

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE, DINDIGUL**

**Present: Thiru. Swarnam J Rajagopalan, B.A.B.L.,(Hons.)**

**Additional District Judge, Dindigul**

**Tuesday, dated this the 17<sup>th</sup> day of March, 2026**

**Original Suit No.44/2016**

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1. Tmt.Gnambal
2. Tmt.Nanthini Devi
3. Tmt.Navaranchini
4. Thiru.Azhagar Rajesh ... Plaintiffs

-Vs-

1. Thiru.Chinnan Chettiyar(Died)
2. Thiru.C.Rajendran
3. Thiru.R.Karthik rajesh
4. Tmt.R.Sangeetha
5. Thiru.S.Thirumoorthy
6. Thiru.B.M.Hari
7. Nagamani
8. R.S.Nattarasan
9. \*Thamizharasi
10. \*Arulmozhi
11. \* Murugesan

12. \*Sivakumar

13. \*Ramesh

14. \*Latha

... Defendants

(Plaint is amended as per order in I.A.No.5/2022 dated on 29.08.2022 )

This suit came on 3.08.2023 for final hearing before this court in the presence of Learned Counsel Thiru.P.Saravanan, Thiru.M.Mathankumar, and Thiru.S.Arunkumar Advocates for the plaintiffs and the Learned counsel Thiru.. A. Abdul Hameed, Advocate for the defendants 1 to 4, Learned counsel Tr.S.Krishna Kumar, Advocate for the defendants 5, 6, and Learned counsel Thiru.P.K.M.Murugesan, Advocate for the defendants 7, 8, and D1 died and Defendants 2 to 4, 7,8 and 9,14 called absent set exparte and Batta was not paid for defendants D11 to D13, the suit was dismissed against defendants 11 to 13 on 12.07.2024 and the suit having stood over under the consideration of this court till this date and this court this day doth delivers the following:-

### **JUDGMENT**

This suit is filed by the plaintiffs seeking a preliminary decree for partition and separate possession of their 1/3rd share in the suit schedule properties. In the event the same is being granted, the plaintiffs pray that the Court may be pleased to appoint an Advocate Commissioner to divide the suit properties and allot the plaintiffs their 1/3rd share separately, and to permit the plaintiffs to file an application for passing a final decree for effecting such division and separate possession. The plaintiffs further seek a declaration that the settlement deed dated 11.06.2003 executed by the 1st defendant in favour of

the 2nd defendant as null and void. The plaintiffs also seek a declaration that the sale deed dated 13.10.2014 executed by the 2nd to 4th defendants in favour of the 5th and 6th defendants in respect of the 1st item of the suit property as null and void. The plaintiffs further pray for a declaration that the sale deed dated 13.10.2014 executed by the 2nd to 4th defendants in favour of the 5th and 6th defendants in respect of the 2nd item of the suit property as null and void. The plaintiffs also seek a declaration that the sale deed alleged to have been executed by the 7th defendant in favour of the 8th defendant on 17.02.2011 as null and void and costs of the suit.

**1. BRIEF AVERMENTS OF THE PLAINT IS AS FOLLOWS:**

- I. The suit properties originally belonged to Alagar Chettiar and constituted his ancestral properties. The said Alagar Chettiar died intestate, leaving behind his two sons, namely Arumugam Chettiar and the first defendant Chinnan Chettiar, as his legal heirs. After his demise, the suit properties continued to remain in the joint possession and enjoyment of Arumugam Chettiar and his sons Rajan, Sivaraman and Sadashivam on the one hand, and the first defendant Chinnan Chettiar and his sons Ilavalagan and Rajendran on the other hand, and they were jointly deriving income therefrom. The daughters of the first defendant had been married about 30 years prior to the filing of the suit, utilizing the income derived from the

suit properties, and were provided with sufficient “Sridhana” including jewels and other articles, and thereafter they have been residing with their respective husbands; hence, according to the plaintiffs, they are not entitled to claim any share in the ancestral properties. It is further stated that the first defendant’s wife, Arokya Lakshmi, possessed about 80 sovereigns of gold jewels, which were allegedly purchased out of the income derived from the ancestral properties, and upon her demise, the same were retained by the first defendant.

- ii. While the properties were so enjoyed, Arumugam Chettiar and the first defendant are said to have executed a registered partition deed dated 03.04.1987 (also referred to as 03.07.1987) in respect of the suit properties, allegedly without the knowledge of plaintiffs 2 to 4 and their father Ilavalagan. Under the said partition, the ‘B’ Schedule properties were allotted to the share of the first defendant Chinnan Chettiar, which include lands situated at Pannaikkad Village in Survey No.1250/2 measuring 1 acre and 46 cents, Survey No.1251/2 measuring 1 acre and 23 cents, totalling 2 acres and 69 cents; further lands measuring 1 acre and 84 cents comprised in New Survey No.463 under Patta No.136 including New Survey No.463/1; and also lands comprised in Survey No.1801 measuring 1 acre and 30 cents, Survey No.1802 measuring 43 cents, and Survey No.1808 measuring 46 cents, which correspond to New

Survey Nos.549/2, 549/3, 549/4 and Survey No.753/11 measuring 90 cents corresponding to New Survey No.838 under Patta No.136. The said partition deed itself describes the properties as ancestral, and therefore their character as ancestral properties was not in dispute. According to the plaintiffs, the suit properties being ancestral, the coparceners, namely the first defendant Chinnan Chettiar, his son (second defendant), and Ilavalagan, were each entitled to one-third share therein.

- III. The plaintiffs 2 to 4, being the sons of Ilavalagan, became coparceners by birth and are entitled to claim their lawful share in the properties that fell to the share of their father, and the first plaintiff, being the wife of Ilavalagan, is also entitled to succeed upon his demise. It is further stated that Ilavalagan, during his lifetime, had repeatedly demanded partition and allotment of his lawful share from the first and second defendants, but the same was not effected. Thereafter, on suspicion, he obtained an Encumbrance Certificate on 17.11.2014 and came to know that a partition deed dated 03.04.1987 had been executed between Arumugam Chettiar and the first defendant in respect of the ancestral properties, and that the shares said to have been allotted to him along with the one-third share of the first defendant had subsequently been settled in favour of the second defendant by a registered settlement deed dated 11.06.2003. On learning

of these transactions, Ilavalagan was greatly shocked and distressed and thereafter passed away on 21.11.2014.

