

A.S(MD)No.248 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.04.2026

Pronounced on : 19.06.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

A.S(MD)No.248 of 2021

Ramaiyan (Deceased)

1.R.Saathayee

W/o.Late.Ramaiyan,
No.105/80 Main Road,
North Veethi West Part,
Dharasuram Village,
Kumbakonam Taluk,
Thanjavur District.

2.R. Kumara Kurubaran,
S/o.Late Ramaiyan,
No.105/80 Main Road,
North Veethi West Part,
Dharasuram Village,
Kumbakonam Taluk,
Thanjavur District.

... Appellants/3rd Party
(Legal heirs of Ramaiyan)

Vs.

1.Venugopal,
S/o. Packirisami Servai,
No.1364/9, K.K.Neelamegam Nagar,
Melachatram, Valayappettai Village,
Kumbakonam Taluk,
Thanjavur District.

...1st Respondent/Plaintiff



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- 2.Valaiyammal @ Valaambal,
W/o.Swaminathan,
No.141D, Thanjavur Main Road,
Ammapettai Village,
Kumbakonam Taluk,
Thanjavur District.
- 3.Thiyagarajan,
S/o.Pazhanivel,
Nadu Salai, Yanaiyadi,
Valappettai Mangudi,
Darasuram,
Kumbakonam Taluk,
Thanjavur District.
- 4.Rani,
W/o.Ayyasami,
Thohur Village Post,
Opposite to the Police Station,
Thiruvaiyaru Taluk,
Thanjavur District.
- 5.Pappathi,
W/o. Murugesan,
Thohur Village Post,
Opposite to the Police Station,
Thiruvaiyaru Taluk,
Thanjavur District.
- 6.Selvaraj,
S/o. Swaminathan,
No.3/1234, Thanjavur Main Road,
Ammapettai Village,
Kumbakonam Taluk,
Thanjavur District.



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7.Mahadevan,
S/o.Swaminathan,
No. 141D, Thanjavur Main Road,
Ammapettai Village,
Kumbakonam Taluk,
Thanjavur District.

8.Pechimuthu,
S/o.Guruchandran,
Maravar Street, Darasuram,
Kumbakonam Taluk,
Thanjavur District.

9.Meenakshi,
W/o.Haresh Narayanan,
No.13/123C,
Kanagathara Apartments,
Masoothi Street, Saidapet,
Chennai.

10.Ananthavalli,
W/o. Anandhan,
Maravar Street, Darasuram,
Kumbakonam Taluk,
Thanjavur District.

11.Suba,
W/o. Sivandham,
No.105, Western Vadakku Veethi,
Darasuram, Kumbakonam Taluk,
Thanjavur District.

...Respondents 2 to 11/
Defendants 2 to 11

12.Shanmugavalli,
W/o.Gunasekaran,
D/o.Late. Ramaiyan,
Mangudi Swami Malai,
Kumbakonam Taluk,



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Thanjavur District.
13.Muthulakshmi,
W/o. Ravichandran,
D/o.Late. Ramaiyan,
Middle Street, Mangudi,
Swami Malai, Kumbakonam Taluk,
Thanjavur District.

...Respondents 12 & 13/3rd Party
(Legal heirs of Ramaiyan)

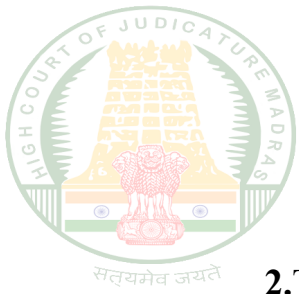
(Memo, dated 10.12.2024 in USR.No.46371 is recorded to the effect that issuance of notice to R2, R4 to R11 is dispensed with as they were set ex-parte before the Court vide Court order, dated 19.12.2024 made in A.S(MD)No.248 of 2021)

PRAYER:- This Appeal Suit is filed under Order 41 Rule 1 r/w Section 96 of CPC., to set aside the judgment and decree, dated 31.01.2020 made in O.S.No.74 of 2015 on the file of the Additional District Judge (Fast Track Court), Kumbakonam, Thanjavur District and allow the First Appeal.

