



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 16.12.2025

Order pronounced on : 09.01.2026

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

A.S.No.307 of 2024

D.Manikavasagam

... Appellant

Vs.

1.L.Valarmathi
2.S.Manimegalai
3.S.Malarkodi

... Respondents

Prayer: Appeal Suit filed under Section 96 of CPC to set aside the judgment and decree dated 28.10.2022 in O.S.No.135 of 2018 on the file of V Additional District Judge, Coimbatore.

For Appellant : Mr.P.Saravana Sowmiyan

For Respondents : Mr.R.Prabakar for R1
Mr.A.Sundaravadanan for RR2 & 3

JUDGMENT

The 2nd defendant in O.S.No.135 of 2018 is the appellant.



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2.The Complaint in brief:

The suit properties are self-acquired properties of Thasappan @ Thasappa Gounder, father of the plaintiff and the defendants. The said Thasappan died on 10.05.1999, leaving behind his two sons, Manickavasagam, the 2nd defendant and Elangovan, who died on 02.03.2012 as a bachelor, and three daughters, namely Valarmathi, the plaintiff, Manimegalai, the 1st defendant, and Malarkodi, the 3rd defendant. The wife of Thasappan (i.e) the mother of the parties died on 08.02.2006. The plaintiff, as one of the legal heirs, claims partition and separate possession of her 1/4th share in the suit properties. The plaintiff alleges that the defendants are not coming forward for any amicable partition and on the contrary, they are deciding to alienate the suit properties, suppressing the plaintiff's rights.

3.The Written Statement of the 2nd defendant in brief:

(a) The 2nd defendant does not dispute the relationship between the parties, as well as the factum of death of the parents and one of the brothers of the plaintiff, as a bachelor. According to the defendants, the plaintiff has no share in the suit properties and the 2nd defendant has been managing the suit properties, including the agricultural lands. The 2nd defendant denies



that he is attempting to alienate the suit properties. It is only the plaintiff and the 3rd defendant, who are colluding to unlawfully alienate and lease out the suit properties and not the 2nd defendant, as alleged by the plaintiff. The 2nd defendant has taken the entire family burden upon himself and he has spent his entire earnings to take care of his parents and also sisters, including the plaintiff.

(b) The 2nd defendant has financially helped the 1st defendant by providing Rs.80,000/- for the purchase of a transport Truck in her husband's name and again Rs.60,000/- in 2006, towards meeting job consultant fees of the 1st defendant's daughter. Similarly, the 2nd defendant has also provided Rs.40,000/- to the plaintiff to meet the plaintiff's elder daughter's education expenses and a further Rs.80,000/- to provide education to the youngsters in the plaintiff's family. The plaintiff's husband had abandoned the plaintiff and had an illicit affair and it was only the 2nd defendant, who went to the rescue of the plaintiff and settled the plaintiff and her two children by ensuring that they were housed in a rented premises, together with all household goods and dresses for the entire family. The 2nd defendant has also spent for the marriage expenses of the plaintiff's daughter. Similarly, the 2nd defendant



has also financially assisted the 3rd defendant as well. The only object of the 2nd defendant is to preserve the suit properties, considering family pride, especially the family hailing from the agrarian community. The plaintiff, by law of exclusion and ouster, is not entitled to any share and the suit is liable to be dismissed.

4. Issues framed by the trial Court:

Based on the pleadings available before it, the trial Court has framed the following issues:

1. Whether the suit properties belong to Thasappa Gounder?
2. Whether plaintiff is entitled to partition as prayed
3. What relief?

5. Trial:

On the side of the plaintiff, the plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A10. On the side of the defendants, the 2nd defendant examined himself as D.W.1 and one Sundararajan was examined as D.W.2 and Giri was examined as D.W.3 and no document was marked on their side.



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6.Decision of the trial court:

The trial court, finding that the properties were belonging to the father, Thasappan, held that the plaintiff is entitled to a 1/4th share and proceeded to pass a preliminary decree, as against which, the present appeal has been filed.

7.Arguments of the learned counsel for the appellant:

(a) Mr.P.Saravana Sowmiyan, learned counsel for the appellant would attack the findings of the trial Court, contending that the trial Court has failed to see that the plaintiff was separated from the family, immediately after the marriage and never chose to make any claim for partition. He would therefore state that the plaintiff's right stood ousted and the trial Court has not even framed an issue with regard to the plea of ouster, specifically when it has been raised in the written statement. He would further state that the trial Court also failed to see that even during the lifetime of the father of the parties, the properties had been allotted to the 2nd defendant, by way of an oral partition and the same was also acted upon.

