

IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE NO.I
KODAIKANAL

PRESENT : Thiru R. ARUN PANDIAN B.A.,B.L.,(Hons). M.L.,

District Munsif cum Judicial Magistrate No.I.Kodaikanal

Saturday the 01st day of August, 2026.

IA,No. 09 of 2018

in

Original Suit No. 219 of 2004

Between:-

1. Velankanni
2. Sironmani
3. Ravisaviour
4. Jeyamary
5. David Mani
6. Daniel

---- Petitioners/Defendants.

Vs

1. Kamalamary
2. Raja Baskar

---- Respondent/Plaintiff.

---- Respondent/Defendant.

This petition coming on 17.07.2026 for final hearing before me in the presence of Thiru. T.R.Thangamani, Advocate for the Petitioners, and Thiru. N. Ramachandran, Advocate for the 1st Respondent. The 2nd Respondent was set ex-parte, and after hearing the arguments on both sides and on perusal of the case records and having stood over for consideration till this day, this court delivered the following:

ORDER

This petition is filed under Order 26 Rule 13 of C.P.C to appoint an advocate as the court commissioner to divide the suit schedule properties into 8 equal shares by metes and bounds and allot such divided shares to them in terms of the preliminary decree and submit his plan and report in order to enable the court to pass the final decree in terms of the commissioner's report and also in accordance with the preliminary decree and pass a final decree with costs and thus render justice.

2) The contents of the petition in brief is as follows :-

The 1st Respondent/Plaintiff filed a suit for partition and for separate possession against the Petitioners/Defendants and 2nd Respondent/Defendant. The suit filed by the 1st

Respondent was decreed, and a preliminary decree was passed on 11.02.2010. The petitioners/defendants herein affirms and submits that, they did not take any steps to set aside the preliminary decree. Likewise, the 1st Respondent/Plaintiff, despite obtaining the preliminary decree, has not initiated any proceedings to effect the partition and has merely allowed the matter to remain pending without taking further action. Hence the Petitioners/Defendants have filed the present petition seeking to appoint an advocate commissioner to divide the suit properties into 8 equal shares and allot 1/8th share each to the petitioners in terms of the preliminary decree and submit his plan and report in order to enable the court to pass final decree and accordingly pass final decree with costs.

3) The respondents, namely Kala Mary and Raja Baskar, who were the plaintiff and the 4th defendant, respectively, in the suit culminating in the preliminary decree, were duly served with notice. The notice issued to the 2nd respondent was recorded as served. However, the 2nd respondent failed to enter appearance and was, consequently, set ex parte. The 1st respondent entered appearance and raised the following contentions. It is contended that the petitioners have suppressed material facts and therefore the petition is liable to be dismissed. The 1st respondent asserts that she instituted O.S. No. 219 of 2004 for partition, which was decreed on 11.02.2010, but states that the suit related only to 1.05 acres out of the total extent of 1.35 acres, and not the entire property. According to the 1st respondent, the original property belonged to her grandfather, Subbiah, and thereafter devolved upon her father, Arputhadass, by intestate succession. The 1st respondent further contends that her father, under a registered Will dated 12.11.2003, bequeathed 30 cents on the eastern side of the property to her, which she inherited by testamentary succession. It is asserted that the earlier partition suit specifically excluded the said 30 cents, and therefore the present petition seeking partition of the entire property is not maintainable. The respondent claims to have been in exclusive possession and enjoyment of the said 30 cents for over 20 years, with the revenue records standing in her name and taxes being paid by her. The respondent maintains that while she is willing to partition the remaining property, the petitioners are attempting to include her exclusive 30 cents with an intention to deprive her of her lawful property. Hence, she seeks dismissal of the petition with exemplary costs.

4) **The point for determination is whether this petition under order 26 rule**

13 of C.P.C has to be allowed or not?