For Appellant	: Mr.N.Balakrishnan
For R1	: Mr.R.Raja Raman
R2, R4 to R11	: Dispensed With
For R3, 12 & 13	: No Appearance

JUDGMENT

This Appeal Suit is directed against the judgment and decree, dated 31.01.2020 passed in O.S.No.74 of 2015 on the file of the learned Additional District Judge (Fast Track Court), Kumbakonam, Thanjavur District.



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2.The appellants are Legal Heirs of the 1st defendant Ramaiyan in O.S.No.74 of 2015 on the file of the Additional District Court (Fast Track Court), Kumbakonam. The 1st respondent is the plaintiff and the respondents 2 to 11 are defendants 2 to 11 in that suit. The respondents 12 and 13 are other legal heirs of the 1st defendant Ramaiyan.

3.The 1st respondent/plaintiff filed the suit for partition seeking 1/4 share in the 1st item and seeking 1/3 rd share in the 2nd item of in the suit property and for directing the 2nd defendant to pay Rs.36,000/- towards his share rental income and for permanent injunction.

4.For the sake of convenience, the parties are referred to as per their rank before the trial Court.

5. The case of the plaintiff (1st respondent herein):-

The suit properties consist of two items. The 1st item was the absolute property of one Pappathi Ammal. She died in the year 1948. On her death, her husband, Packirisami Servai and sons, the plaintiff, the defendants 1 and 2 and one Pazhanivel succeeded the same. The said Pazhanivel ran away from the



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home on the death of his mother Pappathi Ammal. The father, Packirisami Servai, was running a Brass Pattarai in the 1st item of the suit property. Then, he purchased the 2nd item for himself, earned in the joint names of himself, plaintiff and the defendants 1 and 2. He constructed a small house in the 2nd item of the suit property. The father Packirisami Servai, died on 14.01.1972 and he was running the Pattarai till his death with the assistance of the plaintiff and the 1st defendant. Thereafter, the plaintiff was employed in Thanjavur Sarvothaya Sangam. In the absence of Pazhanivel, the 1st defendant was running the brass pattarai till the year 2000 and then closed the pattarai and appropriated the entire income from it. The 2nd item of the suit property is owned jointly by the plaintiff and the defendants 1 and 2. Since Pazhanivel was unheard of, on a mutual temporary arrangement, the plaintiff has taken 3 cents in 1st item abutting Maravar Street and put up a thatched house. The 1st defendant also put a thatched house in the middle portion of the 1st item. The rear portion was let out to one Senthil. There was no effective partition of the suit properties. In the year 2014, the defendants 1 and 2 colluded, and the 2nd defendant executed a settlement deed in favour of the 1st defendant on 10.09.2014 to grab the plaintiff's share. Later, it was cancelled on 16.10.2014. In respect of the 1st item, the plaintiff and the defendants 1 and 2 and



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Pazhanivel are entitled to a 1/4 share. Since Pazhanivel is no more, his 1/4 share goes to his children, i.e., the defendants 3 to 5. In respect of the 2nd item, the plaintiff and the defendants 1 and 2 alone are entitled to 1/3 share each. The defendants 1, 6 and 7 are trying to encumber the suit properties. The defendants 6 to 10 have no right over the suit properties. Hence, the plaintiff has filed the suit for partition.

6.The case of the 1st defendant:-

The relationship between the parties is admitted. The suit properties mentioned in the plaint are not correct. The plaintiff has not added the house property standing in his wife's name and the leasehold lands. The 1st defendant alone was running the brass Pattarai for 25 years. The plaintiff was one year old at the time of the death of his mother. The 1st defendant brought up the plaintiff and educated him. The plaintiff got employment at Sarvodaya Sangam. Twenty years back, a panchayat was convened and as per the said panchayat, the 2nd item was allotted to the 1st defendant. The house in the first item was allotted to the 2nd defendant. The house at K.K.Neelamegam Nagar was allotted to the plaintiff. The elder son, Pazhanivel, got money for his share and gone out of family. Hence, his children, i.e., the defendants 3 to 5, are not



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been entitled to any share. If any partition is ordered, this defendant may be allotted his share.

