



A.S. No.264 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 03.12.2025

Judgment pronounced on :30.01.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.264 of 2022
and CMP. No.5289 of 2025

R.K.Dilli

..Appellant

Vs.

1.Smt.Venkatammal
2.R.K.Babu

..Respondents

Prayer: Appeal Suit filed under Section 96 and Order XLI, Rule 1 of CPC to set aside the Judgment and decree dated 11.08.2022 in O.S. No.132 of 2014 on the file of the 1st Additional District Judge, Thiruvallur.

For Appellant : Mr.M.Aloysius Raja Pragash

For Respondent : Mr.A.R.Suresh for R1
No Appearance for R2

JUDGMENT

The first defendant in a suit for partition is the appellant in this First Appeal.

II. PLEADINGS:

**2.1.PLAINT IN BRIEF:**

The plaintiff and the defendants are children of late Kollapuri Reddy.

The said Kollapuri Reddy died intestate on 19.06.1995, leaving behind the plaintiff and the defendants as his only surviving legal heirs and thereby, the plaintiff is entitled to a 1/3rd share in the suit properties. The wife of Kollapuri Reddy, the mother of the parties also died intestate, on 19.06.1995. The suit items 1 to 39 are joint family properties, in which the plaintiff is entitled to a 1/3rd share. The plaintiff also states that she is an illiterate lady and she used to put her thumb impression without understanding the contents of the documents that she may have signed. The properties continued to be in joint possession and enjoyment and for the purposes of convenient enjoyment, the plaintiff seeks partition and separate possession. Insofar as Items 40 to 50, the plaintiff contends that the first defendant did not have any source of income, except from the income accruing from Items 1 to 36, from and out of which he has purchased Items 40 to 50 in his name. It is therefore, the contention of the plaintiff that even Items 40 to 50 are joint family properties available for partition. The plaintiff also states that the defendants were giving the plaintiff's due share in the suit properties upto 2011 and on 28.06.2012, there was a mediation between the parties in the presence of Shivanandham, Palayam and Ganeskaran and the first defendant had agreed to receive 1/3rd share of Rs.6,333/- from and out of value of teakwood saplings and also agreed to divide the suit properties into three. However, since the first defendant did not come



forward to any amicable partition or comply with the terms that were agreed upon at the Mediation, the plaintiff issued a notice on 14.08.2012. The first defendant sent a reply to the said notice, claiming that Koorchit has been entered on 17.12.1997 and that the properties 1 to 39 are already in separate possession of the respective parties and the plaintiff is not entitled to seek for partition. Insofar as Items 40 to 50, in the reply notice, the first defendant states that the properties are in his name and the said properties are also not available for partition. In view of the said reply notice issued by the first defendant, the plaintiff has filed the suit seeking partition and separate possession of her 1/3rd share.

2.2. Written Statement of the first defendant, in brief:

The relationship between the parties and the factum of the death of the parties are admitted. However, the claim that parties is in joint possession of Item Nos.1 to 39 is denied. The plaintiff's entitlement of 1/3rd share in the said items 1 to 39 is stoutly denied. Insofar Items 40 to 50, the first defendant contends that the same are the absolute properties of the first defendant and the plaintiff was never in joint possession at any point of time and consequently, she is not entitled to any share in these items. The claim of the plaintiff that the defendants were giving the plaintiff's share and the profits upto 2011, is denied. The first defendant, referring to the Koorchit dated 17.12.1997, even during the lifetime of the father states that the said Koorchit has already been acted upon



and therefore, the plaintiff is not entitled to any relief consequently, the first defendant prayed for dismissal of the suit.

2.3. ISSUES:

Based on the pleadings, the Trial Court framed the following issues.

(i) Whether a partition was effected by the father on 17.12.1997 between the first and second defendants?

(ii) Whether the suit items 40 to 51 are absolute properties of the first defendant?

(iii) Whether the plaintiff had participated in the alleged earlier partition dated 17.12.1997?

(iv) Whether the plaintiff is entitled to 1/3rd share in the suit properties 1 to 51 items?

(v) To what other reliefs, the plaintiff is entitled to?

2.4. TRIAL:

At trial, the plaintiff examined herself as P.W.1 and marked Ex.A1 to A14.

On the side of the defendants, the appellant examined himself as D.W.1, one Mani examined as D.W.2, one Ramalingam examined as D.W.3 and one Pankaj Kumar was examined as D.W.4 and Exhibits B1 to B10 were marked.

