

IN THE COURT OF THE PRINCIPAL SUB JUDGE, PALANI.**Present : Tmt. K. Renugadevi,LL.M.,
Principal Sub Judge, Palani.****Dated 28th day of April 2026, Tuesday****O.S. No.435/2015****(CNR. No.TNDG07- 000582-2015)**

1. P.Devarajan
2. Saritha

--- Plaintiffs

/Vs/

1. Mayilathal
 2. N.Natrayan (Died)
 3. N.Sivasubramaniyan
 4. S. Rengasamy
 5. P.Thulasimani
 6. Saraswathy
- (6th defendant impleaded as legal heir of deceased
2nd defendant as per order in I.A.No.3/2024,
dated 03.06.2025)
(Plaint amended as per order in I.A.No.4/25
dated 19.06.2025)

--- Defendants

This Suit was taken on file on 01.06.2015 and came before me for final hearing on 12.03.2026 in the presence of Mr.A.Abdulhameed, Learned Counsel for the plaintiffs and Mr.A.R.Rajendran, Learned counsel for the first defendant/counter claimant and Mr. P.Mahendran and Mr.B.Manoharan, Learned Counsels for the defendant Nos. 3 to 5 and the 6th defendant being remained exparte and upon hearing the arguments on both side and upon perusal of oral and documentary evidence adduced on both side and having stood over for consideration till this date, this court doth delivers the following:

JUDGMENT

The plaintiffs have filed the suit seeking for the relief of preliminary decree of partition in respect of 2/9th share in the suit schedule property and for cost.

1. The plaintiffs have filed the suit for partition of 2/9th share in the suit schedule property by alleging that the first defendant is the mother of plaintiffs and the father of plaintiff is one Palanisamy and the defendant Nos.2 and 3 are the brothers of first defendant. The defendant Nos. 4 and 5 are sons of third defendant. The first item of property belonged to Mr.Natchimuthu Gounder vide Sale Deed dated 15.07.1966. The second item of property is the ancestral property of Mr.Natchimuthu Gounder and the 3rd and 4th item of properties belonged to Mrs.Karupathal, maternal grandmother of plaintiffs vide Sale Deed dated 24.03.1975 and the said Karupathal died on 26.11.1992 leaving behind her husband Natchimuthu Gounder and her daughter and sons defendant Nos.2 and 3. And the said Natchimuthu Gounder died intestate on 28.12.2011 leaving behind the defendant Nos. 1 to 3 and so the first defendant acquired 1/3rd right and the second defendant acquired 1/3rd right and defendant Nos. 3 to 5 acquired 1/3rd right. And all the properties are in joint possession of the plaintiffs and the defendants and from the income accrued from the suit schedule property after deducting expenses proceeds and fruits accrued from the property was given to the plaintiffs and first defendant. The plaintiffs have 1/9th share each in the suit schedule property and the same was demanded to the defendants though the defendants admitted their right they are dragging to partition the property. The second defendant was mentally affected due to the accident that took place in the year 2011 and he has no issues and as the defendants are prolonging to partition the property the plaintiffs have filed the present suit. During the

pendency of the suit the second defendant died leaving behind his wife 6th defendant, and so sought to decree the suit.

2. The first defendant mother of the plaintiffs had filed written statement along with counter claim admitting the right of Natchimuthu Gounder and Karupathal in the suit schedule property. And further contended that in the first item of property first defendant has 1/3rd share and the second defendant had executed Release Deed dated 26.04.2013 in favour of the third defendant as if he has ½ right in the suit schedule property. And so it is false to say that the second defendant has ½ share in the first item of property and therefore the said document is not legally acceptable. And on the basis of the Release Deed the third defendant had executed Settlement Deed in favour of his son 4th defendant in respect of first item of property and it is false to say that he has acquired absolute right in his first item of property. And this defendant has 1/3rd share in the first item of property and in respect of item Nos. 3 and 4, 6th defendant along with defendant Nos. 3 and 4 had executed General Power of Attorney Deed in favour of second defendant dated 01.12.2009 and on the basis of the said Power Deed properties were sold to various persons and in the remaining property this defendant has 1/3rd right. After the death of parents of defendant Nos.1 to 3 the suit properties are in joint possession of the defendant Nos. 1 to 3. And due to misunderstanding between the first defendant and other defendants they had not given the fruits of the income received from the suit schedule property. And therefore 1/3rd right of this defendant has to be partitioned and paid Court Fee for the same and sought for the relief declaring that the Release Deed dated 26.04.2013 executed by second

defendant in favour of third defendant is not valid and the same is sham and nominal and so sought to allow the counter claim.

