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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	06.08.2026
Pronounced On	:	29.10.2026

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

S.A.(MD).No.804 of 2005

Boovalingam — Appellant

Vs.

1.Valliammal

2.Vaanmathi

3.Selvaraj — Respondents
(***3rd respondent given up)***

PRAYER:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 23.03.2005 passed in A.S.No.29 of 2004 on the file of the learned Subordinate Judge, Paramakudi confirming the judgment and Decree dated 27.02.2004 passed in O.S.No. 165 of 2002 on the file of the learned District Munsif, Paramakudi.

For Appellant : Mr.S.Ponsenthilkumaran
For respondents : Mr.M.Thirunavukkarasu for R1and R2
: R3 Given up

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JUDGMENT

The first defendant in O.S.No.165 of 2002, on the file of the Principal District Munsif Court, Paramakudi, dated 27.02.2004 is the appellant in the present second appeal. The appeal is directed against the judgment and decree passed in O.S.No.165 of 2002, confirmed by the first appellate Court in A.S.No.29 of 2004 on the file of the learned Subordinate Judge, Paramakudi dated 23.03.2005.

2.For the sake of convenience and better appreciation, the parties are referred to as per their ranks before the trial Court.

3.The plaintiffs are the sisters of the appellant/first defendant and the second defendant. Their parents are Muthukkonar and Ramayammal. Muthukkonar died about twelve years prior to the institution of the suit, and Ramayammal died about six years before the filing of the suit. According to the plaintiffs, both parents left behind several properties. It is their specific case that, after the death of Ramayammal, a village panchayat was convened, wherein the parties amicably effected an oral

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partition. Under the said oral partition, the properties belonging to Ramayammal were allotted to her daughters, namely the plaintiffs, while the properties belonging to Muthukkonar were allotted to the sons, including the appellant. It is further pleaded that, subsequently, the appellant attempted to mutate the revenue records in his favour and interfered with the plaintiffs' peaceful possession and enjoyment of the suit properties. Hence, the plaintiffs instituted the suit seeking a declaration of their title and consequential permanent injunction.

4.The first defendant filed a written statement denying the alleged oral partition. According to him, Ramayammal had executed a Will dated 03.09.1991 in his favour bequeathing the suit properties. He further contended that he had been in continuous possession and enjoyment of the properties and had, in any event, acquired his title by adverse possession. It was also alleged that the plaintiffs had recently secured mutation of the revenue records without his knowledge. On these grounds, he prayed for dismissal of the suit. The second defendant remained ex parte and did not file a written statement.

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5.On the basis of the rival pleadings, the trial Court framed the necessary issues. On the side of the plaintiffs, the first plaintiff examined herself as PW-1 and their maternal uncle was examined as PW-2 to establish the alleged oral partition. On the side of the defendants, the first defendant examined himself as DW-1, and one of the attesting witnesses to the Will was examined as DW-2.

6.Upon appreciation of the oral and documentary evidence, the learned trial Judge disbelieved the execution of the Will and accepted the plaintiffs' case regarding the oral partition, principally relying upon the testimony of PW-2. Consequently, the suit was decreed. Aggrieved by the same, the first defendant preferred A.S.No.29 of 2004. The first appellate Court, on re-appreciation of the entire evidence, dismissed the appeal and confirmed the judgment and decree of the trial Court. Challenging the concurrent findings of the Courts below, the present second appeal has been filed.

7.At time of admission, this Court admitted the second appeal on the following substantial question of a law:

(1) Whether the finding of the Court below that the

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respondents/plaintiffs got the suit property in oral partition is sustainable in the absence of evidence as required under Section 101 of Evidence Act?

(2) Whether the Court below is justified in disbelieving Exhibit B-1(Will) merely because entire property of the Testatrix is bequeathed to daughter in law and without giving anything to the daughters?

8.The learned counsel for the appellant submitted that both the Courts below committed a serious error in rejecting the Will despite the evidence of DW-2, one of the attesting witnesses, satisfying the mandatory requirements under Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. It was further contended that PW-2, who deposed regarding the alleged oral partition, is the maternal uncle of the plaintiffs and is admittedly inimical towards the appellant. Therefore, his testimony ought not to have been accepted in the absence of any independent corroboration.