5) Heard both sides. Records perused. It is the case of the petitioners that preliminary decree has been passed, hence they have filed the present petition seeking for final decree. It is the contention of the 1st respondent that, the petition is liable to be dismissed on the ground that the petitioners have suppressed material facts and wrongly seek partition of the entire property by including 30 cents claimed by her under a registered Will dated 12.11.2003, which, according to her, was excluded from the earlier partition decree and has remained in her exclusive possession and enjoyment. It is pertinent to note that the objector, the 1st respondent, Kamalamary, was the plaintiff who instituted the suit for partition, whereas the petitioners herein were arrayed as defendants. The petitioners, having failed to file a written statement, were set ex parte, and consequently, a preliminary decree came to be passed on 11.02.2010 based upon the extent and description of the suit property as furnished by the plaintiff herself. A perusal of the plaint filed by the 1st respondent unequivocally discloses that Item No.1 of the suit schedule property was described as measuring 1.35 acres in its entirety. No internal demarcation, subdivision, or separate boundaries were specified to exclude any portion thereof. Although the respondent now seeks to rely upon an alleged testamentary disposition in respect of 30 cents, the plaint proceeds on the footing that the entire extent of 1.35 acres constituted the suit property, without any reference to or exclusion of the alleged testamentary property. Likewise, a reading of the preliminary decree reveals no recital or finding recognising any testamentary instrument alleged to have been executed by Aruputhadass. No testamentary instrument of any sort stood marked behest respondent Kamalamary. Further, while the preliminary decree was passed on 11.02.2010, the present final decree proceedings were instituted only in the year 2018. During the intervening period of nearly eight years, the respondent, who herself had obtained the preliminary decree on the basis of the pleadings contained in the plaint, never questioned the extent or description of Item No.1 of the suit schedule property. Having invited the Court to pass the preliminary decree on the basis of her own pleadings, she cannot now be permitted to contend that the extent mentioned therein is erroneous or that a portion of the property stood excluded by virtue of a testamentary disposition. Such a contention is clearly hit by the doctrine of estoppel. Consequently, the objection raised by the respondent with regard to the extent of the suit property is devoid of merit and is liable to be rejected.

6) Learned Advocate Mr. O. Ayyar was appointed as the Advocate Commissioner on 30.07.2025. Pursuant to the said appointment, the learned Advocate Commissioner inspected Item No. 1 of the suit schedule property on 11.09.2025, along with the Surveyor, in the presence of the petitioners, their learned counsel, and the 1st respondent. Thereafter, the learned Advocate Commissioner inspected Item No. 2 of the suit schedule property on 19.11.2025, along with the Surveyor, in the presence of the petitioners and their learned counsel. On behalf of the 1st respondent, learned counsel Ms. Danam Mahalakshmi and Ms. Kalaiarasi were present during the inspection. On completion of inspection, the commissioner placed his report on 19.06.2026.

7) The preliminary Decree is perused. The learned counsel for the petitioners stated no objection. The first respondent filed objections contending that the Advocate Commissioner's report is liable to be rejected on the ground that it was submitted without conducting a proper survey of the suit property. According to the respondent, the learned Advocate Commissioner, instead of excluding 25 cents allegedly in the respondent's exclusive possession and entitlement, proceeded to divide the entire property into eight equal shares and earmarked a pathway. It is further contended that, although the notice issued by the Advocate Commissioner specified that the inspection of the 1.10-acre suit property would be conducted at 12.00 noon, the Commissioner informed the respondent that the property had already been inspected and measured prior to the scheduled time. The respondent therefore alleges that neither the Advocate Commissioner conducted a proper inspection of the suit property nor did the Surveyor undertake a proper measurement before submitting the report. The respondent has further objected that, instead of confining the exercise to the 1.10-acre suit schedule property and dividing the same into eight equal shares, the Advocate Commissioner has erroneously divided the entire extent of 1.35 acres into eight equal shares.

8) Though the respondent attempted to assail the Advocate Commissioner's Report on the ground that the survey was not properly conducted, no material whatsoever has been placed to demonstrate the technical infirmity or procedural defect in the survey. The respondent has failed to specify in what manner the survey was erroneous or contrary to

the accepted principles of survey. A bald assertion that the survey is defective or incorrect, without any supporting technical evidence, cannot invalidate a survey conducted by a qualified Surveyor, who is a person possessing the requisite expertise in the field. It is a settled principle that the burden of proving a fact lies upon the person who asserts it. In the present case, except for making a bare allegation, the respondent has neither produced any evidence nor substantiated the alleged defects in the survey. Consequently, the said contention cannot be accepted. The objection regarding the incorrect mention of the time of inspection is wholly insignificant and does not affect the merits of the Commissioner's Report. The report itself clearly records the presence of the first respondent at the time of inspection and survey of Item No. 1 of the suit schedule property, thereby demonstrating that no prejudice has been caused on account of such clerical discrepancy. The contention relating to the extent of Item No. 1 has already been considered and answered in Paragraph No. 6 above, and therefore requires no further discussion. Accordingly, this Court finds no merit in the objections raised against the Advocate Commissioner's Report. The report is accepted and taken on record, and shall form part of the materials to be considered for passing the final decree.

