

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DHARMAPURI

Present: Tmt.U.Monica,M.L.,
Additional District Judge,
Dharmapuri.

Friday, this the 31st day of January 2025

Original Suit No.174/2022
(CNR No.TNDP010020982022)

Murugan

... Plaintiff

/ versus /

1.Dhanapal
2.Raja

... Defendants

This case came before me on 23.01.2025 for final hearing in the presence of Mr.A.Sivaraju, Advocate for plaintiff, Mr.J.Kumaresan and Mr.K.Hariharan Advocates for first defendant and second defendant called absent and, set exparte. upon hearing both side arguments, on scrutiny of written arguments of first defendant, upon perusing the records and having stood over till this day for consideration, this court delivers the following:

JUDGMENT

This suit is filed for the relief of partition, permanent Injunction and costs.

2. The averments in the plaint in brief is as follows:

i) Periakkal, Perannan, Mani, plaintiff and defendants were born to Manickam and Muthu. The above said Mainckam died 46 years ago leaving behind ancestral properties bearing survey no.559/1 in Naduhalli village. Periakkal got married 43

years ago, she was given necessary sridhana during her marriage and she is living with her husband, Periannan got married 40 years ago, Mani got married 39 years ago and they are living separately. In respect of the ancestral properties, oral partition was effected in the year 1993, later same was registered by way of registered partition deed dated 02.07.1996. As the plaintiff and defendants were of tender age, they all lived together with their mother Muthu, they jointly cultivated betel leaves, sugar cane and also reared cows, sold milk and out of the income they have purchased suit properties in the name of plaintiff and first defendant by way of sale deed dated 28.09.1996. As the second defendant was minor at that time, his name not included and the properties were treated as joint family properties, tiled houses and cow shed were constructed in it. The well in the suit properties was deepened and its connection was changed from 3HP to 5HP. After the marriage of plaintiff and defendants, they are all residing separately. However, they are cultivating the suit properties jointly. Their mother Muthu died in the year 2021. The first defendant is not rendering proper account of the income from the suit properties and there is no cordial relationship between them, in spite of the repeated demands of the partition, the defendants did not choose to partition the suit properties, and he is attempting to make construction in the suit properties. Hence the plaintiff has filed this suit for permanent injunction restraining the defendants from alienating the suit properties, for permanent injunction restraining the defendants from making any construction in the suit properties.

3. The averments in written statement filed by the defendants in brief are as follows:

i) The oral partition has been effected 20 years ago, plaintiff is in possession and enjoyment of his share by cultivating betel leaves, sugarcane, groundnut and the first defendant is cultivating fodder crops and rearing cows. The plaintiff already filed O.S.No.125/2011 on the file of Sub Court, Dharmapuri for the relief of partition through his wife and the same was dismissed. The plaintiff is not entitled to file this suit on same cause of action for the same relief. The first defendant is constructing a house in his share in the suit properties by obtaining permission under the Prime Minister India housing scheme. As the plaintiff did not get interim injunction in the suit, he gave complaint to Mathikonpalayam Police Station from preventing first defendant from constructing the house. The Police upon enquiry warned plaintiff. Thereafter the plaintiff threatened the defendants through katta panchayatars. As the first defendant is a heart patient, only to threaten him and to grab the suit properties the plaintiff is doing everything. The second defendant was already allotted separate properties and he is supporting the plaintiff case. On 22.08.2022, plaintiff, second defendant, Thangavel, Sakthivel and Madhu attempted to beat mason, yet the police did not take any action upon complaint given by the first defendant. The cow shed, tiled house and new house under construction belong to first defendant and plaintiff has not right over it. As the value of the properties increased, the plaintiff requested the first defendant to exchange the properties. However the first defendant denied it.

Hence, the plaintiff in order to prevent first defendant from constructing house, filed this suit. The suit properties have been partitioned 22 years ago. The plaintiff has purchased separate lands. The second defendant is enjoying lands allotted to him near Mukanoor Aathimoolasamy Temple. There is no cause of action for the suit. The suit is liable to be dismissed.