- iv. It is further averred that the said settlement deed dated 11.06.2003, alleged to have been executed by the first and second defendants in favour of the fifth and sixth defendants, is only nominal and not intended to be acted upon, and that the same never came into force and the fifth and sixth defendants never took possession or enjoyment of the suit properties. According to the plaintiffs, the plaintiffs and defendants 1 to 4 continued to remain in joint possession and enjoyment of the suit properties. It is further alleged that the first and second defendants, in collusion, had unlawfully dealt with Item Nos.1 and 2 of the suit properties and executed the settlement deed without any right or authority, and hence the same is not binding on the plaintiffs.
- v. The plaintiffs further state that the existence of the partition deed dated 03.04.1987 and the settlement deed dated 11.06.2003 came to the knowledge of Ilavalagan only upon obtaining the Encumbrance Certificate on 17.11.2014. Thereafter, the plaintiffs caused a legal notice dated 22.06.2015 to be issued to the defendants demanding their one-third share in the suit properties. The defendants 1 to 4 sent a reply notice dated 06.07.2015 contending that partition had already been effected in the year 1987 and further alleging that in respect of Item No.3, the

seventh defendant had sold the property and that Ilavalagan had participated in the said transaction and received his share. The plaintiffs have specifically denied the said allegations. The plaintiffs have also denied the further allegations that Arokya Lakshmi had been suffering from prolonged illness and that the defendants had incurred substantial medical expenses, and that Ilavalagan had been financially assisted by the defendants in construction of his house and in meeting marriage expenses.

VI. It is further stated that the first defendant subsequently died and his legal heirs were brought on record as defendants; defendants 9 and 10 are his legal heirs, the 11th defendant is the husband of Parimala, daughter of the first defendant, and defendants 12 to 14 are their children, who are necessary parties and are bound by the result of the suit.

In these circumstances, the plaintiffs have filed the present suit seeking partition and separate possession of their one-third share in the suit properties described as Items 1 to 3 by passing a preliminary decree; for declaration that the settlement deed dated 11.06.2003 is null and void and not binding on them; for declaration that the sale deeds dated 13.10.2014 executed by defendants 2 to 4 in favour of defendants 5 and 6 in respect of Item Nos.1 and 2 are invalid and not binding on them; for declaration that the sale deed dated 17.02.2011 executed by defendants 7 and

8 is invalid and not binding on them; for costs; and for such further or other reliefs as this Court may deem fit and proper.

**2. WRITTEN STATEMENT FILED BY THE 2ND DEFENDANT IN BRIEF IS AS FOLLOWS:**

- I. The averments contained in the plaint are denied. This Defendant denied that the suit properties were jointly enjoyed by the heirs of Azhagar Chettiar, namely Arumugam Chettiar and his sons Rajan, Sivaraman and Sadasivam, along with the first defendant Chinnan Chettiar and his sons Ilavazhagan and Rajendran. On the contrary, immediately upon the demise of Azhagar Chettiar, his sons Arumugam Chettiar and Chinnan Chettiar effected a partition of the properties and thereafter enjoyed their respective shares separately.
- II. It is admitted that Arumugam Chettiar and the first defendant Chinnan Chettiar, being the principal titleholders of the ancestral properties, executed a registered partition deed dated 03.04.1987. However, it is specifically denied that the father of plaintiffs 2 to 4, namely Ilavazhagan, was unaware of the said partition. Under the said partition, Item No.3 of the suit property was allotted to his share, and he, in exercise of his independent rights, sold the same to the seventh defendant under a registered sale deed dated 30.06.1988 and appropriated the sale proceeds.

- III. The settlement deed dated 11.06.2003 executed by the first defendant in favour of the second defendant is valid, lawful and binding. By virtue of the earlier alienation made by Ilavazhagan in the year 1988, he had no subsisting right, title or interest in the suit properties thereafter. Consequently, neither he nor the plaintiffs claiming through him can assert any claim over the same.
- IV. It is further contended that Ilavazhagan, during his lifetime, never demanded partition or asserted any right against defendants 1 and 2 until his demise on 21.11.2014. For more than 25 years from 1988, he remained silent and acquiesced in the state of affairs. Even at the time when defendants 5 and 6 purchased Item Nos.1 and 2 of the suit properties, Ilavazhagan did not raise any objection whatsoever.
- V. The sale effected by defendants 2 to 4 in favour of defendants 5 and 6 was through duly registered sale deeds supported by valid consideration. The said purchasers are bona fide purchasers for value without notice of any alleged claim. It is further submitted that the properties in question had been mortgaged with Indian Bank, Kodaikanal, in the year 2004 and the mortgage was duly discharged in the year 2014 at the time of sale, without any objection from Ilavazhagan at any point of time.
- VI. It is also submitted that as early as in the year 1978, subsequent to his marriage, Ilavazhagan had separated himself from the joint family and

was living independently. Though there existed cordial relationship and occasional visits between the families, there was no joint enjoyment of the suit properties thereafter.

VII. In view of the fact that Ilavazhagan had already alienated the properties allotted to him under the partition deed in favour of the seventh defendant in the year 1988, the plaintiffs, who claim through him, thus have no manner of right to seek partition of the suit properties.

VIII. It is further contended that the daughters of the first defendant, namely Thamizharasi and Arulmozhi, have not been impleaded as parties to the present suit. They are necessary parties, and in their absence, the suit is bad for non-joinder of necessary parties and is liable to be dismissed.