7.The case of the 3rd defendant:-

The 2nd item was purchased by Packirisamy out of his own income and he ran Brass Pattarai till his death on 14.01.1972. The said Pazhanivel being the son of Packirisami, was entitled to a share in the suit properties. The alleged family arrangement in 1980 will not bind this defendant. This defendant is entitled to an equal share in the suit properties.

8.The defendants 2 and 4 to 11 remained exparte before the trial Court.

9.The trial Court framed the following issues upon the pleadings of both parties.

(1) Whether the suit properties are joint family properties?

(2) Whether the plaintiff is entitled to a share as prayed for?

(3) Whether the plaintiff is entitled to his share of the rental income and future income as claimed in the suit?



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(4) *To what other relief is the plaintiff entitled to?*

Additional Issues:

(1) *Whether the particulars of the suit properties are correct?*

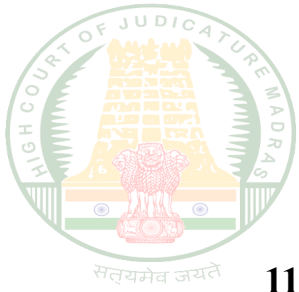
(2) *Whether the suit is bad for partial partition?*

(3) *Whether the alleged oral partition between plaintiff and defendants 1 and 2, as alleged by the 1st defendant, is correct?*

(4) *Whether the plaintiff was ousted from the suit property as stated by the 1st defendant, is correct.*

(5) *Whether the 1st defendant is entitled to share in the suit properties?*

10. During the trial, the plaintiff examined himself as P.W.1 and marked exhibits as Ex.A.1 to Ex.A.48. On the defendants' side, two witnesses were examined as D.W.1 and D.W.2. No exhibit was marked on the defendants' side.



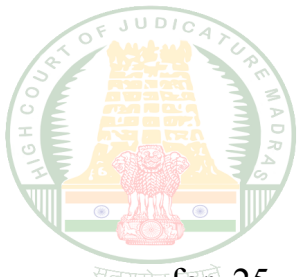
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11.On appreciation of evidence and the submissions made on behalf of the parties, the trial Court has held that the plaintiff was not ousted from the suit properties; that the plaintiff has proved his possession, and that the 1st defendant has not proved oral partition. The trial Court passed preliminary decree as sought by the plaintiff declaring that the plaintiff and the defendants 1 to 3 are entitled to 1/4 share each in the 1st item and that the plaintiff, the defendants 1 and 2 are entitled to 1/3 share each in the 2nd item of the suit properties and directed the 2nd defendant to pay a sum of Rs.36,000/- to the plaintiff towards share in rental income and passed the decree of permanent injunction as against the defendants 1, 2, 6 to 8 as prayed for by its judgment and decree, dated 31.01.2020.

12.Aggrieved by the judgment and decree of the trial Court, dated 31.01.2020, the two legal heirs of the 1st defendant Ramaiyan have preferred this appeal.

13.The learned counsel for the appellants/LRs of the 1st defendant has submitted that the plaintiff admitted in his evidence that he was working in Sarvodaya department and the 1st defendant was running the brass pattarai



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for 25 years, so the plaintiff was ousted from the joint family properties.

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Since the plaintiff was out of possession for more than 25 years, he lost his right as per Article 110 of the Limitation Act. The 1st defendant proved the oral partition by adducing evidence. The trial Court has not properly appreciated the evidence and erred in granting a preliminary decree. Therefore, the appeal may be allowed.