4. Based on the pleadings, the following issues were framed.

- 1) Whether the plaintiff is entitled to partition as sought for?
- 2) Whether the plaintiff is entitled for the relief of permanent injunction restraining defendants from creating any alienation in the suit property?
- 3) Whether the plaintiff is entitled to permanent injunction restraining defendants from making any constructions in the suit property?
- 4) To what other relief, the plaintiff is entitled to ?

5. During the trial before this court, on plaintiff side, plaintiff was examined as PW.1, through him, Ex.A1 to Ex.A5 were marked. Mr.Manickam was examined as PW.2, Mr.Natarajan was examined as PW.3 and Ex.B1 was marked through him. On the defendants side, first defendant was examined as DW.1 and through him Ex.B2 to Ex.B14 were marked, Mr.Maadhu was examined as DW.2, Mr.Shankar was examined as DW.3, Mr.Manimegan was examined as DW.4 and no documents were marked through them.

6. Issue No.1 :

- 6.1) It is the case of the plaintiff that suit properties were purchased out of

income derived from joint family properties belonging to plaintiff and defendants in name of plaintiff and first defendant by way of Sale deed dated:28.9.1986, they are in joint possession and enjoyment of suit properties, plaintiff, defendants are each entitled to 1/3 share. The defendants are not partitioning properties, also making constructions in suit properties. Hence plaintiff has filed this suit for partition, for permanent injunction restraining defendants from creating any alienation over suit properties, for permanent injunction restraining defendants from making any constructions over suit properties and for costs.

6.2) The first defendant resisted suit by contending that oral partition has been already effected before 22 years, parties are in possession, enjoyment of their respective share, plaintiff has suppressed filing of O.S.125/2011 on the file of Sub Court, Dharmapuri for partition, so plaintiff is not entitled to partition.

6.3) The second defendant has chosen to remain exparte in this suit.

6.4) Admitted facts in this case is that Periyakkal, Periyannan, Madhu, Mani, plaintiff, defendants are children of Manickkam and Muthu. It is also admitted that joint family properties have been partitioned by way of registered partition deed dated:2.7.1996. Both parties admit that sale deed dated:28.9.1996 in respect of suit properties is in name of plaintiff and first defendant. The nature of suit properties has to be first determined in this case.

6.5) The learned plaintiff counsel argued that suit properties were purchased out of income derived from joint family properties, hence suit properties are also joint

family properties. It is important to point out that although plaintiff alleges that out of income derived from joint family properties, suit properties were purchased, he has not sought for partition in respect of other joint family properties. He has not filed any documentary evidence to prove income derived from joint family properties. Further plaintiff's wife has filed O.S.125/2011 on the file of Sub court, Dharmapuri seeking partition in respect of suit properties alleging that suit properties were purchased jointly by plaintiff and first defendant in this suit. The plaintiff has not disclosed about said suit in this case. The learned plaintiff counsel argued that plaintiff's wife has no right to file suit seeking partition, so averments in O.S.125/2011, will not bind plaintiff. The plaintiff at the time of cross examination deposed as follows:

எனது மனைவி எனக்காக பாகம் கேட்டு தருமபுரி சார்பு நீதிமன்றத்தில் வழக்கு போட்டார் என்றால் சரிதான். நான் வெளிநாட்டில் இருந்ததால் எனது மனைவி எனக்காக வழக்கு போட்டார் என்றால் சரிதான். நான் வெளிநாட்டில் சென்று வெளி செய்த போது அங்கு திருட்டு வேலையில் ஈடுபட்டதால் அங்கிருந்து ஓடி வந்து விட்டேன் என்றால் சரியல்ல. என் மனைவி போட்டுள்ள வழக்கு சொத்தும் இந்த வழக்கு சொத்தும் ஒன்றே தான் என்றால் சரிதான். 01.04.20/16 அன்று ஒஎஸ் 125/11 என்ற வழக்கு என் மனைவி போட்ட வழக்கு வழக்கிற்கு ஆஜராகாததால் தள்ளுபடியாகி விட்டது என்றால் சரிதான்.