**3. WRITTEN STATEMENT FILED BY DEFENDANTS 5 AND 6 IN BRIEF IS AS FOLLOWS:**

I. The plaint is not maintainable either in law or on facts and is liable to be dismissed in limine. These defendants submit that they are bona fide purchasers for valuable consideration of Item Nos.1 and 2 of the suit schedule properties, having purchased the same under valid registered instruments, taken possession thereof, and have since been in separate and independent possession and enjoyment. In such circumstances, the valuation of the suit and the court fee paid by the plaintiffs are wholly

wrong and the suit is grossly under valued. In as much as these defendants are in exclusive possession of the properties, the plaintiffs are not entitled to invoke Section 37(2) of the Court Fees Act.

II. It is further submitted that on 27.01.1978, the first defendant Chinnan Chettiar and his sons Ilavazhagan and Rajendran (then a minor) effected a family partition in respect of the joint family properties and executed a registered partition deed. Under the said partition, 'A' Schedule properties were allotted to Chinnan Chettiar, 'B' Schedule properties to Ilavazhagan, and 'C' Schedule properties to Rajendran. Pursuant thereto, Ilavazhagan separated from the joint family and commenced living independently. From the said date onwards, there has been no joint family or joint possession among them.

III. In the above circumstances, the present suit, filed on the footing that the parties continue to be members of a joint family and seeking partition and separate possession, is not maintainable. The alleged partition deed dated 01.04.1987 relied upon by the plaintiffs is a subsequent document, which is stated to have come into existence after Ilavazhagan had already severed his status from the joint family. Therefore, neither Ilavazhagan nor the plaintiffs claiming through him have any right or claim over the properties covered under the said document.

- IV. It is further submitted that even under the alleged partition deed dated 01.04.1987, only limited extents were allotted to the share of Chinnan Chettiar, namely, the northern portion measuring 1 acre and 84 cents out of the total extent of 2 acres and 69 cents in Old Survey Nos.1250/2 and 1251/2, and an extent of 90 cents in Old Survey No.753/1. The plaintiffs have failed to explain or substantiate their claim over any extent beyond what is stated therein in the plaint.
- V. It is further submitted that in respect of Item Nos.1 and 2 of the suit schedule properties, separate patta has been issued in the name of the second defendant, who has been in long, continuous and exclusive possession and enjoyment thereof. The said properties were also mortgaged by Rajendran in his individual capacity to Canara Bank, Kodaikanal Branch, for availing loan facilities, and the said loan has been duly discharged by him. If at all Ilavazhagan had any right or interest in the said properties, he would have asserted the same at the relevant point of time. His failure to do so clearly attracts the principles of estoppel by conduct and estoppel by acquiescence, thereby disentitling the plaintiffs from maintaining the present suit.
- VI. It is further contended that the plaintiffs have no manner of right to question the gift settlement deed dated 11.06.2003 executed by the first defendant in favour of the second defendant. These defendants, having

purchased the properties, namely 2 acres and 70 cents in Survey No.838/11 and 3 acres and 29 cents in Survey No.436/1, are absolute owners in possession and enjoyment thereof. The plaintiffs have no right, title or interest in the said properties and are not entitled to seek partition or any share therein.

VII. In the above circumstances, the suit is devoid of merits and is liable to be dismissed with costs.

**4. WRITTEN STATEMENT FILED BY DEFENDANTS 7 AND 8 IN BRIEF IS AS FOLLOWS:**

I. All the averments in the plaint are denied. It is submitted that on 30.06.1988, the first defendant, along with Ilavazhagan (husband of the first plaintiff and father of plaintiffs 2 to 4), acting as guardian of his minor son Azhagar Rajesh (then aged about 3 years), together with the second defendant C. Rajendran, jointly executed a registered sale deed in favour of the seventh defendant, R. Nagamani, in respect of Item No.3 of the suit schedule property. The said sale deed was duly registered in the office of the Sub-Registrar, Batlagundu, as Document No.920 of 1988. Thus, Ilavazhagan himself was a party to the said transaction. In such circumstances, the present suit, insofar as it relates to Item No.3 property, is not maintainable, particularly in view of the inordinate delay in challenging the said sale.

- II. It is further submitted that the inclusion of Item No.3 property in the plaint is wholly unjustified and without any legal basis. The plaintiffs have no locus standi to question the said transaction, having derived no subsisting right in the said property. It is also contended that, though the first defendant was entitled to a one-third share in the ancestral properties of Azhagar Chettiar, and though Ilavazhagan is alleged to have demanded partition, the said allegations do not bind these defendants. It is further stated that only upon verification of encumbrance records on 17.11.2014 did Ilavazhagan allegedly come to know about the partition deed dated 03.04.1987 and the settlement deed dated 11.06.2003 executed in respect of Item Nos.1 and 2.
- III. These defendants submit that, following the partition between the first defendant and his brother Arumugam Chettiar, the properties allotted under Schedule 'B' were sold to the seventh defendant by Ilavazhagan along with defendants 1 and 2. Suppressing this material transaction, the plaintiffs have instituted the present suit by projecting the properties as still being ancestral and by unnecessarily impleading defendants 7 and 8, which is legally unsustainable.
- IV. It is further submitted that, though the plaintiffs had issued a legal notice seeking partition and allotment of one-third share, the same was duly replied to by defendants 1 to 4 by notice dated 06.07.2015. The allegation

that the sale deed dated 30.06.1988 was fraudulently created or that the signature of Ilavazhagan was forged is specifically denied. The claim in respect of Item No.3 property is clearly barred by limitation.

V. It is further submitted that the seventh defendant has subsequently sold Item No.3 property to the eighth defendant, who is now in continuous, open and uninterrupted possession and enjoyment thereof. The eighth defendant is a bona fide purchaser for value. In view of the long and continuous possession, the claim of the plaintiffs is also barred by the doctrine of adverse possession. Therefore, the suit, insofar as it relates to Item No.3 property, is liable to be dismissed.

VI. It is further stated that the suit properties originally belonged to Azhagar Chettiar, and his sons Chinnan Chettiar and Arumugam Chettiar were enjoying the same. They effected a partition on 03.04.1987. It is the plaintiffs' own case that Ilavazhagan came to know of the said partition only in the year 2014. It is also stated that prior to such partition, the properties were enjoyed in common by the branches of Arumugam Chettiar and Chinnan Chettiar.

