



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 16.12.2025

Judgment pronounced on : 13.02.2026

CORAM

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

A.S.No.888 of 2025
& CMP.No.21731 of 2025

P.Thendral

.. Appellant

Vs.

1.T.Maheswari
Kannamal (Died)
2.R.Muthammal
3.M.Kamala
4.P.Palaniyappan

.. Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 04.07.2025 made in O.S.No.94 of 2015 passed by the learned Principal District Judge, Krishnagiri.

For Appellant : Mr.V.Raghavachari
Senior Counsel
for Mr.S.Tamilselvan

For Respondents : Mr.R.Ezhilarasan for R1
No appearance for RR2 to 4



JUDGMENT

The 5th defendant in O.S.No.94 of 2015, aggrieved by the decree for partition, is the appellant.

2.Pleadings:

The plaint in brief:

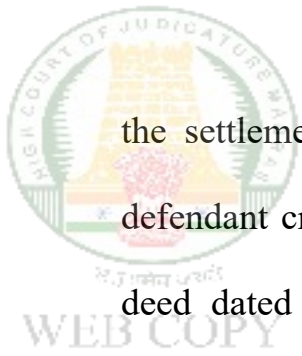
(a) The suit properties belong to one Anuma Gounder. Anuma Gounder was blessed with three sons, namely Rajappan, Manickam and Ramu Gounder. After the demise of Anuma Gounder and his wife, the daughter and one son, Rajappan, along with the remaining two sons, Manickam and Ramu Gounder have jointly enjoyed the properties. Items 2, 3 and 4 were allotted to share of the deceased Rajappan in an oral partition, even during the lifetime of Anuma Gounder. Item 1 was the subject matter of O.S.No.93 of 2001 and after disposal of the said suit, the said item of the property was divided into three equal shares amongst the three sons of Anuma Gounder. An appeal was preferred in A.S.No.94 of 2004, challenging the decree in O.S.No.93 of 2001 and the same was dismissed. The said Rajappan and his two brothers divided the properties for convenient enjoyment and under such division, Item 1 was enjoyed by Rajappan.

(b) Even during the lifetime of Rajappan, the plaintiff, as well as Kannammal and the 2nd defendant, the daughter of the deceased Rajappan, who was then alive, jointly



enjoyed the property along with him. As Rajappan was maintaining the property, the plaintiff gave 1/3rd share to Rajappan. Rajappan wanted to get a loan for upliftment of the properties and he took defendants 1 and 2 to the Sub-Registrar's Office and obtained their signatures in some stamp papers. The plaintiff, as well as the 2nd defendant and their mother were under the impression that they were executing the document only for the purposes of obtaining loan. Kannammal is the wife of the deceased Rajappan and Muthammal and Makeswari were born to her. Rajappan had an illegal relationship with one Periapappa and through the said Periapappa, Kamala and Palaniappan were born and they are illegitimate children and they do not have any right in the property which belongs to the plaintiff and the 2nd defendant alone.

(c) The plaintiff approached the 1st defendant and requested an amicable partition. The 1st defendant assured the plaintiff that since O.S.No.93 of 2001 was pending, the plaintiff's share would be given after passing of the final decree in O.S.No.93 of 2001. The 4th defendant claimed that Rajappan had executed a gift deed in favour of the 5th defendant. The plaintiff applied for Encumbrance Certificate and came to know of a settlement deed executed in Doc.No.1569 of 2007, which is legally not enforceable, as Rajappan has no right to create the document as he is only a coparcener and not the absolute owner. The suit properties are ancestral properties and the plaintiff, her father and the 2nd defendant were enjoying the same jointly. The plaintiff's signature in the partition deed in Doc.No.1482 of 2009 dated 22.06.2009 was obtained fraudulently and



the settlement deed and the partition deed are not binding on the plaintiff. The defendant created a Will in respect of Item 3 of the suit property and in and by a sale deed dated 05.11.2011, the property was sold in favour of the 4th defendant. The plaintiff's father did not execute any Will and in view of the attempts made to deprive the plaintiff of a legitimate share, the plaintiff has come forward to file a suit for partition.