3. The contesting defendant Nos. 3 to 5 filed written statement admitting the right of Natchimuthu Gounder and Karuppathal in the suit schedule property and further alleged that the second item of property is not an ancestral property as alleged by the plaintiffs rather it is a Government land for which patta was granted in the name of defendant Nos. 2 and 3. And during the life time of Natchimuthu Gounder, as the first defendant is the only daughter she was given all Seervarisai for her marriage and he died on 28.12.2011. And thereafter the defendant Nos. 2 and 3 took care of first defendant and after the death of Natchimuthu Gounder the second defendant had executed Release Deed in favour of third defendant in respect of his $\frac{1}{2}$ share in the first suit schedule property on 26.04.2013 and the third defendant in turn executed Settlement Deed in favour of 4th defendant and so he becomes absolute owner of the first item of the property. And in respect of second item of property the second defendant had executed Settlement Deed dated 26.04.2013 in favour of the third defendant who in turn executed another Settlement Deed on the same day in favour of 4th defendant and so the 4th defendant is the absolute owner of the second item of the property. As regards third and fourth item of properties the first defendant has $\frac{1}{3}$ rd share and on the basis of the Power Deed executed by defendant Nos. 1, 3 and 4 in favour of the second defendant, the second defendant as a power agent had executed Sale Deed in respect of 4th item measuring 83- $\frac{1}{2}$ cents to various persons in particular to one Manivannan. S/o. Gopal in respect of 2141 sq.ft vide Sale Deed

dated 04.12.2009, to Duraisamy, S/o. Mariyappa Thevar in respect of 1368 sq.ft vide Sale Deed dated 11.12.2009, to one Krishnan, S/o. Murugappa Thevar in respect of 1615-1/4 sq.ft vide Sale Deed dated 11.12.2009, to one Arumugam, S/o. Muthusamy Thevar in respect of 1743 sq.ft vide Sale Deed dated 24.02.2010, in respect of 1789 sq.ft vide Sale Deed Dated 25.02.2010 to one Kamalakannan, in respect of 1447 sq.ft vide Sale Deed dated 25.02.2010 to one Mariyappan , S/o.Subramaniya Thevar, in respect of 1999 sq.ft vide Sale Deed dated 26.02.2010 to one Karnan,S/o.Palanisamy Thevar, to one K. Manoharan,S/o. Kaliyappa Thevar in respect of 1508 sq.ft vide Sale deed dated 25.02.2010, to one Duraiammal, W/o.Periysamay in respect of 1719-1/2 sq.ft vide Sale Deed dated 25.02.2010.

And after selling the properties in item Nos. 3 and 4 the remaining property is only 7 cents in which the first defendant has also 1/3rd share and the second defendant in respect of her 1/3rd share had executed Settlement Deed in favour of third defendant vide Sale deed dated 26.04.2013. And thereafter the third defendant acquired 2/3rd right in the said 7 cents. And in respect of 2/3rd share the third defendant executed Settlement Deed in favour of 5th defendant dated 26.04.2013 and these facts are known to first defendant even at the time of execution of the document. And therefore the claim of first defendant challenging the Settlement Deed executed by second defendant in favour of third defendant is barred by limitation and the predecessor in title of the item Nos. 3 and 4 are not added as party and so the suit is bad for non joinder of necessary parties. And the plaintiffs have not approached the court with clean hands and misrepresented the facts and so sought to dismiss the suit.

4. Based on the pleadings of both parties and documents the following issues were framed.

1. Whether the plaintiffs are entitled 2/9th share in the suit schedule property ?
2. Whether the suit is bad for non joinder of necessary parties?
3. To what other relief ?

And the following additional issues were framed as per the counter claim of first defendant on 14.07.2022.

1. Whether the first defendant is entitled for the relief of partition of 1/3rd share in the suit schedule property ?
2. Whether the first defendant is entitled for the relief of declaration to declare that the Release Deed executed by second defendant in favour of third defendant dated 26.04.2013 is null and void ?

5. On the side of the plaintiffs they had not led any evidence and the Learned Counsel of plaintiff reported no evidence on their side when this court sought clarification regarding non leading of evidence on plaintiff side. The first defendant examined herself as DW1 and through her Ex.B1 to Ex.B5 were marked and the 4th defendant was examined as DW2 through him Ex.B6 to Ex.16 were marked.