VII. Without prejudice to the above contentions, it is alternatively contended that there is no proof that Ilavazhagan had validly consented to or participated in the sale transaction of 1988. It is alleged that the minor son Azhagar Rajesh was included only nominally, and that the signatures

of other co-sharers were obtained by the first defendant fraudulently and without proper disclosure, thereby rendering the sale invalid.

VIII. It is further contended that the settlement deed dated 11.06.2003 executed by the first defendant in favour of the second defendant is also legally unsustainable, inasmuch as the first defendant had only a one-third share in the ancestral property but purported to deal with the entire property as if he were the absolute owner. The subsequent mortgage of the said property in favour of a bank and the discharge thereof are stated to have been carried out without transparency and behind the back of other interested parties.

IX. It is also contended that certain recitals in earlier documents relating to house property, including references to enjoyment after the lifetime of the first defendant and alleged arrangements between Ilavazhagan and the second defendant, are false and misleading. It is further pointed out that additional land measuring  $\frac{1}{2}$  cent was purchased in 2003 for the purpose of constructing a staircase, which, according to these defendants, indicates that the property was not exclusively owned by a single individual, as otherwise such an arrangement would not have been necessary.

X. It is finally contended that the first defendant had, throughout, misled Ilavazhagan by making inconsistent and contradictory representations and

had acted unilaterally in dealing with the properties. Despite having only a limited share, he dealt with the properties as if he were the absolute owner by executing settlement deeds, creating encumbrances, and effecting subsequent alienations, all of which are alleged to be tainted by fraud.

XI. In the above circumstances, the plaintiffs are not entitled to any of the reliefs sought, and the suit, particularly in respect of Item No.3 property, is liable to be dismissed with costs.

**Plaintiff's side filed by reply statement and the brief of the reply is as follows:**

- I. The suit properties originally belonged to Azhagar Chettiar, whose sons, Chinnan Chettiar and Arumugam Chettiar, were in joint enjoyment of the same. Though a partition is said to have been effected between them on 03.04.1987, it is the specific case of the plaintiffs that Ilavazhagan, the husband of the 1st plaintiff and father of plaintiffs 2 to 4, became aware of such partition only in the year 2014. According to the plaintiffs, notwithstanding the alleged partition, the properties continued to be enjoyed in common by the heirs of Azhagar Chettiar, namely, Arumugam Chettiar and his heirs—Rajan, Sivaraman, and Sadasivam—and Chinnan Chettiar along with his sons, Ilavazhagan and Rajendran.

- II. The plaintiffs further contend that the sale deed executed in favour of the 8th defendant in the year 1988 is not binding on their share, as there is no material to show that Ilavazhagan had either consented to or participated in the said transaction. It is alleged that the minor son of Ilavazhagan, namely Azhagar Rajesh, was included in the document merely to give an appearance of validity, without any lawful representation or necessity. The plaintiffs assert that the signatures of the other co-sharers were obtained fraudulently by the 1st defendant with an intention to suppress the true facts and effectuate the sale, thereby rendering the said transaction legally invalid.
- III. It is the further case of the plaintiffs that even after the alleged partition of the year 1987, the 1st defendant, after a lapse of about 17 years, executed a settlement deed in favour of the 2nd defendant, purporting to convey the entire suit properties as if he were the absolute owner thereof. The plaintiffs contend that the 1st defendant, at best, was entitled only to a 1/3rd share and, therefore, the settlement deed executed beyond his share is not valid or binding on the other co-sharers. They also allege that the property obtained under the said settlement deed was subsequently mortgaged with a bank in the year 2003 for availing a loan, which was

later discharged, all without the knowledge of the plaintiffs' branch, thereby evidencing a pattern of unilateral and clandestine dealings.

IV. The plaintiffs also place reliance on the recitals found in an earlier document of the year 1978, wherein it is stated that the house property described in the D Schedule was to be taken by the 2nd defendant only after the lifetime of the 1st defendant, and that thereafter, Ilavazhagan and the 2nd defendant were to divide and enjoy the same equally. The further recital that electricity service connection stood in the name of Ilavazhagan is also relied upon. According to the plaintiffs, these recitals are false and have been introduced only to mislead and create a semblance of exclusive entitlement.

V. In support of their contention regarding joint enjoyment, the plaintiffs further aver that the house property in the 'H' portion consisted of two distinct portions and that the portion allotted to the 2nd defendant did not have a staircase. Consequently, an extent of ½ cent of land was purchased from one Bethu Rajulu in the year 2003 for the purpose of constructing a staircase. The plaintiffs contend that if the property had truly belonged exclusively to a single individual, there would have been no necessity for constructing separate staircases, and the absence of any explanation from the defendants in this regard strengthens the plaintiffs' case.

VI. According to the plaintiffs, the 1st defendant had, from the inception, been misleading Ilavazhagan by making inconsistent representations and acting unilaterally in respect of the suit properties. While earlier documents suggested that the property was to be enjoyed only after his lifetime, the 1st defendant, in deviation thereof, sold a portion of the property in the year 1998. Thereafter, despite having only a limited share, he projected himself as the absolute owner, executed a settlement deed, created a mortgage, and ultimately alienated the property in the year 2014. The plaintiffs assert that all these transactions are tainted by fraud, misrepresentation, and lack of authority, and hence, they are not binding on the plaintiffs' share. On these grounds, the plaintiffs seek that the suit be decreed as prayed for

**5. Issues:**

Based on the pleadings of the parties, this Court, by order dated 23.03.2017, framed the following issues in tamil, translated in English for the purpose of this judgment is as follows:

1. Whether the plaintiffs are entitled to a one-third share in the suit properties?
2. Whether defendants 5 and 6 are bona fide purchasers for value?
3. Whether the suit is barred by limitation?
4. Whether the court fee paid by the plaintiffs is proper and correct?