3. Written statement of the 2nd defendant in brief:

The plaint allegations are denied. The property was purchased in the name of Anuma Gounder, with the aid of ancestral nucleus. The property is an ancestral property and not self acquired property of Anuma Gounder. The claim that the property was allotted to Rajappan in oral partition is denied. No partition was effected between the sons of Rajappan, because the matter was pending in A.S.Nos.94 and 95 of 2004 at that point of time. The registered partition executed by the father of the plaintiff in favour of the plaintiff's son is not valid in law, as the property is ancestral property and it will not bind the other sharers. The 2nd defendant has no knowledge that the document signed by her is a partition deed. Her signature has been obtained fraudulently and only after receipt of notice from the Court, the defendants have come to know that the document was actually a partition deed. Therefore, the said document is not valid in law. The defendants 2 and 3 and their father, Rajappan were entitled to equal 1/3rd share and the forged documents are not binding on the 2nd defendant. The 2nd defendant prays for her



share being allotted. The 2nd defendant also states that the plaintiff and the 4th defendant were born only through concubine Periapappa and they are illegitimate children since Kannammal, the first wife was very much alive and Periapappa cannot claim to be a legally wedded wife of Rajappan. The 2nd defendant is entitled to 5/12th share in the suit properties.

4. Written statement filed by the 4th defendant adopted by the 5th defendant briefly:

The property belongs to the plaintiff's grandfather, Anuma Gounder. Anuma Gounder had three sons, Rajappan, Manickam and Ramu Gounder. In an oral partition, Items 2, 3 and 4 were allotted to Rajappan. Rajappan's brother, Manickam filed a suit in O.S.No.93 of 2001 for partition of the remaining properties. The said suit was decreed and a preliminary decree was passed, allotting 1/3rd share to the plaintiff's father, 1/3rd share to Manickam and 1/3rd share to Ramu Gounder. An appeal preferred against the said judgment and decree was dismissed by the Sub-Court, Krishnagiri. Before the final decree came to be passed in O.S.No.93 of 2001, the plaintiff's father Rajappan and his brothers orally partitioned the properties in Item 1 and 1A. The 4th defendant denies the claim of the plaintiff that the suit properties were jointly enjoyed by the plaintiff, the 1st defendant and the 2nd defendant. In 2009, the plaintiff's father Rajappan got signatures of the plaintiff in blank stamp papers by deceiving the plaintiff. The defendants 3 to 5 do not have any right or share in the suit property. Rajappan did not have any independent income, except income from the joint family property. The gift deed executed by



Rajappan and the partition deed in favour of the 5th defendant (son of the 4th defendant) are fraudulent and not binding on the 4th defendant. Even Item 3 of the property is not a joint family property. The 5th defendant has no right in Item 3 of the property and Rajappan has not executed any Will in favour of the 5th defendant. The plaintiff has no share and the suit is liable to be dismissed.

5. Issues framed by the trial Court:

1. Whether the suit property is ancestral property as claimed by the plaintiff?

2. Whether the plaintiff is entitled to get 1/3rd share in the suit properties?

3. Whether the first and second schedule properties which was already been executed by Rajappa Gounder in favour of his grand son Thendral is declared to be null and void which is mentioned as Vide document No.1589/2007?

4. Whether the claim of the plaintiff is declare that the document that was created on 22.06.2009 with regard to 3rd and 4th item of property via document No.1482/2009 is declared to be null and void as claimed by her?

5. Whether the claim of the plaintiff in O.S.No.94/2015 with regard to the 3rd item of the suit property, the 5th defendant which was fraudulently made as a document in favour of the 4th defendant namely Palaniyappan on 05.11.2012 which is registered in the Registrar Office as document No.2540/2012 whether need to be declared as null and void?

6. Whether the plaintiff is entitled to get the relief not to encumber the suit properties and also not to sell the suit properties till the dispossession of the suit is allowable or not?