8.1. The learned counsel further argued that the first appellate Court erred in observing that, according to the customary practice prevailing in the community, the mother's properties would devolve upon the daughters. Such a finding, according to the learned counsel, is wholly

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in conceivable, as there was neither any pleading nor any evidence regarding the existence of such a custom. It is a well-settled principle that a custom must be specifically pleaded and strictly proved. In the absence of such pleadings and proof, the appellate Court was not justified in relying upon any alleged custom while affirming the decree.

8.2. It was further submitted that the expert opinion regarding the thumb impressions on the Will cannot outweigh the direct testimony of the attesting witness. Merely because the expert could not express a definite opinion with respect to the thumb impressions found on all the pages of the Will, the document should not have been discarded when DW-2 had clearly spoken about its execution and attestation. It was therefore contended that both the Courts below had misappreciated the oral and documentary evidence and had arrived at a finding contrary to law, warranting interference by this Court. In support of this contention he relied the following precedents:

8.2.1.In the case of ***Savithri and others vs. Karthiyayani Amma and others*** reported in ***(2007) 11 SCC 621***

8.2.2.In the case of ***Surjit Kaur vs, Garja Singh and others***

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reported in ***(1994) 1 SCC 407***

8.2.3.In the case of ***Boramma vs. Krishna Gowda and others*** reported in ***(2000) 9 SCC214***

8.2.4.In the case of ***Chithra vs Saroja and others*** reported in ***2017 (2) MWN (Civil) 241***

9.Per contra, the learned counsel appearing for the respondents/plaintiffs submitted that both the Courts below, upon proper appreciation of the entire evidence, concurrently accepted the plaintiffs' case regarding the oral partition and disbelieved the Will propounded by the appellant. The concurrent findings are pure findings of fact based on appreciation of evidence and do not warrant interference in the present second appeal. It was further contended that, even assuming that the observations regarding customary practice are ignored, the decree is independently sustainable on the strength of the evidence let in about the oral partition. It was therefore prayed that the concurrent judgments and decrees passed by the Courts below be confirmed.

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10. This Court carefully perused the entire records, considered the rival submissions advanced by the learned counsel appearing on either side, and examined the precedents relied upon by them.

11. At the outset, it is necessary to consider the scope of interference under Section 100 of the Code of Civil Procedure. The learned counsel for the appellant relied upon the judgments of the Hon'ble Supreme Court to contend that the concurrent findings recorded by the Courts below can to be interfered with. On a consideration of the principles laid down in the said decisions, it is evident that there is no inflexible rule that the High Court, while exercising jurisdiction under Section 100 CPC, can never interfere with concurrent findings of fact. The settled legal position is that interference is permissible where the concurrent findings are vitiated by perversity, misreading or non-consideration of material evidence, consideration of inadmissible evidence, or where the findings are such that no reasonable person could have arrived at such a finding on the evidence available on record. Therefore, it is well within the jurisdiction of this Court to examine whether the appreciation of the evidence of PW-2 and DW-2 by the

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Courts below suffers from such perversity.

12. The plaintiffs' claim is founded entirely on the plea of an oral partition. The learned counsel for the appellant rightly contended that the pleadings are conspicuously silent as to the date, month or even the year on which the alleged oral partition took place. Equally absent are the particulars regarding the properties constituting the joint family estate, the properties allegedly belonging to the father and the mother separately, and the manner in which the properties were allotted to each sharer, namely, the plaintiffs, the appellant and the second defendant.

13.A partition, in the eye of law, is not established merely because the parties are in separate enjoyment of certain properties for convenience. Partition necessarily contemplates a definite division of the joint estate with certainty regarding the properties allotted to each co-sharer. The Hon'ble Supreme Court, in its recent decisions, including *Vineeta Sharma v. Rakesh Sharma*, has reiterated that an oral partition is an exception and must be pleaded with specificity and proved by cogent, convincing and reliable evidence. The relevant principles laid down

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therein shall be adverted to at the appropriate stage.