5. Whether the plaintiffs are estopped by their conduct (including acquiescence) from claiming relief?
6. Whether the plaintiffs are entitled to the relief of partition and separate possession?
7. Whether the plaintiffs are entitled to the first declaratory relief sought in the plaint?
8. Whether the plaintiffs are entitled to the second declaratory relief sought in the plaint?
9. Whether the plaintiffs are entitled to the third declaratory relief sought in the plaint?
10. To what other reliefs, if any, are the plaintiffs entitled?

**6. Additional Issues (framed on 01.03.2018)**

- I. Whether the alleged partition in the year 1978 was accepted and acted upon by Ilavazhagan?
- II. Whether the subsequent transactions and changes in title following the partition of the year 1987 are valid and binding?

**7. Additional Issue (framed on 02.04.2019)**

Whether the suit is bad for non-joinder of necessary parties, as contended by defendants 1 to 4?

8. On the side of Plaintiffs, 2nd plaintiff PW1 was examined and exhibits Ex.A1 to Ex.A12 were marked. Ex.A1 - Partition Deed executed between Arumugam Chettiar and the 1st Defendant. Ex.A2 - Gift settlement Deed executed by the 1st Defendant in favour of the 2nd Defendant. Ex.A3 - Sale

Deed executed by Defendants 2 to 4 in favour of Defendants 5 and 6 regarding the 1st item of the suit property. Ex.A4 - Sale Deed executed by Defendants 5 and 6 regarding the 1st item of the suit property. Ex.A5 - Patta(Land Revenue Record) in the name of the 1st Defendant for the suit properties. Ex.A6 - Legal Notice sent by the plaintiffs to the Defendants. Ex.A7 - Reply Notice sent by the 1st Defendant. Ex.A8 - Reply Notice sent by Defendants 2 to 4. Ex.A9 - Sale Deed in the name of the 7th Defendant. 21 Ex.A10 - Sale Deed in the name of the 8th Defendant. Ex.A11 - Patta for the 3rd item of the suit property in the name of the 8th Defendant. Ex.A12 - Correlation certificate (Survey/Revenue) for the suit properties.

On the side of defendants, 5th Defendant DW1 was examined and exhibits Ex.B1 to Ex.B12 were marked. Ex.B1 - Partition Deed executed by Chinnan Chettiar and others. Ex.B2 - Partition Deed executed between Arumugam Chettiar and Chinnan Chettiar. Ex.B3 - Settlement Deed executed by Chinnan Chettiar in favour of Rajendran. Ex.B4 - Patta in the name of Rajendran. Ex.B5 - Encumbrance Certificate (EC) for the suit property. Ex.B6 - Sale Deed executed by Defendants 2 to 4 in favour of Defendants 5 and 6 regarding the 2nd item of property. Ex.B7- Sale Deed executed by the Defendants in favor of Defendants 5 and 6 regarding the 1st item of property. Ex.B8 - Receipt for Rs.10 Lakhs received by Rajendran from the 5th Defendant.

Ex.B9 - Receipt issued by Canara Bank, Kodaikanal, to Chinnan Chettiar, Arokkia Lakshmi, and Rajendran. Ex.B10 - Sale Agreement executed between Rajendran and Kumaresan. Ex.B11 - Cancellation Deed of the Sale Agreement executed between 22 Rajendran and Kumaresan. Ex.B12 - 10(1) Chitta for Patta Nos. 2760 and 2761 issued in the names of the 5th and 6th Defendants.

9. The submissions of both the learned counsels for the parties filed in the form of written submissions and the materials placed before me were considered.

10. Since the issues arisen in the suit revolves around the pivotal point as to the character of the suit properties and its dealings by the parties to the suit, the issues are taken up together for common discussion as they are intertwined as follows:

11. At the outset, it is necessary to determine the true character of the suit properties and the legal effect of the admitted and proved transactions, namely the partitions of the years 1978 and 1987, the sale deed dated 30.06.1988, and the settlement deed dated 11.06.2003. The plaintiffs have proceeded on the footing that the suit properties are ancestral coparcenary properties of Azhagar Chettiar and that they are entitled to claim a share by birth through Ilavazhagan.

However, such a plea requires strict scrutiny in the light of the admitted facts, evidence presented and settled principles of law.

12. It is not in dispute that the suit properties originally belonged to Azhagar Chettiar and that he died intestate without leaving any testamentary disposition. Upon his death, succession opened under Section 8 of the Hindu Succession Act, 1956, and the properties devolved upon his sons, namely Arumugam Chettiar and the first defendant Chinnan Chettiar, as Class-I heirs. The legal consequence of such devolution is well settled, namely that the heirs take the property as tenants-in-common in their individual capacity and not as coparceners, and the property loses its ancestral or coparcenary character in their hands. Therefore, the very foundation of the plaintiffs' claim, namely that the property continued to be ancestral coparcenary property conferring birthright, cannot be accepted.

13. The documentary evidence placed before this Court, particularly Ex.A1/Ex.B2, establishes that Arumugam Chettiar and the first defendant Chinnan Chettiar entered into a registered partition deed dated 03.04.1987, whereby the properties inherited from their father were divided and specific shares were allotted, with A-Schedule properties going to Arumugam Chettiar and B-Schedule properties to Chinnan Chettiar. This partition did not create any new rights but merely crystallised the shares that had already devolved upon

them under Section 8. Consequently, each of them thereafter held their respective shares as separate and absolute property with full powers of disposition. This fact is fortified by the fact that in Ex.A9 the recitals contain that Ilavazhagan has admitted that he obtained the said property in S.No.1801 through the partition along with D1 and D2.

14. Significantly, the evidence further discloses that even prior to the said partition of 1987, the first defendant Chinnan Chettiar had effected a family partition on 27.01.1978, under which the properties were divided among himself and his sons, namely Ilavazhagan and minor Rajendran, with A-Schedule properties allotted to Chinnan Chettiar, B-Schedule properties to Ilavazhagan, and C-Schedule properties to Rajendran. This fact is evidenced by Ex.B2. Though the plaintiffs have not adverted to or pleaded about this 1978 partition, the same being a registered document and having been relied upon by the defendants, cannot be ignored. The omission on the part of the plaintiffs to plead such a crucial earlier partition further weakens their case and indicates suppression of material facts and the conduct of the plaintiffs in approaching this court.