It is made out from his cross examination that his wife filed OS.125/2011 on his behalf in respect of suit properties, said suit was dismissed for default. Hence it is

obvious that his wife has filed suit on his behalf, only as per his instructions, so plaintiff had knowledge about filing of O.S.125/2011 and averments in that suit. Therefore, averments in above suit, binds plaintiff. In O.S. 125/2011, the plaintiff's wife admitted that suit properties belong to plaintiff and first defendant jointly alone. In that suit, it is not plaintiff case, that second defendant has right over suit properties and it is plaintiff case second defendant has no right over suit properties. The evidence of PW.1 is as follows;

என்னுடன் பிறந்தவர்கள் மாதா, மணி, தனபால், முருகன், ராஜா. மாதா, மணிக்கு பொது குடும்பத்திலிருந்து சொத்தை பிரித்து பாகம் கொடுத்து விட்டார்கள் என்றால் சரிதான். எனக்கு சிறு வயதாக இருக்கும் போதே மாதா, மணிக்கு பாகம் பிரித்து எனது அம்மா கொடுத்து விட்டார். ராஜாவிற்கும் 20 வருடத்திற்கு முன்பே பாகம் பிரித்து கொடுத்து விட்டார்கள் என்றால் சரிதான். அது போல் பாகம் பிரித்து கொடுக்கப்பட்ட சொத்துக்களுக்கு அவர் அவர்கள் பெயரில் பட்டா, சிட்டா உள்ளது என்றால் சரிதான். தாவா சொத்துக்கள் சம்பந்தமாக ஏற்கனவே தனி தனியாக பாகம் ஏற்பட்டு அவர் அவர்கள் தனி தனியாக அனுபவித்து வருகிறோம் என்றால்கிரியல்ல. பாகமே ஏற்படவில்லை.

The plaintiff clearly admitted that oral partition has been effected in respect of joint family properties, second defendant was allotted properties twenty years, ago, revenue records have been changed, but alleges that no partition has been effected in respect of suit properties.

6.6) The plaintiff in order to establish his case examined PW.2 Mr.Manickam,

father in law of second defendant and PW.3 Mr.Nadarajan who have given evidence to effect that suit properties are undivided joint family properties. PW.2 evidence during cross examination is as follows:

2) வாதி முருகன் பெயரில் 6 ஏக்கர் நிலம் வாங்கப்பட்டு அவர் பெயரில் பட்டா, சிட்டா உள்ளது என்றால் சரிதான்.

PW.2 admitted that plaintiff has purchased six acres of land. PW.3 evidence at the time of cross examination is as follows:

என் நிலத்திற்கு மேற்குபுறம் வாதியின் நிலங்கள் உள்ளது. அதில் தென்னை மரங்கள் உள்ளது என்றால் சரிதான்.

It is made out from PW.3 cross that plaintiff is owning lands separately.

6.7) The learned plaintiff counsel argued that first defendant during cross examination admitted joint possession and enjoyment of family properties by first defendant. This court shall analyse evidence of first defendant. The evidence of first defendant during his cross examination is as follows:

பாகபிரிவினைக்கு பிறகும் நான், வாதி, 2 பிரதிவாதி எல்லோரும் எங்களுக்கு ஒதுக்கப்பட்ட பாகத்தை விவசாயம் செய்து வந்தோம் என்றால் சரிதான். எங்கள் பாக சொத்தில் வெற்றிலை தோட்டம், கறவை மாடுகள் வைத்து பால் வியாபாரம் செய்து வந்தோம். விவசாய செலவுகளையும், குடும்பத்தில் வரவு செலவுகளையும் நானும், எனது அம்மாவும் தான் பார்த்து வந்தோம். எனக்கு விவசாயம் மற்றும் பால் வியாபாரத்தை தவிர வேறு தொழில் கிடையாது.