7. Whether the plaintiffs are entitled to get Permanent Injunction against the defendants?

8. What are all the other reliefs that the plaintiff herein are entitled to?

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6. Trial:

Before the trial Court, the suit in O.S.No.94 of 2015 was tried along with O.S.No.63 of 2014, which was a suit filed by one Makeshwari, daughter of Rajappan, against Kannammal and others for partition, declaration and injunction. The plaintiff in O.S.No.63 of 2014 examined himself as P.W.1 and he examined Dharmalingam and Chakaravarthy as P.W.2 and P.W.3. On the side of the plaintiff in O.S.No.63 of 2014, Ex.A1 to Ex.A26 were marked. On the side of the defendant, the plaintiff in O.S.No.94 of 2015, Makeshwari examined herself as D.W.1 and E.D.Thamaraiselvan and Muthammal were examined as D.W.2 and D.W.3 and marked Ex.B1 to Ex.B6 were marked. The memo filed by the Commissioner on 27.06.2019 was marked as Ex.X1.

7. Decision of the trial Court:

On assessing the oral and documentary evidence, the trial Court came to a finding that the suit properties were ancestral properties and the plaintiff in O.S.No.94 of 2015, Makeshwari, the 2nd defendant, Muthammal, the 3rd defendant Kamala and the 4th defendant Palaniappan are entitled to 1/4th share each. The trial Court further declared the documents, namely settlement deed and partition deed as null and void. The relief of permanent injunction was however disallowed, since injunction cannot be granted



against co-sharers. The 2nd defendant, who was also found to be entitled to 1/4th share was directed to pay the Court fee as per law.

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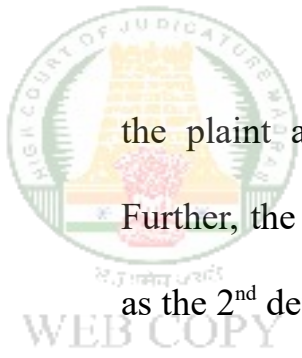
8. Present appeal:

Aggrieved by the findings of the trial Court, the 5th defendant is on appeal, as against the decree in O.S.No.94 of 2015.

9. I have heard Mr.V.Raghavachari, learned Senior Counsel for Mr.S.Tamilselvan, learned counsel for the appellant and Mr.R.Ezhilarasan, learned counsel for the contesting 1st respondent in O.S.No.94 of 2015.

10. Arguments of the learned counsel for the appellant:

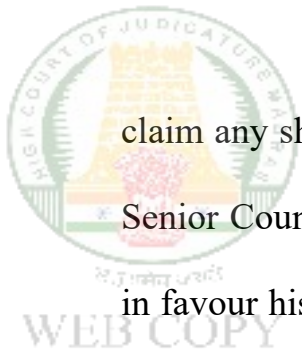
(a) Mr.V.Raghavachari, learned Senior Counsel appearing for the appellant would at the outset state that the plaintiff/1st respondent had come to Court, claiming that the properties are ancestral in nature. Inviting my attention to Ex.A19, which is a lawyer's notice dated 05.03.2009 issued by the plaintiff and the 2nd defendant, Makeshwari and Muthammal, the learned Senior Counsel would contend that the suit properties were self acquired properties of the grandfather, Anuma Gounder. Therefore, it is the submission of the learned Senior Counsel that the plaintiff and the 2nd defendant are estopped from claiming any right for partition in the suit properties. It is their admitted case that the properties were the absolute properties of Anuma Gounder. He would therefore state that



the plaintiff averments were contrary to the admissions made in the pre-suit notice.

Further, the learned Senior Counsel would contend that admittedly the plaintiff, as well as the 2nd defendant have admitted to the execution of the document on 22.06.2009 and it is not open for them to contend that they were under the impression that they were only executing a mortgage document and not a partition deed.