15. Under the said arrangement of partition and subsequent dealings, it is clear that Ilavazhagan had obtained a defined share and had acted upon the same. This is fortified by Ex.A9, the registered sale deed dated 30.06.1988,

whereby Ilavazhagan himself, along with the first defendant and the second defendant, executed a sale deed in favour of the seventh defendant in respect of Item No.3 of the suit properties as observed supra. Ilavazhagan not only acted in his individual capacity but also as guardian of his minor son. This transaction clearly demonstrates that Ilavazhagan was exercising independent ownership rights over the property and had consciously alienated the same. The plaintiffs' plea that the said document was brought about by fraud or without consent is not supported by any cogent or convincing evidence. A registered document carries a presumption of validity, and in the absence of proof to the contrary, the same must be given due effect. Hence, the claim of the plaintiffs in respect of Item No.3 is liable to be rejected.

16. Coming to the next transaction, the settlement deed dated 11.06.2003 (Ex.A2/Ex.B3) executed by the first defendant in favour of the second defendant in respect of Item Nos.1 and 2 of the suit properties, the plaintiffs contend that the first defendant had only a limited share and could not have settled the entire property. However, this contention overlooks the fundamental legal position that, after the death of Azhagar Chettiar and the subsequent partition of 1987, the properties in the hands of Chinnan Chettiar became his separate property. Once the property ceased to be coparcenary property and

stood as the separate property of the heir, he was fully competent to deal with it in any manner, including by way of settlement.

17. The legal position in this regard is well settled that once succession opens under Section 8 of the Hindu Succession Act, the property loses its ancestral character and the heirs hold it as separate property. Consequently, the descendants do not acquire any right by birth. In the present case, the plaintiffs have not produced any material to establish that the property retained its character as joint family property after such devolution also. On the contrary, the admitted partition of 1987 and the earlier arrangement of 1978 clearly indicate severance and individual ownership and he has also suitably dealt with the same as observed supra. Therefore, Ilavazhagan or the plaintiffs claiming through him cannot assert any coparcenary right.

18. The undisputed facts disclose that the original owner of the suit property, namely the grandfather of the parties, died intestate. Upon his death, succession opened under Section 8 of the Hindu Succession Act, 1956. Consequently, the property devolved upon his sons as Class-I heirs. The legal position governing such devolution has been authoritatively settled by *the Hon'ble Supreme Court in Uttam v. Saubhag Singh and others, AIR 2016 SC 1169* wherein it has been held that once succession opens under Section 8, the property devolves upon the heirs as tenants-in-common and not as coparceners, and the property thereby

loses its character as joint family or coparcenary property. Each heir takes the property in his individual capacity and not as a representative of a coparcenary. Thus, the sons who inherited the property from the deceased held their respective shares as their separate property.

19. It is further seen that the two sons of the deceased entered into a registered partition deed in the year 1978 whereby the properties inherited by them were divided and their respective shares were crystallized. Such partition only recognized and separated the shares that had already devolved upon them under Section 8. Once the shares stood defined, each sharer held his allotted portion as his separate property with full powers of disposition. In other words, the partition did not create or revive any coparcenary rights in favour of the next generation. The evidence on record further reveals that the 1<sup>st</sup> Defendant who obtained a defined share in the said partition, executed a settlement deed in the year 2003 in favour of 2nd Defendant, one of his sons. Since the property in his hands had already become his separate property by virtue of succession and partition, he was legally competent to deal with the same in any manner he deemed fit, including by way of settlement in favour of one of his children. The plaintiff cannot claim a share in such property on the footing of a coparcenary right by birth, as the property had already lost its ancestral character upon succession under Section 8.

20. The **Hon'ble Supreme Court in *Angadi Chandranna v. Shankar***, reported in 2025 INSC 532 has reiterated that when property devolves upon heirs under the scheme of the Hindu Succession Act, it becomes the separate property of such heirs and alienations made by them are valid to the extent of their share. The burden lies upon the person asserting coparcenary rights to establish that the property continued to retain its ancestral character. In the absence of such proof, the property must be treated as the separate estate of the heir and transfers made by him cannot be questioned by the descendants merely on the basis of birth. In the present case, the plaintiff has not placed any material to demonstrate that the suit property continued to retain the character of joint family or coparcenary property after the death of the original owner or after the partition of 1978 or 1987 for that matter. On the contrary, the admitted facts establish that succession opened under Section 8 and the properties were subsequently partitioned in the year 1987. Hence, the share obtained by the 1<sup>st</sup> Defendant became his absolute property and he was fully competent to execute the settlement deed in favour of 2nd Defendant in the year 2003. It is also not in dispute that 2nd Defendant, after obtaining the property through the settlement deed, alienated the same to third parties under registered sale deeds in the year 2014 . Once the settlement deed is held to be valid, the subsequent alienations made by 2nd Defendant, who had become the owner of the property, cannot be impeached or questioned by the plaintiff.

21. The plaintiff has instituted the present suit for partition only in the year 2015 claiming a coparcenary right in the property. However, the plaintiff has not even averred about the date of death of Ilavazhagan and his death certificate not produced and legal heirship certificate not produced. In any view of the matter, the settled legal position laid down by the Supreme Court in Uttam and reiterated in Angadi Chandranna, the plaintiff did not acquire any right by birth in the property inherited by his father under Section 8 of the Act. His right, if any, would arise only upon succession to his father's estate and not otherwise. Since the grandfather of plaintiffs 2 to 4 had already alienated the property by executing the settlement deed in favour of 2<sup>nd</sup> defendant, the plaintiff's cannot seek partition of the said property. Therefore, this Court is of the considered view that the plaintiff has failed to establish any coparcenary right in the suit property and the settlement deed executed by the 1<sup>st</sup> Defendant in favour of 2<sup>nd</sup> Defendant, as well as the subsequent alienations made by 2<sup>nd</sup> Defendant, is valid and binding. Consequently, the suit for partition filed by the plaintiff is liable to be dismissed. It was contended on behalf of the plaintiff that the suit property should still be treated as ancestral property on the ground that the father had income from the lands allotted to him under the earlier partition and also possessed certain amounts received at the time of partition and from other family sources, and therefore the property continued to retain the character of joint family property in which the plaintiff, as a coparcener, acquired a right by

birth. This contention cannot be accepted as no such evidence presented before this court for such plea.

