



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-01-2026

CORAM

WEB COPY

**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

AS No. 1113 of 2025 and CMP.No.27187 of 2025

1. A. Murali
2. A. Prasanna
3. A. Harish
4. Manjamma

Appellant(s)

Vs

1. G. Kullamma
2. Venkatalakshamma

Respondent(s)

PRAYER: Appeal filed under Section 96 of the Code of Civil Procedure, 1908 to set aside the Judgment and Decree in O.S.No.161 of 2019 dated 31.07.2025 passed by the Additional District Judge at Hosur.

For Appellant(s): Mr.M.Selvam

JUDGMENT

(Order of the Court was made by N.Sathish Kumar J.)

Challenging the preliminary decree declaring 1/3rd share of the property in favor of the plaintiff and the declaration declaring the gift deeds in favour of Anjapa and the fourth defendant dated 19.11.2004 as null and void, the present appeal has been filed by the unsuccessful defendants.

2. Brief facts leading to filing of this appeal are as follows:-

2.a. The suit property originally belonged to Peddha Ramasamy, who is the father of the plaintiff. Peddha Ramasamy died on 14.11.2004 leaving behind the plaintiff, her brother Anjappa, sister Venkadalashmamma/fourth defendant as his legal heirs to succeed his estate. The said Anjappa also died in



the year 2008 leaving behind the defendants 1 to 3 as his legal heirs. The suit properties are joint family properties of the plaintiff and the defendants. So far, no partition was effected in respect of the suit properties. The plaintiff is entitled to 1/3rd share, accordingly, she approached the defendants for partition, wherein, she was shocked to know that on 22.11.2004, Lakshamma, w/o Peddha Ramasamy/mother of the plaintiff has created gift settlement deeds in Doc.Nos.1826 and 1825 of 2004 on the file of the SRO, Shoolagiri in favour of the Anjappa and the fourth respondent in respect of some of the properties in the joint family properties. According to the plaintiff, her mother has no independent right or title over the suit schedule joint family properties. The plaintiff being the class-I legal heir had sought for partition and declaration declaring the gift deeds as null and void.

2.b. The defendants 1 to 3 filed a written statement contending that there was oral partition between the plaintiff, the fourth defendant and Peddha Ramasamy in the year 2004 and in pursuance of the same, the grandmother of the defendants 1 to 3 has executed gift deeds in favour of Anjappa and the fourth defendant. The plaintiff has taken her share by way of cash and jewels from the father of these defendants and from the date of partition, the father of these defendants and fourth defendant are enjoying the properties allotted to them in the partition. There is no joint possession as alleged by the plaintiff. Hence, it is the contention that as the father of the plaintiff died much earlier to the passing of Hindu Succession Amendment Act 39 of 2005, the plaintiff is not



entitled for the benefit of the Hindu Succession Amendment Act 39/2005.

Therefore, opposed the suit.

WEB COPY

2.c. Based on the above pleadings, the Trial Court framed the following issues:

- 1) Whether the contention of defendants that oral partition was effected, and it was revealed by the Gift Deeds is true?
- 2) Whether suit properties are the ancestral or self acquired properties of the father Pedda Ramasamy?
- 3) Whether suit is barred by Limitation?
- 4) Whether plaintiff has share in suit properties, if so, what extent?
- 5) Whether plaintiff entitled to Preliminary Decree as sought for?
- 6) Whether plaintiff entitled to declaration regarding the Gift Deeds as sought for?
- 7) What other reliefs?

2.d. On the side of the plaintiff, PW1 to PW3 were examined and has marked Exs.A1 to A7. On the side of the defendants, DW1 and DW2 were examined and no documents were marked on their side, and marked Exs.X-1 and X-2 through PW3.

2.e. Considering the oral and documentary evidences, the Trial Court has



passed the preliminary decree declaring 1/3rd share of the property in favor of the plaintiff and the declaration declaring the gift deeds in favour of Anjapa and the fourth defendant dated 19.11.2004 as null and void. Challenging the same, the present appeal has been filed.