(b) It is the further submission of the learned Senior Counsel that there is absolutely no evidence available on the side of the plaintiff or the 2nd defendant to substantiate their claim that their signatures were obtained in the partition deed on fraud being played and they being given an impression that they were signing only a mortgage deed. He would also take me through the reply notice issued by the appellant in Ex.A20 dated 08.04.2009 by Rajappan, where Rajappan himself has clearly asserted that the mother of the plaintiff, that is the 2nd defendant, left him and has been living separately for more than 20 years and that he has thereafter married the Kannammal's sister, one Periapappa, through whom his son Palaniappan and daughter Kamala were born to him. In the said reply notice, Rajappan has also stated that lands in Survey No.55/4 and 55/3 were allotted to Muthammal and the said lands are in enjoyment of the plaintiff and the 2nd defendant alone and that Makeshwari also admitted to the said factum by deposing in O.S.No.221 of 1995 as D.W.2. The plaintiff herself has deposed and admitted to these facts in O.S.No.221 of 1995, where she was examined as D.W.2. Rajappan has clearly stated that the properties are ancestral properties and the plaintiff or Muthammal cannot



claim any share. Even in the said reply notice, according to Mr.V.Raghavachari, learned Senior Counsel, Rajappan has disclosed the fact that he has already settled the property in favour of his grandson, Thendral and the grandson alone is in possession and enjoyment of the same. The learned Senior Counsel would therefore state that the trial Court has clearly committed an error in decreeing the suit, which is contrary to the very case of the plaintiff and the 2nd defendant.

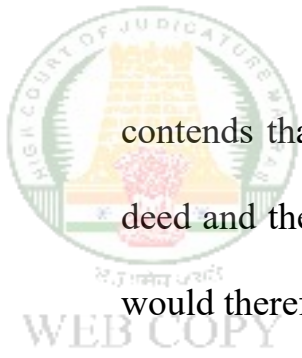
11. Arguments of the learned counsel for the respondents:

(a) Mr.R.Ezhilarasan, learned counsel appearing for the respondents would submit that though the two suits for partition were jointly tried, the suit in O.S.No.63 of 1994 was in respect of only one item and all items of the properties were subject matter of the suit in O.S.No.94 of 2015, which judgment and decree is now under challenge in the above appeal. He would further state that Anuma Gounder was the owner of the property. He would further contend that Rajappan had no funds to have purchased the suit properties and admittedly, the properties were ancestral properties at the hands of Rajappan and therefore, he had no right to execute any settlement deed or even a Will. He would therefore state that the trial Court has rightly held that the Will was not valid and equally, the settlement deed also is not valid and binding, since the properties were ancestral properties.



(b) As regards the notice issued in Ex.A19, the learned counsel for the respondents would state that the notice was issued only in respect of two items of the property and not all items and therefore, he would state that the reference to the properties being the self acquired properties of Anuma Gounder can only be restricted to the properties that were subject matter of the said legal notice and not to the other items of the property. With regard to the Will of Rajappan, the learned counsel for the respondents would invite my attention to cross examination of D.W.3, the 2nd defendant, Muthammal, who has supported the case of the plaintiff, where she has clearly deposed that on 22.06.2009, she and the plaintiff signed the document, as they were informed by the appellant that it was only for the purposes of availing a loan from the Bank and not with an intention to give or release their share in the suit properties.

(c) Further, pointing out to Ex.A21, the learned counsel for the respondents would state that even in preamble to the said document, which is the partition deed dated 22.06.2009, there is absolutely no mention about the derivation of title to the properties and further, the defendants 4 and 5, being wife, Periapappa, who was only concubine of Rajappan, they were illegitimate children and they were not entitled to any share in the property. He would also rely on the decision of this Court in *P.Balasubramanian and others Vs. P.Sivaprakash and others*, reported in 2019 (3) CTC 56, where this Court found that when a partition deed was not fair, it cannot be held to be valid and directed to be acted upon. Relying on the said decision, the learned counsel for the respondents



contends that the respondents 1 and 3 were given only Rs.30,000/- under the partition deed and therefore, on account of unfairness, the partition deed has to necessary go. He would therefore pray for dismissal of the appeal suit.

12.I have carefully considered the submissions advanced by the learned Senior Counsel for the appellant and the learned counsel for the respondents. I have also gone through the records, including the judgment of the trial Court.