3) தாவா சொத்து எங்களுக்கு பாகமாக வந்த வருமானத்திலிருந்து

இருந்து தான் வாங்கப்பட்டது. எனக்கும், வாதிக்கும் சேர்த்து 3 1/4 ஏக்கர் பத்திரம் செய்தோம். பிறகு 12 ஏக்கர் நிலத்தை வாதியும், 2பிரதிவாதியும் எனக்கு படிப்பறிவு இல்லாததால் அவர்கள் பெயரில் செய்து கொண்டார்கள். தாவா சொத்துக்களை வாங்கும் போது 2ம் பிரதிவாதி 11ம் வகுப்பு படித்து கொண்டிருந்தார் என்றால் சரிதான்.

On proper assessment of DW.1 testimony, it is made out his evidence is that they were cultivating their properties, out of income derived from their shares, suit properties were purchased. It is not evidence of first defendant that suit properties were purchased out of joint family income. Hence contention of plaintiff counsel cannot be accepted, when more particularly plaintiff admitted that oral partition has been effected in respect of joint family properties.

6.8) From plaintiff side evidence, it emerges that partition has already taken place in respect of joint family properties, and plaintiff and defendants are in separate possession and enjoyment. In O.S 125/2011 filed by plaintiff's wife upon his instructions seeking partition in respect of suit properties, it has been stated that suit properties belong to plaintiff and first defendant alone.

6.9) The plaintiff has not proved that from income derived from joint family properties, suit properties were purchased. As plaintiff has not proved that suit properties were purchased in name of first defendant and plaintiff out of joint family income, it cannot be held that suit properties are joint family properties. The second defendant has not chosen to contest the case even after receipt of summons, so it has be arrived that he voluntarily chose to remain exparte in this suit. Therefore it has to

be held that suit properties belong to plaintiff and first defendant alone and second defendant has no right over suit properties.

6.10) In light of foregoing discussions, this court holds that suit properties are not purchased out of joint family income as contended by plaintiff and it has been purchased jointly by plaintiff and first defendant alone. The plaintiff alleges that he is entitled to partition in respect of suit properties. Per contra, the first defendant allege that oral partition has been effected already in respect of suit properties. The burden lies upon the first defendant to prove that oral partition has been already effected.

6.11) The first defendant has alleged in his written statement, evidence that oral partition has been effected 22 years ago, also examined DW.2-Madhu, DW.3-Shankar and DW.4-Manimegan to prove the alleged oral partition. It is important to point out that in written statement filed by defendant in OS. 125/2011 on the file of sub court, Dharmapuri, he has taken a specific stand that suit properties belong to him alone, and plaintiff has no right to claim partition in respect of suit properties. It is not his case that partition was effected in respect of suit properties. The defendant, however, has taken a contrary stand in this case, that partition has been effected in respect of suit properties 20 years ago. The contrary stand taken by defendant affects his case. The defendant who has claimed absolute ownership over suit properties, cannot be permitted to contend that oral partition has been already effected, in which plaintiff was allotted half share.

6.12) DW.2-Madhu has filed Chief affidavit to effect that his father divided the

suit properties between plaintiff and first defendant 22 years ago, and parties are in separate possession and enjoyment of their respective share. His evidence during his cross examination is as follows:

பூர்வீக சொத்துக்களில் பாகம் வந்த சொத்துக்களின் வருமானத்திலிருந்து தான் வாதி, பிரதிவாதிகள் வழக்கு சொத்துக்களை வாங்கினார்கள் என்றால் எனக்கு தெரியாது. 22 வருடத்திற்கு முன்பாக எனது அப்பா பாகம் பிரித்து கொடுத்தது பற்றி எனக்கு தெரியாது.