6. Though the plaintiffs have not adduced evidence as the plaintiffs are the sons of the first defendant and in the suit for partition both defendants and plaintiffs are plaintiffs, and also the fact that they claim right under the same party this court inclined to proceed further for the issues framed in the suit even though the plaintiffs have not led any evidence.

7. Issue No.2 :

It is the specific case of contesting defendant Nos. 3 to 5 that in respect of item Nos.3 and 4 of suit schedule property, the first defendant along with defendant Nos. 3 and 4 had executed Power Deed in favour of second defendant and the second defendant on the basis of the said Power Deed had executed various Sale deeds in favour of third parties. And the same is not denied either by the plaintiffs by way of replication and in evidence, or by the counter claimant/first defendant rather the first defendant herself admitted sale of item Nos. 3 and 4 to various persons.

8. Further, even though the defendant Nos. 3 to 5 had specifically narrated the names of the persons to whom the properties had been sold by the second defendant on the basis of the Power Deed standing in his name in respect of item Nos. 3 and 4, has not produced any documents to substantiate the same. However it is admitted fact that on the basis of the Power Deed the second defendant had sold to various persons. However to establish before this court as to the extent of land sold to the third persons in respect of 3rd and 4th item of properties no documents is available and so there is no material available to elucidate the remaining land available for partition,even though it is the case of defendant Nos 3 to 5 that the remaining extent available for partition is 7 cents. And the first defendant who is the mother of the plaintiffs herself admitted that the properties in item Nos. 3 and 4 were sold to various persons and sought partition in respect of the remaining properties.

9. Further the third parties who had purchased the suit item 3 and 4 properties were not added as parties though they are necessary parties to the suit nor the counter

claimant added the said parties. Hence both the suit and counter claim are bad for non joinder of necessary parties. Moreover as the third and fourth item of properties are self acquired properties of mother of defendant Nos 1 to 3, the plaintiffs have no locus standi to claim share in the said properties.

10. Issue No.1 :

Even as per the admitted case of the plaintiffs and other defendants that the first item of property belonged to Natchimuthu Gounder vide Ex.B6 Sale Deed and item Nos. 3 and 4 to Karupathal the parents of defendant Nos. 1 to 3 and the said Natchimuthu Gounder and Karupathal died intestate. In such circumstances as per Section 8 and 14 of Hindu Succession Act the legal heirs that is the defendant Nos. 1 to 3 alone are entitled for 1/3rd share. In such circumstances, the plaintiffs during the life time of first defendant who is their mother have no locus standi to file suit seeking partition.

11. As regards the second item of property as per the case of the plaintiffs it is an ancestral property of the Natchimuthu Gounder. However no pleadings available and documents produced to substantiate the ancestral nature of second item of property. On the other hand the contesting defendant Nos.3 to 5 had specifically contended in the written statement that the second item of property is the Government land for which Patta was issued in the name of defendant Nos.2 and 3, and on the basis of the Settlement Deed executed by second defendant in favour of third defendant the third defendant had executed a Settlement deed in favour of his son fifth defendant and thereafter he is in possession of the second item of property and

obtained patta in his name and produced the said patta as Ex.B15 which clearly shows that the second item of property is the Natham Nilavari Thooya Patta that stands in the name of 4th defendant. In such circumstances, the claim of the plaintiffs that the second item of property is an ancestral property and they have right in the said property is also without any basis.

12. And therefore the plaintiffs have no right to sue or in other words as per the Maxim "*Ubi jus ibi remedium*" "where there is a right, there is a remedy", the plaintiffs have not established their right to file suit in respect of the suit schedule properties and so they have no right to seek remedy before this court of law, and hence the suit is not maintainable.

13. Additional issue Nos. 1 and 2 :

It is admitted that the first item of property belonged to the father of the defendant Nos.1 to 3 and he died intestate. In such circumstances, the first defendant being the daughter of Natchimuthu Gounder is entitled for 1/3rd right. The contention of the defendant Nos. 3 to 5 that she was given sufficient Seervarisai even during life time of Natchimuthu Gounder for her marriage would no way take away the right of the first defendant to get her 1/3rd share in her father's property unless it is established that towards her one third share right the said Seervarisai was given. And therefore in the first item of property the first defendant has 1/3rd share. In such circumstances, the execution of Release Deed by the second defendant in favour of third defendant in respect of ½ share is not legally valid and binding on the first defendant in respect

of her 1/3rd share. As the second defendant is also having 1/3rd share in the first item of property the execution of the Release Deed by itself cannot be declared as null and void. However the Release Deed executed by the second defendant including the 1/3 rd share of the first defendant is not valid and it does not bind the first defendant. And therefore the Release Deed to the extent of 1/3rd share of the first defendant is not valid and binding on the first defendant.