2.5. DECISION OF THE TRIAL COURT:

The Trial Court finding that all the properties were joint family properties proceeded to grant a preliminary decree declaring the plaintiff's 1/3rd share in Items 1 to 51 by judgment and decree dated 11.08.2022. Challenging the



preliminary decree, the first defendant has preferred the present First Appeal

WEB COPY

3. I have heard Mr.M.Aloysius Raja Pragash, learned counsel for the appellant and Mr.A.R.Suresh, learned counsel for the respondents.

4. THE ARGUMENTS OF THE LEARNED COUNSEL FOR THE APPELLANT:

The learned counsel for the appellant, at the very outset, would submit that though the first defendant challenged the entitlement of the plaintiff in respect of all items of the suit properties, placing reliance on the unregistered Koorchit entered into between the family members even during the lifetime of the father. The appellant is not willing to pursue the appeal insofar Items 1 to 39 are concerned. Consequently, he is not pressing the Application filed in CMP.No.5289 of 2025, for filing additional evidence viz., to mark the unregistered Koorchit as an exhibit in the course of the appeal proceedings.

4.1. It is the further contention of the learned counsel for the appellant that the appellant has been doing independent business and it was only out of his earning that he has purchased Item Nos.40 to 51 and admittedly, Items 40 to 51 have been purchased in the name of the first defendant. He would therefore contend that it is for the plaintiff who claims that these properties have been



purchased out of income accruing from joint family properties to establish such plea, by adducing satisfactory oral and documentary evidence. In this regard, learned counsel for the appellant submit that absolutely no evidence was adduced on the side of the plaintiff that these properties have been purchased out of surplus income that was left in the hands of the first defendant and such income accrued from the joint family properties belonging to the family. The learned counsel would further state that when the plaintiff has not discharged the said burden, the plaintiff cannot be entitled to any presumption and consequently, a decree for partition. In support of his contention, the learned counsel for the appellant relies on the following decisions:

(i) *Govindammal and Ors Vs. Anjugam and Ors*, reported in 2024 MWN 256;

(ii) *K.V.Ramasamy Vs. K.V.Rahgavan and three others*, reported in 2009 (4) CTC 440; and

(iii) *Angadi Chandranna Vs. Shankar and Others*, reported in (2025) SCC Online SC 877.

4.2. Relying on these decisions, it is the contention of the learned counsel for the appellant that it is the plaintiff's burden to establish the existence of joint family property or that the properties in respect of which, the claim for partition is made were purchased out of surplus income that was available at the hands of the joint family and when the plaintiff has not been able to establish the same, the suit for partition has to be dismissed.



WEB COPY

5. ARGUMENTS OF THE LEARNED COUNSEL FOR THE FIRST RESPONDENT/PLAINTIFF:

MR.A.R.Suresh, learned counsel for the plaintiff/first respondent would submit that the plaintiff has not specifically denied the fact that the properties were purchased from and out of the income accruing from Items 1 to 39. Inviting my attention to the written statement, the learned counsel Mr.A.R.Suresh, would contend that the denial with regard to Items 40 to 50 is only under/because of the Koorchit and when it has been denied and especially when the Koorchit was not even placed before the Trial Court, leave alone being proved, no reliance can be placed on the said case. He would therefore state that the Trial Court has rightly considered the said facts and evidence adduced by the parties to hold that the properties in Items 40 to 50 was also purchased only out of the joint family income. The learned counsel would further state that the family was admittedly, having joint possession up to the year 2011 and it was only in 2012 that disputes arose with regard to the enjoyment of all the properties. Items No.40 to 50 has been purchased in the year 2004 and the plaintiff is entitled to the benefit of a presumption assessment that all these properties only out of the joint family income that accrued from the other items viz., Item Nos. 1 to 39.

5.1. Learned counsel would also take me through the cross examination



of D.W.1, the defendant where he has gave a new theory, not pleaded, that certain items of the property were purchased in his name, by selling and pledging the jewels of the wife and also applied loans from the Indian Bank. It is therefore argued by Mr.A.R.Suresh, learned counsel for the first defendant has not been able to establish that properties in Item Nos.40 to 50 are his self acquired property and therefore, the Trial Court has not committed any error in holding that the plaintiff is entitled to 1/3rd share of the suit properties.

5.2. Learned counsel relies on the decision in *L.V.Velusamy Vs. L.V.Palanisamy (Died) and others*, reported in 2025 (4) CTC 317, where I had an occasion to hold that unregistered and insufficiently stamped partition deed cannot be admitted in evidence even for collateral purposes.