2) ராஜாவிற்கு தனி பாகம் கொடுக்கப்பட்டது. 3 ஏக்கர் நிலத்தில் முருகனும், தனபாலும் பாதி பாதி என்றும் கிணற்றில் மூன்று பாகம் என்று பிரிக்கப்பட்டது. இப்போதையிலிருந்து ஒரு வருடத்திற்கு முன்பாக மேற்சொன்ன பாகம் பற்றி பேசப்பட்டது. ஆனால் அதற்கு மூன்று பேரும் ஒத்துக்கொள்ளவில்லை.

It is made out from the cross examination is that he is not aware of the alleged partition, his evidence is only that plaintiff and defendants did not agree to the partition arrangement one year ago. As DW.2 is not aware of the alleged partition, his evidence does not in any way support defendant case.

6.13) DW.3-Shankar has given evidence to the effect that the first defendant purchased 1.5 acres of land out of his own funds from Manimegan, however, sale deed was obtained in the name of second defendant and the above property was allotted to second defendant as per the advice of elders, oral partition was effected in respect of the suit properties 22 years ago and parties are in separate possession and enjoyment of their respective share. DW.3 at the time of his cross examination

admitted that, he does not know the details of the property purchased by first defendant from Manimegan. His evidence that sale deed was obtained in the name of first defendant in respect of property purchased from Manimegan is factually not correct. Hence the evidence of DW.3 is want of material particulars. So much reliance cannot be placed upon his evidence.

6.14) DW.4-Manimegan deposed that the first defendant paid sale price, purchased properties from him, however sale deed was obtained in the name of second defendant and suit properties were already orally partitioned. His evidence at the time of his cross examination is as follows:

4) என்னுடைய பிரமாண வாக்குமூலத்தில் 23 வருடத்திற்கு முன்பாக பஞ்சாயத்து நடந்ததாக சொல்லப்பட்டிருக்கும் விவரங்களை நான் எதுவும் சொல்லவில்லை.

His evidence is that the averments in the chief affidavit to effect that panchayat was held 23 years ago is not correct. Hence his evidence does not in any way support the first defendant case.

6.15) On perusal of Ex.B4-Patta no.965 in the name of the plaintiff, defendant and their brothers in respect of the survey no.599/1, Patta no.386 in the name of first defendant in respect of the survey no.101/1 and 101/2, Ex.B5-Patta no.1160 in the name of plaintiff in respect of survey no.100/1A, patta no.2666 in the name of plaintiff in respect of survey no.137/4, Ex.B6-Patta no.2852 in the name of second defendant in respect of survey no.89/2B, Ex.B7-Patta no.1125 in the name of plaintiff and second defendant in respect of survey no.246/1A2 and 246/1A3, Ex.B14-Patta

no.2852, 1125, 2666, 1160, it is evident that revenue records have been changed in respect of joint family properties, patta stands in their individual name and there are separate properties in the name of plaintiff and defendants.

6.16) Ex.B10-Patta no.719 and patta no.233 in respect of suit properties jointly stand in the name of plaintiff and first defendant. There is no explanation on the part of the first defendant as to why revenue records have not been mutated when oral partition is alleged to taken place before 22 years. Ex.B8-Kist receipt, Ex.B9-House tax receipt have been paid after the filing of the suit, so no reliance can be placed. Ex.B12-House tax receipt dated:8.12.2017. As far as Ex.B12-loan closure receipts is concerned, there is no connected documents. So these documents are not sufficient to prove alleged oral partition. The learned defendants counsel contended that first defendant has obtained loan and constructed house in suit properties. It is clear from cross examination of first defendant, during pendency of suit he constructed the house. Hence same will not give any advantage to him.

6.17) In view of foregoing discussions, this court holds that defendant has not proved alleged oral partition. The learned defendant counsel relied upon judgment of **honourable Supreme court in Vineetha Sharma vs Rakesh Sharma(2020 5 CTC 302)** and contended that oral partition is valid. The above authority is not of any assistance to defendant, as it is found that the suit properties still remain intact as the joint properties of plaintiff and first defendant. Hence it has to be held that plaintiff and first defendant are equally entitled to suit properties which jointly belong

to plaintiff and first defendant. Hence this issue is decided in favour of plaintiff.