14. As far as the third and fourth item of properties are concerned as observed in the previous issues it is admitted that the said properties were purchased by Karupathal Ex.B7 Sale deed and the portion of the item Nos. 3 and 4 were sold to the third parties. However the first defendant/counter claimant had scheduled the entire property purchased by Karupathal vide Ex.B7 Sale Deeds as items Nos 3 and 4, when admittedly portion of the said properties sold to third parties. Hence the description of property is not proper to grant one third share of the first defendant in Item Nos3 and 4. The first defendant ought to have proved the extent of land sold by the second defendant in favour of third parties and described the schedule of property in respect of the remaining property available for partition. Having not done so, it is not established as to the extent of land available for partition after selling the property to third persons. Moreover the said third persons who had purchased the property are not arrayed as parties and so the counter claim is also bad for non joinder of necessary parties. Hence the first defendant is not entitled for the relief of 1/3rd share in the item Nos. 3 and 4 of the properties.

15. Issue No.3 :

As the issue Nos 1, 2 are negatived, the plaintiffs are not entitled for any other relief.

In the result, the suit is dismissed and the counter claim is decreed in respect of 1/3rd share of first defendant in the first item of suit schedule property and the Release Deed dated 26.04.2013 is not binding on the first defendant in respect of her 1/3rd share and the counter claim is dismissed in respect of the second and third items of suit schedule properties. No cost is ordered considering the relationship between the parties.

Dictated to the steno-typist, transcribed and computerized by her, corrected and pronounced by me in the open court on this the 28th day of April 2026.

sd./K.Renugadevi,
**Principal Sub Judge,
Palani.**

Plaintiff side Witnesses and exhibits: Nil.**Defendant side witnesses**

1. DW1. - Mrs.Mayilathaal
2. DW2. - Mr.S.Rengasamy (4th defendant)

Defendant side Exhibits :

1. Ex.B1 - 28.12.2011 - Copy of legal heir certificate of Late.Natchimuthu Gounder.
2. Ex.B2 - 01.11.2012 - Cancellation of General Power of Attorney Deed executed by Mayilathal.
3. Ex.B3 - 26.04.2013 - SRO copy of Settlement Deed executed by N.Sivasubramaniyan in favour of S. Rengasamy.

4. Ex.B4 - 26.04.2013 - SRO copy of Partition deed executed by N.Sivasubramaniyan in favour of N.Natraya Gounder.
5. Ex.B5 - 26.04.2013 - SRO copy of Settlement Deed executed by P.Thulasimani in favour of Mr.N.Sivasubramaniyan.
6. Ex.B6 - 15.07.1966 - Online copy of Sale deed in the name of Natchimuthu Gounder.
7. Ex.B7 - 24.03.1975 - Copy of Sale deed executed by Thirumalaisamy Gounder in favour of Karupathal in respect of third and fourth items of suit property.
8. Ex.B8 26.04.2013 - Online copy of Partition executed by second defendant in favour of third defendant.
9. Ex.B9 26.04.2013 - Online copy of Settlement Deed executed by third defendant in favour of 4th defendant.
10. Ex.B10 26.04.2013 - Online copy of Partition Deed executed by 2nd defendant in favour of third defendant.
11. Ex.B11 26.04.2013 - Copy of Settlement Deed executed by third defendant in favour of fifth defendant.
12. Ex.B12 26.04.2013 - Online copy of Settlement executed by second defendant in favour of third defendant.
13. Ex.B13 26.04.2013 - Online copy of Settlement deed executed by third defendant in favour of 4th defendant.
14. Ex.B14 06.08.2019 - Copy of rectification document in respect of second item of property executed by N.Sivasubramaniyan in favour of S. Rengasamy.
15. Ex.B15 03.01.2024 - Copy of Natham Nilavari Patta in the name of 4th defendant (2 numbers) for patta No. 572.
- 16 Ex.B16 .. - Letter written by the husband of 1st defendant.

sd./K.Renugadevi,
Principal Sub Judge,
Palani.

PRINCIPAL SUB COURT,

PALANI.

O.S. No.435/2015

DRAFT/FAIR JUDGMENT

Judgment dated : 28.04.2026