14. Applying the above principles to the present case, the evidence of PW-2 falls considerably short of the standard required to establish an oral partition. PW-2 merely stated that a panchayat was convened after the death of the mother and that an oral partition took place. He did not depose as to the extent of the family properties, the properties standing in the names of the father and the mother respectively, the exact allotment made to each branch, or the terms upon which the alleged settlement was arrived at. His testimony does not provide the essential particulars necessary to prove a concluded partition.

15. Both the Courts below proceeded on the premise that the first defendant had admitted the partition during his evidence. This Court carefully perused the deposition of DW-1, and the relevant portion has been extracted hereinbefore:

> *என் பெற்றோர்கள் சொத்து சம்பந்தமாக வாதி தரப்பு PW2 முன்னால் ஊரில் பஞ்சாயத்து நடந்தது என்றால் சரியல்ல. அவர் என் தாயுடன் பிறந்த என் மாமா மகன் எங்களுக்கும் அவருக்கும் பிரச்சனை இல்லை அவரிடம்*

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சொல்லி அவர் இருந்து தாய் சொத்தை பெண் மக்களுக்கும், தந்தை வழி சொத்தை எங்களுக்கும் பிரித்துவிட்டதன் அடிப்படையாய் அவர்கள் அனுபவித்து வருகிறார்கள் என்றால் சரியல்ல. நாங்கள் நால்வரும் இருந்து பேசி தந்தை சொத்தில் -இரண்டை சகோதரிகளுக்கு விட்டு கொடுத்துவிட்டோம்.

அவ்வாறு பேசிய போது பெற்றோர்கள் சொத்து முழுவதும் சம்பந்தமாக பேசப்பட்டது தாயாரின் கிரியை அன்று பேசப்பட்டது. கிரியைக்கு அனைவரும் PW2 உட்பட வந்திருந்தார்கள் அது சம்பந்தமாக எழுதப்படவில்லை பேசப்பட்டது உண்மை என்றாலும் என்னால் சொல்லப்பட்டது போல முடிவு செய்யப்பட்டவில்லை என்றாலும் அவர்கள் சொல்வது போல் கிரியை பின்னர் முடிவு செய்யப்பட்டது என்றால் சரியல்ல.

A reading of the evidence does not disclose any clear or unequivocal admission regarding the alleged partition. At best, DW-1 admitted that a panchayat had taken place. Such an admission cannot be construed as an admission of the plaintiffs' specific case that the properties were partitioned in the manner pleaded by them. It is well settled that an admission must be clear, categorical and unambiguous. The finding recorded by the Courts below treating the evidence of DW-1 as an admission of partition is therefore a clear misreading of the evidence.

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16. Apart from the above, no contemporaneous document evidencing mutation of revenue records immediately after the alleged oral partition, separate enjoyment by each party as exclusive owner, payment of revenue independently, or any other conduct consistent only with a completed partition has been produced. In the absence of such evidence, the testimony of PW-2 alone cannot be accepted as sufficient proof of the alleged oral partition.

17. This Court is therefore of the considered view that the plaintiffs have failed to establish the oral partition in the manner known to law. The concurrent findings of the Courts below accepting the oral partition are the result of mis-appreciation of the oral evidence and omission to consider the legal requirements governing proof of an oral partition. Consequently, this Court is justified in exercising its jurisdiction under Section 100 CPC to interfere with the said findings.

18. Turning to the defence set up by the first defendant, his claim is founded upon the alleged Will executed by Ramayammal. To prove the

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Will, the defendants examined DW-2, one of the attesting witnesses.

19. Both the Courts below, upon appreciation of the entire evidence, concurrently held that the testimony of DW-2 was not trustworthy. The Courts found material inconsistencies in his evidence and noticed circumstances affecting his credibility. The contention of the learned counsel for the appellant that the mandatory requirements under Section 63(c) of the Indian Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872, stood satisfied cannot be accepted in the facts of the present case.