13.Points for consideration:

On assessing oral and documentary evidence adduced by the parties before the trial Court, as well as the submissions made by the learned Senior Counsel for the appellant and the learned counsel for the respondents, I proceed to formulate the following points for consideration:

- 1.Whether the suit was in time?
- 2.Whether the suit properties were ancestral joint family properties available for partition at the hands of the plaintiff?
- 3.Whether the partition deed dated 22.06.2009 in Ex.A21 and the settlement deed are valid and binding on the plaintiff?

14.Points 1 and 2:

The relationship between the parties is not in serious dispute. In fact, it is also admitted all round that Rajappan had married one Kannammal and without dissolving



the said marriage, he married Kannammal's own sister, Periapappa, through whom the defendants 4 and 5 were born. The plaintiff and the 2nd defendant are claiming under the first wife, Kannammal. If the properties are ancestral joint family properties at the hands of Rajappan, then the plaintiff would certainly be entitled to a share and consequently claim a partition decree. However, if the properties were the absolute properties of Rajappan, then the plaintiff cannot maintain the suit for partition. Admittedly, in the suit, there is no challenge to the partition deed, as well as the settlement deed executed by Rajappan. In fact, in the partition deed dated 22.06.2009, both the plaintiff and the 2nd defendant are admittedly signatories. In such circumstances, the plaintiff ought to have prayed for a relief of declaration. Therefore, any challenge to the said document should have been made within a period of three years, in terms of Article 58 of the Limitation Act.

15. Even though the defendants had not taken the plea of limitation and no issue has been framed by the trial Court, the issue of limitation being a question of law, which goes to the very maintainability of the suit at the first instance, applying Section 3 of the Limitation Act, this Court, being the Court of First Appeal, can certainly go into the said issue of limitation as well. Admittedly, the suit has been filed only on 22.02.2013, clearly beyond the period of three years from the date of partition deed. Therefore, clearly the suit for declaration regarding the partition deed is hopelessly barred by limitation.



16. Even when the plaintiff chose to set the ball in motion by issuing a lawyer's notice in Ex.A19, the plaintiff and the 2nd defendant, who jointly issued the notice, have categorically asserted that the properties mentioned in the notice were the self acquired properties of Anuma Gounder, their grandfather. Admittedly, both these items of properties are also forming part of the suit properties. Rajappan himself, while replying to the said notice in Ex.A20, has admitted the status of Periapappa, the sister of his first wife, Kannammal to be his second wife, through whom the 4th defendant the daughter by name, Kamala were born.

17. In fact, Rajappan has also asserted that there was a partition in the family and that his first wife was allotted lands in Survey Nos.55/4 and 55/3 over which Rajappan has not claimed any right. Rajappan has also brought to the notice of the plaintiff and the 2nd defendant that he has executed a settlement deed on 13.07.2007 in favour of the grandson Thendral, son of the 4th defendant, Palaniappan and that the said Thendral is in possession and enjoyment of the properties. Therefore, even as early as on 08.04.2009, the plaintiff was put on notice about even the settlement deed. Thereafter, within the period of three years, the suit has not been laid, challenging the said document. As already pointed out, the suit has been filed only in February 2013, clearly beyond the period of three years from the date of partition deed, as well as the date of the reply

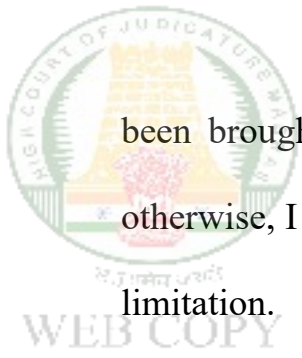


notice dated 08.04.2009 clearly rendering the relief of declaration barred by law of limitation under Article 58 of the Limitation Act.