23. The plaintiff has not challenged the validity of the said partition deed, which itself provides that the parties shall enjoy their respective shares with absolute rights of alienation. In view of the above position, the share obtained by the 1<sup>st</sup> Defendant in the said partition became his separate property and he was legally competent to deal with it in any manner he deemed fit. The **Hon'ble Supreme Court in Angadi Chandranna v. Shankar** has reiterated that where property devolves upon an heir and is thereafter held as his separate estate, alienations made by him are valid and binding unless the person questioning the same establishes that the property continued to retain its coparcenary character. The burden of proving such continuance of joint family character lies upon such claimant. In the present case, no material has been placed to establish that the property retained its coparcenary character after the succession and subsequent partition of the year 1987 as already held by me. Consequently, the settlement deed executed by the father in the year 2003 in favour of 2nd Defendant constitutes a valid transfer of his separate property, and the subsequent alienations made by 2nd Defendant in favour of third parties in the year 2014 is also valid and binding on the plaintiff. During the cross-examination of the 2nd Plaintiff the witness had admitted about the earlier partition in favour of his

father, “1987-ஆம் ஆண்டிற்கு முன்பே சின்னான் செட்டியார் அவரது 2 மக்கள் இளவழகன் மற்றும் ராஜேந்திரன் பாகம் பிரித்துக் கொண்டார்கள் என்றால் சரிதான். அந்த பாக பிரிவினையில் என் அப்பா இளவழகனுக்கு 7 ஏக்கர் 53 செண்ட் சொத்து அவரது பாகத்திற்கு ஒதுக்கப்பட்டது என்றால் சரிதான். அந்த சொத்தை இந்த வழக்கில் சேர்க்கவில்லை என்றால் சரிதான்” என்று சாட்சியமளித்துள்ளார்.

Thus knowing about the 1978 partition, the present suit is laid.

26. From the cross-examination of the second plaintiff as extracted supra, it is evident that Ilavazhagan had already separated from the joint family and obtained his share in the joint family properties. It is further established that the present suit has been filed seeking partition against Chinnan Chettiar. However, the plaintiffs have failed to explain how, after having already received his share in the joint family properties and severed his status as a member of the joint family, Ilavazhagan can once again institute the present suit in the capacity of a joint family member seeking partition. In this context the decision relied on by the learned counsel for the 5<sup>th</sup> and 6<sup>th</sup> defendants in the matter of **Chakravarthi vs. Parvathi and others, reported in 2024 (3) LW.97** wherein the settled principle that a person who had already released / Separated from Coparcenary Property cannot gain a back door entry as a coparcener merely because his father died subsequently and seek for an equal share in the coparcenares property has been reiterated and the same is already sufficiently dealt by me referring to the decisions of the Hon’ble Apex Court in the foregoing paragraphs.

27. This Court is therefore of the considered view that the contention advanced on behalf of Defendants 5 and 6 is well-founded. In light of the aforesaid judgment, it is held that Ilavazhagan or his legal heirs are not entitled to claim any share in respect of the remaining joint family properties. Further, having accepted the partition deed of the year 1978, the plaintiffs are estopped from acting in contravention thereof and have no subsisting right to seek any relief inconsistent with the said partition. Moreover, considering that the present suit was instituted during the lifetime of Chinnaan Chettiar, it is held that, after the execution of the partition, neither Ilavazhagan nor his legal heirs possess any legal right to claim a fresh partition without first seeking to reopen or set aside the partition effected in the year 1978, which cannot be anyway be sought by the heirs of Ilavazhagan.

28. Further, in the present case, only Defendants 5 and 6 have contested the suit. The 2nd Defendant died after the filing of the written statement in this case. His legal heirs, namely Defendants 3 and 4, did not come forward to prosecute or defend the case, and the other defendants also failed to contest the matter. It is also observed that the 2nd Plaintiff, examined as PW1, was cross-examined only by Defendants 5 and 6. Likewise, on the side of the Defendants 5 and 6, only the 5th Defendant was examined, and he was cross-examined

solely by the Plaintiffs. The 1<sup>st</sup> Plaintiff did not come forward to depose in support of the plaintiff for best known reasons.

29. Furthermore, the reply notice dated 06.07.2015 sent by defendants 2 to 4 to the legal notice issued on behalf of the plaintiffs has been marked as Exhibit D8. In the said reply notice, the deed of 1978 partition finds reference and in spite of the same, the plaintiff have concealed the same in their plaint that in fact a partition took place in the year 1978 between the sharers and thus the suit is also bad for suppression of material facts inconvenient to the plaintiff.

30. From the discussion made supra, it follows that the first defendant was legally competent to execute the settlement deed in favour of the second defendant, and the said settlement cannot be held to be invalid merely on the ground urged by the plaintiffs. Once the settlement deed is upheld, the subsequent alienations made by the second defendant in favour of defendants 5 and 6 under registered sale deeds in the year 2014 stand on firm legal footing and to be upheld. The said purchasers, having acquired the properties for valuable consideration under registered instruments and having taken possession, are entitled to protection as bona fide purchasers as no such proof of invalid transaction established, even though the sale consideration paid by them were contested, no material lacunae produced to prove that those transaction are sham and nominal .