3. The learned counsel for the appellant submitted that the settlement deeds were executed in the year 2004 itself, whereas, now, the suit has been filed, according to the plaintiff, settlement deeds have been executed by the mother of the plaintiff. The plaintiff is also aware of the fact. That apart, the plaintiff was already allotted with jewels and cash. Once the oral partition has been clearly admitted and PW2 has also admitted the oral partition, the question of granting further partition does not arise at all. Hence, seeks for allowing this appeal.

4. Considering the nature of pleadings and relief sought for in this appeal, we are inclined to dispose of the appeal in the admission stage itself on merits.

5. In light of the above submissions, now, the following points arise for consideration in this appeal:-

- i) Whether there was any oral partition effected between the plaintiff and the fourth defendant's father and other legal heirs?
- ii) Whether the Lakshmamma had any right to execute the settlement



deed in favour of other legal heirs without there being any valid partition?

Points (i) and (ii)

6. It is not in dispute by both sides that the property originally owned by father of the plaintiff and fourth defendant and the grandfather of the defendants 1 to 3. It is also not in dispute that all the parties are the legal heirs of Pedda Ramasamy and they are deriving the right only from the common ancestor namely Pedda Ramasamy and it is a joint family property. The said Pedda Ramasamy died on 14.11.2004 leaving behind the plaintiff, fourth defendant and one Anjappa who is the father of the defendants 1 to 3. Though it is the contention of the defendants that there was oral partition among the legal heirs in the year 2004, absolutely, there is no pleadings whatsoever with regard the date, nature of the partition entered into among the legal heirs even during the lifetime of the said Pedda Ramasamy. It is well settled that any person sets up the plea of oral partition should come out with a definite stand as to the date and nature of the properties allotted to each of the co-owners. In the entire written statement, no details whatsoever was pleaded except contending that there was partition.

7. It is relevant to note that except that the chitta stood in the name of the common ancestor, no other document was filed to show that there was a complete partition effected orally and possession was taken over and the parties



were exercising the right absolutely. Therefore, merely on the basis of some revenue records, it cannot be said that the partition was completed between the legal heirs. It is also to be noted that unless the oral partition has been conclusively established and division is also proved by way of concrete evidence, the defendants cannot now simply plead that there was oral partition.

8. The defendants also pleaded that since grandmother of the defendants executed a settlement deed in the year 2004, oral partition has to be presumed. It is relevant to note that the wife of the Pedda Ramasamy has no right whatsoever to deal with the property as the absolute property. Therefore, any such settlement executed in favour of parties without there being valid partition as per law, such deeds are not binding on the plaintiff.

9. In view of the Hindu Amendment Act 39 of 2005 and amendment under Section 6, if the partition is not effected by registered instrument before 20.12.2004, such partition cannot be valid in the eye of law. Though the Hon'ble Supreme Court in the case of *Vineetha Sharma vs. Rakesh Sharma and others* reported in (2020) 9 SCC 1 has given some importance to the oral partition to the effect that when the oral partition is established followed by mutation of public records and there was a division effected properly, such oral partition can be taken into consideration, however, no evidence whatsoever is available on record except mere pleading. Therefore, when the plea of the oral



partition has not been established, merely on the basis some settlement deeds executed by the grandmother of the defendants, who has no right to deal with the property as absolute property, oral partition cannot be presumed. Further, PW3's evidence and Exs.X1 to X3/revenue records also clearly stands in the name of the original owner Pedda Ramasamy. Accordingly, these points are answered.

10. Such view of the matter, we do not find any merits in this appeal and this appeal suit stands dismissed. The judgment and decree of the Trial Court is hereby confirmed. No costs. Consequently, connected miscellaneous petition stands closed.

(N.SATHISH KUMAR J.)(R.SAKTHIVEL J.)
07-01-2026

dhk

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

To

1. The Additional District Judge
Additional District Court, Hosur.

2. The Section Officer
VR Section,
Madras High Court



WEB COPY

AS No. 1113 of 2025



**N.SATHISH KUMAR J.
AND
R.SAKTHIVEL J.**

dhk

AS No. 1113 of 2025

07-01-2026