20. Compliance with the statutory requirements regarding attestation and proof of execution is only one aspect of the issue. Equally important is the credibility of the witness who speaks to the execution. Where the attesting witness himself is found to be unreliable, the mere fact that his testimony formally satisfies the ingredients of Section 63(c) of the Indian Succession Act and Section 68 of the Evidence Act does not compel the Court to accept the Will as genuine. The Hon'ble Supreme Court has consistently held that proof of a Will depends upon the totality

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of the surrounding circumstances and that each case must be decided on its own facts.

21. In the present case, this Court finds no infirmity in the concurrent conclusion that the execution of the Will has not been satisfactorily proved. Significantly, the opinion of the handwriting expert also does not fully support the appellant's case. The expert was unable to give a definite opinion regarding the thumb impression found on the last page of the Will. Though expert opinion is not conclusive, the absence of a definite opinion assumes significance when viewed along with the unreliable testimony of DW-2 and the surrounding suspicious circumstances. Accordingly, this Court concurs with the finding of the Courts below that the alleged Will has not been proved in accordance with law.

22. Thus, while the plaintiffs have failed to establish the oral partition pleaded by them, the first defendant has equally failed to prove the Will claimed by him. Consequently, the plaintiffs are not entitled to the declaration of exclusive title or the consequential relief of permanent injunction sought in the suit, and the suit, as framed, is liable to be

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dismissed.

23. However, the matter does not rest there. The litigation is between brothers and sisters and has remained pending for more than two decades. During the course of evidence, it has emerged that all the parties are the legal heirs of the original owners. The trial Court has also incidentally observed that, in the absence of proof of the alleged arrangements, the parties would continue to be co-owners. Therefore, dismissal of the suit without preserving the legitimate rights of the parties would result in multiplicity of proceedings and perpetuate the family dispute.

24. The jurisdiction of a civil court is not confined to granting or refusing the precise relief claimed. The Court has power to mould relief if the facts of the circumstances warrants and in the case of directing the parties to drive the another round of litigation which is not only consume the time of the parties and also the precious judicial time more particularly in cases of this nature the Court is duty found mould relief and put on end to the litigations. (I.e.) *in an appropriate case, the Court*

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is empowered to mould the relief in order to render substantial and complete justice between the parties, provided such relief flows from the pleadings and the admitted or proved facts in order to advance the ends of justice and avoid multiplicity of litigation. The same was reiterated by the Honble Supreme Court and the various Courts. The power of a civil Court to mould relief under Order VII Rule 7 CPC enables it to grant appropriate relief founded on the pleadings and the facts established at trial, provided no prejudice is caused to either party. This principle has been recognised in *Rangappa v. Jayamma*, ILR 1987 KAR 2889; *R. Dhanalakshmi v. Senthilkumari*, 2008 (1) CTC 19; *M.M. Kumaresan v. M. Shanmugavadivu*, 2024 SCC OnLine Mad 2863; and *J. Ganapatha v. M/s. N. Selvarajalou Chetty Trust*, 2025 LiveLaw (SC) 353. The Hon'ble Supreme Court, in *J. Ganapatha and Others v. M/s. N. Selvarajalou Chetty Trust, represented by its Trustees and Others*, reported in 2025 INSC 395 and 2025 LiveLaw (SC) 353, reiterated the principles governing the moulding of relief. In paragraph 20 of the judgment, the Supreme Court explained that the Court may shape the relief in the light of the circumstances established at trial, with a view to shortening litigation and rendering complete justice. It is relevant to

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extract paragraph 20 of the Hon'ble Supreme Court in the case of J.Ganapatha and Others Vs. M/s.N.Selvarajalou Chetty Trust rep by its trustees and others reported in 2025 LiveLaw(SC) 353:

> ***20***. *The concept of moulding of relief refers to the ability of a court to modify or shape a relief sought by a party in a legal proceeding based on the circumstances of the case and the facts established after a full-fledged trial. The principle enables the court to grant appropriate remedies even if the relief requested in the pleading is not exact or could not be considered by the court or changed circumstances have rendered the relief obsolete. The court aims that justice is served while taking into account the evolving nature of a case. The above road map is pursued by a court based on the notion of flexibility in relief, equitable jurisdiction, and is tempered by judicial discretion. When moulding the relief, the court considers the issues and circumstances established during the full-fledged trial, looks at shortening the litigation, and then in its perspective, render complete justice to the issue at hand. The converse of the above is that the moulded relief should not take the aggrieved party by surprise or cause prejudice. The relief is moulded as an exception and not as a matter of course.*

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25. Therefore this court inclines to apply theory of moulding of relief to the facts of the present case. Having regard to the admitted relationship between the parties, the evidence on record and the prolonged pendency of the litigation, this Court is of the view that a preliminary decree for partition would effectively resolve the subsisting dispute and preserve the parties' lawful rights, rather than dismissing the present suit and driving them to another round of litigation. Accordingly, the two plaintiffs, who are sisters, the first defendant and the second defendant are each entitled to an equal one-fourth share in the suit properties as per provisions of the Hindu Succession Act, 1956. This Court would be justified in moulding the relief and passing a preliminary decree for partition, instead of dismissing the suit in its entirety. Accordingly this Court holds that the suit properties shall be treated as joint properties among the legal heirs. Consequently, the plaintiffs, who are two sisters, are jointly entitled to **2/4th share** (each being entitled to **1/4th share**), the first defendant/appellant is entitled to **1/4th share**, and the second defendant, though set ex parte, is also entitled to **1/4th share** in the suit properties. On that basis, the plaintiffs would be jointly entitled to 2/4th share, each being entitled to 1/4th share, while the first

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defendant and the second defendant would each be entitled to 1/4th share in the suit properties.

26. Accordingly this Court moulds the relief and passes a preliminary decree for partition, declaring the two plaintiffs jointly entitled to 2/4th share, each being entitled to 1/4th share, and the first and second defendants each entitled to 1/4th share in the suit properties. This relief neither validates the unproved oral partition nor gives effect to the unproved Will; it merely recognises the independent rights of inheritance of the parties and further this relief is extended only to avoid multiplicity of proceedings.

27. It is made clear that this declaration is confined only to the suit properties. Insofar as the other properties allegedly belonging to the father of the parties are concerned, it is open to the plaintiffs and the other legal heirs to work out their rights by instituting appropriate proceedings in accordance with law. The observations made in this judgment shall not preclude any such proceedings. This conclusion has been reached solely because the alleged oral partition has not been

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established in the manner known to law and neither side has produced satisfactory evidence to show that the alleged oral arrangement had been acted upon so as to attain legal finality. Having regard to the extraordinary facts and circumstances of the case, and in order to avoid multiplicity of proceedings, this Court considers it appropriate to exercise its equitable jurisdiction by moulding the relief in the above manner.

28. Accordingly, the Second Appeal is disposed of on the following terms:

(i) The judgments and decrees passed in O.S. No. 165 of 2002 and A.S. No. 29 of 2004 are set aside to the extent of relief of declaration and injunction and decree in O.S.No.165 of 2002 on the file of the learned District Munsif, Paramakudi dated 27.02.2004 is modified to the extent indicated herein:

(ii) There shall be a **preliminary decree for partition** declaring that the plaintiffs are jointly entitled to **2/4th share** (each plaintiff being entitled to **1/4th share**), the first defendant/appellant is entitled to **1/4th share**, and the second defendant is entitled to **1/4th share** in the suit

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properties.

(iii) The Registry shall draw up the preliminary decree in O.S.No. 165 of 2002 on the file of the learned District Munsif, Paramakudi accordingly.

(iv) The parties are at liberty to institute final decree proceedings before the jurisdictional trial Court. Upon such application being filed, the trial Court shall dispose of the final decree proceedings expeditiously and in accordance with law.

(v) There shall be no order as to costs.

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To:

1. The learned Subordinate Judge,
   Paramakudi.

2. The learned District Munisif,
   Paramakudi.

3. The Section Officer,
   VR Section.
   Madurai Bench of Madras High Court,
   Madurai.

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K.K.RAMAKRISHNAN, J.

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