31. The plea of limitation also operates against the plaintiffs, particularly in respect of the 1988 sale with respect to 3<sup>rd</sup> item of suit property. The challenge to a transaction of the year 1988 after several decades, without any acceptable explanation, cannot be entertained. The plea that knowledge was acquired only in the year 2014 does not inspire confidence, especially when Ilavazhagan himself was a party to the transaction as neither the 1<sup>st</sup> plaintiff wife had come to the witness box to depose nor any materials produced before me to support such a plea of absence of knowledge or any fraud played. Similarly, the long silence and inaction on the part of Ilavazhagan during his life time further attract the principles of acquiescence and estoppel.

32. In so far as the plea of joint possession and court fee is concerned, the same cannot be accepted in view of the clear evidence of separate possession and enjoyment by the respective parties following the partitions and subsequent transactions. From Ex.A5, patta, which stands in the name of 2<sup>nd</sup> defendant the 28.01.2016 properties stands even on date of filing of the suit in his name. Thus except the mere pleading and oral claim of joint possession and enjoyment of the properties the contention of the plaintiffs that the properties were in fact possessed and enjoyed jointly, was not established as it is trite law that one who avers joint possession and enjoyment has to prove the same. The plaintiffs cannot, therefore, maintain the suit on the footing of joint possession on mere

surmises and conjectures and accordingly the suit is also bad for under valuation and since the suit is held to be not maintainence on merits, the suit is not dismissed on the ground of improper valuation of suit.

Accordingly, the issues and additional issues framed in the suit are answered against the plaintiffs and the suit is accordingly dismissed and no costs are awarded in view of the relationship between the parties.

**In the result**, this suit is dismissed. No costs are awarded in view of the relationship between the parties.

Dictated to the stenographer, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 17<sup>th</sup> day of March 2026.

**Additional District Judge,  
Dindigul.**

**APPENDIX**

**Plaintiffs Side Witnesses:**

**PW1** Tmt.Nandhini Devi (Plaintiff)

**Plaintiffs Side Exhibits:**

|       |            |   |                |
|-------|------------|---|----------------|
| Ex.A1 | 03.04.1987 | Partition Deed executed between Arumugam Chettiar and the 1 <sup>st</sup> Defendant                       | Certified copy |
| Ex.A2 | 11.06.2003 | Gift settlement Deed executed by the 1 <sup>st</sup> Defendant in favour of the 2 <sup>nd</sup> Defendant | Certified copy |
| Ex.A3 | 13.10.2014 | Sale Deed executed by Defendants 2 to 4 in favour of Defendants 5 and 6 regarding the                     | Certified copy |

|        |            |  |                   |
|--------|------------|--|-------------------|
|        |            | 1 <sup>st</sup> item of the suit property  |                   |
| Ex.A4  | 13.10.2014 | Sale Deed executed by Defendants 5 and 6 regarding the 1 <sup>st</sup> item of the suit property     | Certified copy    |
| Ex.A5  |            | Patta(Land Revenue Record) in the name of the 1 <sup>st</sup> Defendant for the suit properties      | Computerized Copy |
| Ex.A6  | 22.06.2015 | Legal Notice sent by the plaintiffs to the Defendants  | Office Copy       |
| Ex.A7  | 06.07.2015 | Reply Notice sent by the 1 <sup>st</sup> Defendant   | Office Copy       |
| Ex.A8  | 06.07.2015 | Reply Notice sent by Defendants 2 to 4   | Served Copy       |
| Ex.A9  | 30.06.1988 | Sale Deed in the name of the 7 <sup>th</sup> Defendant   | Served Copy       |
| Ex.A10 | 17.02.2011 | Sale Deed in the name of the 8 <sup>th</sup> Defendant   | Served Copy       |
| Ex.A11 | --         | Patta for the 3 <sup>rd</sup> item of the suit property in the name of the 8 <sup>th</sup> Defendant | Original Copy     |
| Ex.A12 | --         | Correlation certificate (Survey/Revenue) for the suit properties                                     | Original Copy     |

### **Defendants 5, 6 Side Witnesses**

|             |   |
|-------------|---|
| <b>DW-1</b> | <b>Thiru.Thirumoorthy</b> (5 <sup>th</sup> Defendant) |
|-------------|---|

### **Defendants 5, 6 Side Documents:**

|       |            |  |                   |
|-------|------------|--|-------------------|
| Ex.B1 | 27.01.1978 | Partition Deed executed by Chinnan Chettiar and others                 | Registration Copy |
| Ex.B2 | 01.04.1987 | Partition Deed executed between Arumugam Chettiar and Chinnan Chettiar | Original Copy     |
| Ex.B3 | 11.06.2003 | Settlement Deed executed by Chinnan                                    | Original Copy     |

|        |            |  |                            |
|--------|------------|--|----------------------------|
|        |            | Chettiar in favour of Rajendran  |                            |
| Ex.B4  | 04.10.2014 | Patta in the name of Rajendran   | Computerized Copy          |
| Ex.B5  | 08.10.2014 | Encumbrance Certificate (EC) for the suit property   | Original Copy              |
| Ex.B6  | 13.10.2014 | Sale Deed executed by Defendants 2 to 4 in favour of Defendants 5 and 6 regarding the 2nd item of property | Original Copy              |
| Ex.B7  | 13.10.2014 | Sale Deed executed by the Defendants in favor of Defendants 5 and 6 regarding the 1st item of property     | Original Copy              |
| Ex.B8  | 22.09.2014 | Receipt for Rs.10 Lakhs received by Rajendran from the 5th Defendant                                       | Original Copy              |
| Ex.B9  | 30.04.2013 | Receipt issued by Canara Bank, Kodaikanal, to Chinnan Chettiar, Arokkia Lakshmi, and Rajendran             | Original Copy              |
| Ex.B10 | 24.07.2014 | Sale Agreement executed between Rajendran and Kumaresan  | Original Copy              |
| Ex.B11 | 13.10.2014 | Cancellation Deed of the Sale Agreement executed between Rajendran and Kumaresan                           | Original Copy              |
| Ex.B12 | 23.02.2014 | 10(1) Chitta for Patta Nos. 2760 and 2761 issued in the names of the 5th and 6th Defendants                | Computerized download copy |

**Additional District Judge,  
Dindigul.**