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18.As regards the character of properties, the evidence of the plaintiff, who was examined as D.W.1 assumes significance. She has admitted that her grandfather, Anuma Gounder was blessed with three sons, Rajappan, Manickam and Ramu Gounder and that there was an oral partition amongst the three sons of Anuma Gounder and that she claims right of partition only in respect of the properties that were allotted to her father, Rajappan in the said partition deed. A suggestion has also been put to D.W.1, the plaintiff that the suit is barred by law of limitation. She has also admitted her signatures in the partition deed dated 22.06.2009. Though she has denied receipt of Rs.30,000/- as mentioned in the said partition deed, during cross-examination, she admitted that there is no mention about such non receipt of the amount of Rs.30,000/- in the earlier pre-suit correspondence or even in the plaint.

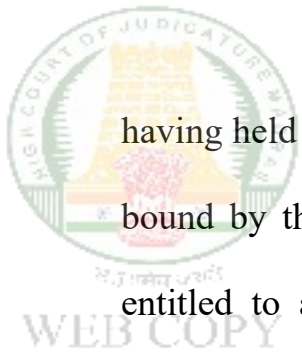
19.On going through the evidence, I am unable to see that the plaintiff and the 2nd defendant have made out even an acceptable case that they were duped into executing the partition deed and that their signatures were obtained by misleading them that the property is being mortgaged. The oral and documentary evidence fall far short of proof of claims made by the plaintiff and the 2nd defendant in this regard. Therefore, there is no acceptable legal evidence to even declare that the partition deed dated 22.06.2009 has



been brought about by playing fraud upon the plaintiff and the 2nd defendant. LVCII
otherwise, I have already held that the suit reliefs of declaration are hopelessly barred by limitation.

20. Once the plaintiff loses the right to challenge the partition deed, to which admittedly, the plaintiff and the 2nd defendant were parties, they are estopped from claiming that the properties are joint family ancestral properties and consequently, say that they are entitled to the relief of partition and separate possession. Once the partition deed dated 22.06.2009 becomes final and binding on the plaintiff and the 2nd defendant, the act of the father, Rajappan in executing the settlement deed in favour of his grandson, the 5th defendant, the son of the 4th defendant also cannot be called in question.

21. Even though the experts report may doubt the truth and genuineness of the Will executed by Rajappan, which has been marked as Ex.P15, the Will has been compared by the expert and the report indicates that the signature in the Will is not the admitted signature of Rajappan, as rightly contended by Mr.V.Raghavachari, learned Senior Counsel, even assuming it is held that the Will is not true and genuine, the plaintiff would not become entitled to any share. Even if the Will is disbelieved, the plaintiff would not automatically become entitled to any share in the suit properties, unless and until the plaintiff succeeds in setting aside the partition deed, as well as the settlement deed, which reliefs have been belatedly claimed by the plaintiff and consequently,



having held that the suits are relief of declaration are barred by limitation, the plaintiff is bound by the partition deed and consequently the settlement deed as well and is not entitled to any relief. Unfortunately, the trial Court has brushed aside the issue of limitation though it has been raised and questions have been put even to the plaintiff in cross examination as regards non filing of the suit within a period of three years from the date of knowledge and from the date of execution of the partition deed.

22. Though reliance is placed on the decision of this Court in *P. Balasubramanian's case*, referred herein supra, in the facts of those case, the execution of partition deed has been accepted by the plaintiff and the issue was only with regard to whether the partition was unequal. In such circumstances, this Court held that the trial Court had not even framed an issue regarding fairness of partition and proceeded to set aside the findings of the trial Court upholding the validity of the partition deed. I am unable to see how this decision can be applied to the facts of the present case, where the plaintiff disowns the partition deed executed by her and the sister of the 2nd defendant. The plaintiff cannot be allowed to blow hot and cold. For all the above reasons, more specifically, on the ground of limitation, the plaintiff has to be necessarily non suited. In the light of the above, the points for considerations are answered in favour of the appellant and against the respondents.



23.Result:

In fine, the Appeal Suit is allowed and the judgment and decree dated 04.07.2025 in O.S.No.94 of 2015 passed by the learned Principal District Judge, Krishnagiri, is set aside. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

13.02.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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The Principal District Judge, Krishnagiri.



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P.B.BALAJI.J.

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Pre-delivery judgment made in
A.S.No.888 of 2025
& CMP.No.21731 of 2025

13.02.2026