9) The learned Advocate Commissioner inspected both Item Nos. 1 and 2 of the suit schedule properties and conducted a survey with the assistance of the Surveyor. In respect of Item No. 1, comprised in T.S. No. 27, having a total extent of 1.35 acres, the property was measured and divided into eight equal shares, each measuring 13.83 cents. The respective shares were identified and marked as A, B, C, D, E, F, G, and H, and were distinguished by separate colour gradations in the Commissioner's plan. Similarly, in respect of Item No. 2, comprised in Survey No. 118/8, having a total extent of 0.18.5 hectares, the property was measured and divided into eight equal shares, each measuring 0.02.32 ares (approximately 5.73 cents). The respective shares were identified and marked as A, B, C, D, E, F, G, and H, and were likewise distinguished by separate colour gradations in the Commissioner's plan.

Result :-

10) **In the result**, the petition is allowed as follows:-

a) It is hereby ordered that a final decree be passed in respect of Item No. 1 of the

suit schedule property, namely T.S. No. 27, whereby an extent of 13.83 cents is allotted to each of the sharers, together with the respective boundaries and pathway, in accordance with the Advocate Commissioner's Report and the plan annexed thereto.

Accordingly, the portions marked in the Commissioner's plan are allotted as follows:

- Portion 'A' – to the 1st petitioner, Velankanni.
- Portion 'B' – to the 6th petitioner, Daniel.
- Portion 'C' – to the 5th petitioner, David Mani.
- Portion 'D' – to the 4th petitioner, Jayamary.
- Portion 'E' – to the 2nd respondent, Raja Baskar.
- Portion 'F' – to the 1st respondent, Kamalamary.
- Portion 'G' – to the 3rd petitioner, Ravi Saviour.
- Portion 'H' – to the 2nd petitioner, Sironmani.

The above allotments shall be subject to the boundaries, measurements, and pathway as delineated in the Advocate Commissioner's Report and the plan forming part thereof.

b) Similarly in respect of Item No. 2 of the suit schedule property, namely S. No. 118/8, whereby an extent of 0.02.32 ares is allotted to each of the sharers, together with the respective boundaries and pathway, in accordance with the Advocate Commissioner's Report and the plan annexed thereto.

Accordingly, the portions marked in the Commissioner's plan are allotted as follows:

- Portion 'A' – to the 1st petitioner, Velankanni.
- Portion 'B' – to the 6th petitioner, Daniel.
- Portion 'C' – to the 5th petitioner, David Mani.
- Portion 'D' – to the 4th petitioner, Jayamary.
- Portion 'E' – to the 2nd respondent, Raja Baskar.
- Portion 'F' – to the 1st respondent, Kamalamary.
- Portion 'G' – to the 3rd petitioner, Ravi Saviour.
- Portion 'H' – to the 2nd petitioner, Sironmani.

The above allotments shall be subject to the boundaries, measurements, and pathway as delineated in the Advocate Commissioner's Report and the plan forming part thereof.

- c) The Advocate Commissioner Report and the Plans annexed shall form part and parcel of this final decree.
- d) There is no order as to costs.
- e) The petitioners shall deposit Non Judicial Stamp papers for drafting of the decree within a month from today.
- f) The petitioners who seek the passing of a Final Decree, shall pay the requisite court fee under section 37 of TN Court fee and suit valuation act -1999 computed on the their respective shares allotted under the preliminary decree, before the final decree is engrossed.
- g) In the event, if the 2nd Respondent subsequently seeks allotment his share, he shall also pay the requisite court fee under section 37 of TN Court fee and suit valuation act -1955 computed on the his respective shares.

Directly dictated to the Steno-Typist, typed by him, corrected and pronounced by me in open court on this the 01st day of August 2026.

**District Munsif cum Judicial Magistrate No 1
Kodaikanal.**

Evidence and Documents:

- 1. Petitioner Side Evidence: Nil
- 2. Respondents Side Evidence: Nil
- 3. Petitioner side documents: Nil
- 4. Respondents side documents: Nil

**District Munsif Cum Judicial Magistrate No1,
Kodaikanal**