14.Per contra, the learned counsel for the 1st respondent/plaintiff states that the plaintiff has produced documentary evidence to prove his case about the purchase of the suit properties by their father in his own name and in the joint name of himself and his sons, the plaintiff and defendants 1 and 2. The 1st defendant has pleaded that an oral partition was effected in the presence of panchayatdars, in which the plaintiff and the defendants 1 and 2 were allotted properties. But the defendants 1 and 2 have not examined any one of the alleged panchayatdars and did not even examine themselves. The 2nd defendant has not participated in the suit proceedings. The trial Court has properly decreed the suit and therefore, there is no need for interference upon the decision of the trial Court, the appeal may be dismissed.



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15. The point for consideration in this appeal are:

- 1. Whether the plaintiff was ousted from the suit properties?*
- 2. Whether the oral partition alleged by the 1st defendant is proved?*
- 3. Whether the appeal is to be allowed?*

16. Points 1 to 3:

On perusal of the appeal records, trial Court records and on consideration of arguments advanced by both parties, the suit properties consist of two items. There is no dispute that the 1st item of the suit property was purchased by the mother of the plaintiff and the defendants 1 to 3, namely Pappathiammal, by virtue of a registered sale deed dated 07.04.1936. The said sale deed is marked as Ex.A.1. It is the case of the plaintiff that after the death of the mother, their father, Packirisami, ran a brass pattarai till his death with the assistance of the plaintiff and the defendants 1 and 2 and purchased the 2nd item from the income of the father in the joint name of the plaintiff and the defendants 1 and 2. The plaintiff has marked the said deed as Ex.A.2. From perusal of Ex.A.2, it is clear that the 2nd item was purchased in the name



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of the plaintiff and the defendants 1 and 2. This was not specifically denied by the contesting defendants.

17.It is the main case of the 1st defendant that the suit properties were orally partitioned in the presence of panchayatdars. A perusal of material records and judgment of the trial Court, it is very clear that the 1st defendant has not examined any one of the panchayatdars as rightly observed by the trial Court. Even the defendants 1 and 2 have not entered the witness box to prove their case. It is a settled position of law that when a litigant has not chosen to enter into the witness box to give evidence and has not been subjected to cross examination, an adverse presumption has to be taken against that litigant. In this case, the defendants 1 and 2 have not examined themselves. Moreover, the 2nd respondent remained ex-parte. Therefore, the trial Court has rightly held that the oral partition was not proved by the defendants 1 and 2.

18.The main case of the appellants is that the plaintiff was working in Sarvodaya Sangam for the past 25 years and so, he was ousted from the joint family properties. This argument is not an acceptable one. Since a joint family

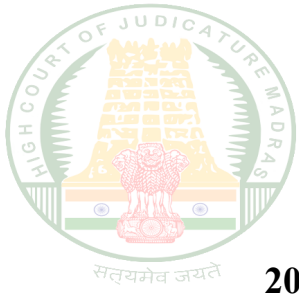


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member is working in the department, it does not mean that he has left the joint family and is ousted from the joint family properties. The plaintiff has examined himself as PW1 and marked documents Ex.A.1 to Ex.A.48. The 1st defendant's case is that he brought up the plaintiff and got him married. The marriage invitation of the plaintiff is marked as Ex.A.9, which clearly shows that he is residing in the suit property. Therefore, the trial Court has correctly appreciated the evidence and correctly held that the plaintiff was not ousted from the suit properties. It is pertinent to note here that the other LRs of the 1st defendant have not participated in the appeal proceedings to support the case of the appellants. The other respondents also have not participated in the appeal proceeding challenging the finding of the trial Court.

19.As discussed above, the plaintiff has clearly proved his case and the trial Court has correctly passed a preliminary decree. Considering the above facts and circumstances, the judgment and decree of the trial Court need not warrant interference. The points are answered accordingly against the appellants. Thus, this appeal suit fails.



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20.In the result, this Appeal Suit is dismissed.

(i) The judgment and decree, dated 31.01.2020 passed in O.S.No.74 of 2015 on the file of the learned Additional District Judge (Fast Track Court), Kumbakonam, Thanjavur District are confirmed.

(ii) No costs.

19.06.2026

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The Additional District Judge (Fast Track Court),
Kumbakonam,
Thanjavur District
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
A.S(MD)No.248 of 2021**

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