6. After considering the arguments advanced by the learned counsel for the parties, the following points arise for consideration:

(i) Whether the properties in Items 40 to 50 were self acquired properties of the first defendant, or, were they acquired from and out of the surplus income that was available in the hands of the joint family in the name of the first defendant, admittedly, the elder son?

7. The relationship between the parties is admitted. Insofar as Items 1 to



39, though it was pleaded before the Trial Court by the first defendant, that is the appellant herein, that the properties were already divided under an unregistered unregistered Koorchit dated 17.12.1997, the Koorchit was not even attempted to be marked before the Trial Court. Even though an Application has been filed in respect of the appeal in CMP. No.5289 of 2025 under Order 41 Rule 27 CPC to mark the said Koorchit, in view of the fact that the appellant has now given up his challenge to the preliminary decree insofar as Item Nos. 1 to 39 is concerned, I do not see any requirement to go into the application for passing additional evidence, especially to mark the Koorchit which admittedly relates only to Item Nos. 1 to 39. In view of the above, the question that remains is as to whether Items 40 to 50 are available for partition entitling the plaintiff to claim 1/3rd share.

8. In the plaint, there is a clear admission that the properties in Items 40 to 50 have been purchased in the name of the first defendant. It is the contention of the plaintiff that the first defendant did not have any source of income and the only income for the first defendant was from and out Items 1 to 39 of the suit properties. Therefore, the contention of the plaintiff is that the though the properties in Items 40 to 50 have been purchased in the name of the first defendant, they are also available for partition at the hands of the plaintiff. Prior to filing of the suit there has been exchange of notices on 14.08.2012 vide Ex.A12, the plaintiff has caused a notice to both the defendants. On receipt of



the said notice, the first defendant/appellant has sent a reply notice on 07.09.2012, where, in respect of Items 40 to 50, the first defendant categorically averred that these properties were the absolute properties of the first defendant and at no point of time, they have been in joint possession as claimed by the plaintiff. The very same averments in the notice and reply have also been taken in the plaint as well as in the written statement.

9. Even when there is existence of a joint family, the existence of joint family property is not an automatic presumption in law. It is for the plaintiff who claims joint family property to be available for partition, to prove sufficient and satisfactory oral and documentary evidence. In the present case, excepting for the pleadings made in the plaint that income that accrued from Items 1 to 39 was utilised and that the first defendant has not independent source of income, I do not find any shred of evidence adduced on the side of the plaintiff to substantiate the said pleadings made in the plaint. None of the exhibits that have been filed on the side of the plaintiff go to show that the first defendant did not have any independent source of income or that the income accrued from the joint family properties in Items 1 to 39 was available in surplus, to be utilized to purchase the properties in Items 40 to 50. The Trial Court has decreed the suit even in respect of Items 40 to 51 relying only the cross examination of D.W.1, where he has stated that agriculture is his only profession and that he has been doing paddy, groundnut and chilly and cattle business for 15 years.



WEB COPY

10. The Trial Court has also taken note of the attempt made by the appellant to prove his defence by contending that by pledging his wife jewels and also availing loans from Indian Bank, he purchased the properties. Finding that there is no plea made in the written statement, the Trial Court has proceeded to hold as follows, *'therefore, he might have purchased the above items only out of the income derived from 1 to 39 items to the suit properties. Further more, the first defendant is eldest son therefore there is no astonishment sale deed stood in the name of the the first defendant. Therefore, items 40 to 51 of the suit property is also deemed to be the joint family properties of the plaintiff and first and second defendants. the plaintiff to being legal heirs of Kollapuri Reddy and Kuppammal has 1/3rd share in the suit properties.'*

11. The above findings of the Trial Court are clearly perverse. The Trial Court based on surmise and conjectures has found that the properties would have been purchased only out of the income from Item 1 to 39. The law in this regard is fairly well settled. The Hon'ble Supreme Court in the recent decision in *Angadi Chandranna'* case (referred herein supra), has held that there can be no presumption of a property being joint family property and merely because a joint Hindu family exists. The Hon'ble Supreme Court held that the person who asserts that the property is joint family property has to



prove the same and that such proof has to be adduced by showing that from the nucleus or the joint family fund, the property was acquired and once it is shown, then a presumption can be raised that the property is joint family property and thereby, the onus would then shift to the person in whose name the property stands and he has to then prove that the property was acquired with his own fund and not joint family nucleus that was available.