(b) Referring to Section 27 of the Limitation Act, Mr.P.Saravana



Sowmiyan, learned counsel for the appellant would contend that the suit was clearly barred under the said provision. He would also contend that there was absolutely no iota of evidence adduced on the side of the plaintiff with regard to the plaintiff being in a joint possession and enjoyment of the suit properties. He would therefore pray for the appeal being allowed.

8.Arguments of the learned counsel for the defendants:

(a) Mr.R.Prabakar, learned counsel for the 1st respondent/plaintiff and Mr.A.Sundaravadanan, learned counsel for respondents 2 and 3 would support the findings of the trial Court and state that the trial Court has elaborately considered the oral and documentary evidence adduced by the parties and rightly found that the 2nd defendant had not established the factum of oral partition and the properties being allotted to the 2nd defendant absolutely. He would also state that the trial Court has rightly factored the evidence with regard to mutation of revenue records.

(b) With regard to limitation and joint possession, it is contended by the learned counsel for the respondents that, as long as the right of the plaintiff and the other legal heirs is conceded, there is no question of



limitation being put against the parties in a suit for partition and further, when there is no adverse action taken by the 2nd defendant defeating the rights of the other legal heirs, the question of ouster also would not apply. They therefore prayed for dismissal of the appeal.

9.Points for Consideration:

On carefully considering the submissions advanced by the learned counsel for the appellant and the learned counsel appearing for the respondents, I frame the following points for determination:

1.Whether the appellant had successfully discharged the burden cast upon him to prove the oral partition, allotting the suit properties to the 2nd defendant?

2.Whether the plaintiff is entitled to a 1/4th share in the suit properties?

10.Points 1 and 2:

The relationship between the parties is not in dispute. The fact that the properties belong to the father of the parties, Thasappa Gounder is also not in dispute. It is the contention of the 2nd defendant, one of the sons, that even



during the lifetime of his father, there was an oral partition, in and by which, the suit properties stood allotted to the 2nd defendant's independent and absolute share. Having taken a specific defence that the 2nd defendant has become the absolute owner of the suit properties, even during the lifetime of his parents, more specifically his father, not a single document has been exhibited on the side of the 2nd defendant to evidence such oral partition, leave alone such oral partition having been acted upon. If really there was any such oral partition, which is, no doubt, permissible in Hindu Law, even then it is for the person claiming under such oral partition to prove the same by adducing substantial and satisfactory evidence that such oral partition had also been acted upon and that the other legal heirs were also parties to such oral partition or at least they had notice of such oral partition and they did not choose to question the same.

11. On the side of the plaintiff, the plaintiff has filed the registered sale deed in favour of the father of the parties, as well as the revenue records. The revenue records were mutated only in the name of the father, Thasappa Gounder. In fact, Item 1 of the suit property was bequeathed to the father Thasappa Gounder under a Will and Item 2 of the property was purchased



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by Thasappa Gounder himself. Therefore, in the absence of any contra evidence and mutation of revenue records also being only in the name of the Thasappa Gounder, there is a clear presumption that can be drawn that on his intestate demise, all his surviving legal heirs would be entitled to an equal share.

12.D.W.2, who was examined to prove the alleged oral partition, himself admitted that the plaintiff is entitled to share in the suit properties. The other witness D.W.3 admitted in his cross examination that he was not personally aware of what transpired within the family of Thasappa Gounder. Therefore, the oral evidence on the side of the defendant also does not in any way improve the defence raised by the defendant, by way of written statement.

13.The trial Court has rightly analyzed the oral and documentary evidence and come to the conclusion that the properties are the absolute properties of the father and on his intestate demise, the plaintiff being a class I legal heir, namely the daughter, is certainly entitled to a 1/4th share. I do not find any infirmity or perversity in such findings. The findings are based



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on the available documents and oral evidence before the trial Court. I do not see any glaring omissions with regard to the assessment of the pleadings and evidence, warranting interference in the first appeal.

14.As regards the plea of limitation, the appellant has not been able to prove that there was an oral partition and that it was acted upon. Therefore, when the revenue records admittedly continued to be in the name of the father and relationship between the parties is also not in dispute, there can be no limitation which can be put against the claim of partition. The defendants have not produced any evidence whatsoever for establishing the plea of ouster as well. In the light of the above, I do not see any merit in the first appeal. Consequently, both points 1 and 2 are answered against the appellant and in favour of the respondents.

15.Result:

The Appeal suit is dismissed. However, considering the relationship between the parties, there shall be no order as to costs.

09.01.2026



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Neutral Citation: Yes/No

Speaking Order/Non-speaking Order

Index : Yes / No

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To

The V Additional District Judge, Coimbatore.

P.B. BALAJI,J.

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Pre-delivery order made in

A.S.No.307 of 2024



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