examination that he did not know what are the properties allotted to each branch and that, no notice was issued to the appellant and the oral partition was not done in the presence of elders and no memorandum of partition was written and he was not aware of the process alleged to have taken place in 1979. These admissions of D.W.1 would demonstrate that there was no oral partition took place in



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the year 1979 as alleged by the defendants. Moreover, Ex.B1 to B5 kists receipts and patta entries do not confer title and they are only revenue entries. Therefore, the revenue records cannot be relied upon to prove partition of joint family properties. The courts below committed a grave error in treating the above documents as proof of partition. His further contention is that, the UDR entries cannot form the basis for a finding of an oral partition. Therefore, the findings of the courts below are perverse, unsupported by evidence and contrary to binding legal principles. To demonstrate that Ex.B1 to B5 revenue records cannot be relied upon to sustain the alleged oral partition, the learned counsel for the appellant has relied upon the following judgments:

- 1. AIR 1966 SC 405 (Bharat Singh and others vs. Mst. Bhagirathi)***
- 2. 1996 AIR SCW 3613 (Smt. Sawarni vs. Smt. Inder Kaur and others)***
- 3. 2014 AIR SCW 4078 (Municipal Corporation, Gwalior vs. Puran Singh alias Puran Chand and others)***
- 4. 2019 (1) MWN (Civil) 30 (Palanivelu and others vs. Muniappan)***



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5. AIR 2019 SC 2122 (*Ajit Kaur alias Surjit Kaur vs. Darshan*

Singh (dead) through LRs and others)

Hence prayed for allowing the Second Appeal.

6. On the other hand, Mr. S. Mukunth, learned Senior Advocate, appearing for Mr.H.Shabeer Ali of M/s. Sarvabhauman Associates, the learned counsel on record for the respondents would submit that there was an oral partition in the year 1979 in respect of the suit properties and the same was acted upon and the sharers took possession of the allotted share and were in possession and enjoyment of the same, by mutating the revenue records and by paying kists to the Government. Hence, the plaintiff has no right to seek for a partition. The learned counsel would submit that it is a settled principle of law that once the partition in the sense of division of right, title or status is proved or admitted, the presumption is that all joint property was partitioned or divided. Therefore, in the present case, since there was a complete partition in the family, the presumption would be that there was complete partition of all the properties. Consequently, the burden of proof that the suit property was excluded from the partition would be on the defendants who alleges



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the same to be joint family properties. To support his contentions, he has relied upon the following judgments:

- 1. (2014) 4 SCC 707 (Kesharbai alias Pushpabai Eknathrao Nalawade (dead) by Lrs and another vs. Tarabai Prabhakar Rao Nalawade and others.***
- 2. Judgment of this Court dated 28.03.2024 in S.A. No.163 of 2018 (A.Samiappan (died) represented by his legal heirs and others vs. S.Kandasamy and others).***

Hence he would submit that the courts below rightly rejected the claim of the plaintiff which warrants any interference by this Court.

7. Heard on both sides. Records perused.

8. It is settled law that, once a partition takes place in a family, presumption would be that all properties stood partitioned. The burden of proof of exclusion of certain property from partition would be on party who asserts same to be joint. It is the definite case of the defendants that there was a partition in the family in respect of the properties situate at Sanyasipatti Village, Sankari Taluk, under a registered partition deed



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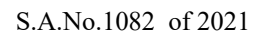
dated 30.08.2001 and likewise the properties situate at Padaveedu in Tiruchengode Taluk was orally partitioned 30 years prior to filing of the suit. In the reply statement filed by the 2nd plaintiff, it is categorically admitted that some of the joint family properties were partitioned under a registered partition deed dated 30.08.2001, but, the suit properties remained undivided. Once a partition takes place in a family, presumption would be that all properties stood partitioned and the burden of proof of exclusion of certain property from partition would be on the plaintiffs who asserts same to be joint. If really the suit properties were not orally partitioned, the plaintiffs would not have remained silent for nearly a decade after the said registered partition, without seeking for partition in the suit properties. The plaintiff failed to produce any evidence to show that the suit properties are kept in common enjoyment of the joint family. It is also seen that mutation entries were effected on the strength of the alleged oral partition and the same was also confirmed by the plaintiff. Though the plaintiff would contend that the revenue entries were made without notice, till the filing of the suit and even thereafter, the plaintiff has not raised any objections before the revenue authorities. On perusal of records it is seen that, under the UDR scheme,



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the properties, including the suit properties, were sub divided and separate pattas were issued to the plaintiff and the defendants and kists were paid to the Government by the respective parties. If really the plaintiff was not aware of the above revenue entries, objections would have been made at the earliest point of time. No action is taken against the revenue authorities by the plaintiff and moreover, the revenue authorities were not made as parties in the suit. Therefore, the plaintiff is estopped from saying that these entries are effected on wrong basis of partition. No doubt, the entries in revenue records do not convey title and the factum of oral partition must be proved by clear, definite evidence and the burden lies wholly on the party alleging oral partition and that separate possession does not amount to partition. In the present case, the entire evidence on record is sufficient to prove that there was an oral partition and the parties have acted upon. The courts below have rightly found that mutation entries were effected on the strength of the partition and on the basis of the entire evidence, the courts below came to the conclusion that the suit properties are not available for partition and rightly dismissed the suit and the appeal suit filed by the plaintiff. No perversity or infirmity is found in the said findings. Accordingly, the



9. In the result,

Consequently, connected miscellaneous petition is closed.

ii. The decree and judgment dated 21.11.2020 passed in A.S. No.05 of 2015, on the file of the Sub Court, Tiruchengode, confirming the Judgment and decree dated 19.09.2014 passed in O.S. No.264 of 2009, on the file of the Additional District Munsif Court, Tiruchengode, is upheld.

02.02.2026

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The Sub Judge, Tiruchengode.
2. The Additional District Munsif, Tiruchengode.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.

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Pre delivery judgment in

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