12. This Court in *Govindamal's* case, (referred herein supra) held that it is the burden of the plaintiff to establish that the joint family properties were yielding income and that from such income, there was surplus, which was sufficient enough to purchase the suit properties. The said ratio would apply in all force in the present case as well. Admittedly, there is absolutely no satisfactory pleading, leave alone, evidence given by the plaintiff in respect of Item No.40 to 51, in this regard. The Trial Court has shifted the burden straightaway on the defendants, especially when he contends that he is the owner of the suit properties and he has purchased it out of his own income. This is against settled principle of law. The initial burden was only upon the plaintiff to establish that the properties were purchased out of surplus income available at the hands of joint family. Therefore, when the plaintiff has not been able to discharge the initial burden that Items 40 to 50 were purchased from and out of the income accruing from the joint family or that there was sufficient funds available which was sufficient to meet the costs of acquisition of items 40



to 50, the Trial Court ought not to have proceeded to grant a preliminary decree in respect of Items 40 to 50.

13. Insofar as the decision that has been relied on the learned counsel for the respondent in *L.V.Velusamy, (referred herein supra)*, that was a case where the issue was pertaining to admissibility of an unregistered and insufficiently stamped partition deed had been admittedly for collateral purposes. In revision, after considering the arguments of the parties, I proceeded to reject the unregistered partition as not being admissible in evidence. I do not see how this decision will come to the aid of the respondent in the present case, especially, when the Koorchit is not even before the Court, though there is a pleading with regard to Koorchit. In any event, the challenge to the preliminary decree in respect of Items 1 to 39 has been given up by the appellant and therefore, there is no necessity to deal with the admissibility of the Koorchit which is not marked as on date and was only attempted to be introduced by way of additional evidence in the First Appeal.

14. In the light of the above, the plaintiff has miserably failed to establish that the items 40 to 50 were purchased only out his surplus income that was available at the hands of the joint family. When the plaintiff was not able to successfully discharge the initial burden that was cast on the plaintiff, the Trial Court ought not to have straightaway non suited the defendant on the ground



that the first defendant did not establish that he has sufficient income to purchase the properties in Items 40 to 50 in his name. Though Mr.Suresh, learned counsel for the first respondent/plaintiff would invite my attention to the written statement of the first defendant, at paragraph No.16, regarding Item 40 to 51 and contend that the first defendant had claimed that he was the absolute owner of Items 40 to 51 and when there is reference to division of items 1 to 39, the said pleading has to be construed in a manner that the first defendant had purchased the property only after the alleged division by way of Koorchit. It is therefore the contention of Mr.Suresh, learned counsel that when Koorchit has not been proved that it was executed in the first place or that it was acted upon, then the statement made in Paragraph No.16 of the written statement has to fall to the ground. I am not able to countenance the said submission. In Paragraph No.16, the defendant has stated as follows:

“ 16.After division items 40 to 47 and 48 to 51 were purchased by this defendant they are his absolute properties.”

15. The first defendant has not stated that he purchased the properties out of the income that accrued Item Nos.1 to 39. Only with regard to point of acquisition that he has stated in paragraph 6, that he purchased Items.40 to 47 and 48 to 51 after the said division and that they are his absolute properties. Therefore, I do not see how the pleadings in written statement can be put against the appellant/defendant. Be that as it may, in view of the above discussion, when the burden was entirely on the plaintiff to establish existence



A.S. No.264 of 2022

of joint family property and surplus and when in the evidence of the plaintiff or the defendants do not lend any support to the claim of the plaintiff that the Items 40 to 50 were purchased only out of surplus funds that were available at the hands of the joint family, the findings of the Trial Court are therefore, clearly perverse, insofar as the grant of preliminary decree relating to Items 40 to 50.

16. In the light of the above, this Appeal Suit is **partly allowed**. The preliminary decree insofar as Items 1 to 39 is confirmed. However, preliminary decree passed in respect of Items 40 to 50 is set aside. Considering the close relationship between the parties, the parties shall bear their own costs.

30.01.2026

Neutral Citation Case : Yes

Internet: Yes

Index : Yes

To

1. The 1st Additional District Judge, Thiruvallur
2. Section Officer,
V.R. Section,
Madras High Court,
Madras.



WEB COPY



A.S. No.264 of 2022

P.B.BALAJI.J,

rkp

Pre-delivery judgment made in
A.S.No.264 of 2022
and CMP. No.5289 of 2025

30.01.2026