7.Issue nos.2 & 3:

As already decided in earlier issue, plaintiff is entitled to partition in respect of suit properties. In view of the strained relationship between the parties and to prevent multiplicity of proceedings, this court is of opinion that defendants have to be restrained by way of permanent injunction from alienating the plaintiff's 1/2 share in suit properties and from making any constructions in suit properties, until partition is effected in accordance with law. Hence these issues decided in favour of plaintiff.

8.Issue no.4:

As already decided in earlier issues, plaintiff is entitled to partition in respect of suit properties, permanent injunction restraining defendants from alienating the plaintiff's 1/2 share in suit properties and from making any constructions in suit properties, until partition is effected in accordance with law. Hence this issue is decided in favour of plaintiff.

In the result,

(i). The suit is decreed and plaintiff is entitled to 1/2 share in the suit properties and preliminary decree is passed accordingly.

(ii). That the plaintiff is entitled to permanent injunction restraining the defendants from creating any encumbrance in respect of the plaintiff's undivided 1/2 share in the suit properties until partition is affected by metes and bounds in accordance with law.

(iii). That the plaintiff is entitled to permanent injunction restraining the defendants from making any constructions in respect of the plaintiff's undivided 1/2 share in the suit properties until partition is affected by metes and bounds in accordance with law.

(iv). In view of relationship between the parties, no cost is awarded.

Dictated to the Steno-Typist, typed by him, corrected and pronounced by me in Open Court, this the 31st day of January 2025.

Additional District Judge,
Dharmapuri.

Plaintiff side Evidence:

PW.1 -Mr.Munusamy

PW.2- Mr.Muniappan

PW.3 - Mr.Gopal

PW.4- Mr.Sairaman

Plaintiff Side Exhibits:

Ex.A1	09.07.2022	Registered Sale deed - Certified copy.
Ex.A2	12.07.2022	Patta No.233 - Akkamanahalli Village - Online Extract
Ex.A3	12.07.2022	Patta No.719 - Akkamanahalli Village - Online Extract
Ex.A4	16.07.2022	Patta No.89 - Akkamanahalli Village - Online Extract
Ex.A5	16.07.2022	Guideline value document No.93- Online Extract

Defendant Side Evidence:

DW.1 Mr.Dhanapal.

DW.2 - Mr.Maadhu.

DW.3 - Mr.Shankar.

DW.4 - Mr.Manimegan.

Defendant Side Exhibits:

Ex.B1	27.02.1996	Registration Deed - original
Ex.B2	29.07.2011	Certified copy of plaint in O.S.125/2011 on the file of Subordinate Court, Dharmapuri
Ex.B3	07.12.2011	Certified copy of written statement in O.S.125/2011 on the file of Subordinate Court, Dharmapuri
Ex.B4	24.07.2015	Computerized patta, chitta in the name of plaintiff
Ex.B5	28.08.2022	Computerized patta in the name of plaintiff
Ex.B6	28.08.2022	Computerized patta in the name of plaintiff and second defendant
Ex.B7	28.08.2022	Computerized patta in the name of second defendant - online extract
Ex.B8	23.02.2024	Property tax receipt in the name of first defendant - original
Ex.B9	6.03.2016 and 23.03.2022	House tax receipt (2no.s) in the name of first defendant's wife - original
Ex.B10	06.12.2021	Computerized patta of suit property
Ex.B11	06.12.2021	Computerized patta of suit property
Ex.B12	08.12.2017	House tax receipt in the name of first defendant - original
Ex.B13	09.03.2022	Loan closure voucher (2 no.s) - original
Ex.B14	08.0.2019	Computerized patta in the name of plaintiff and 1st defendant.

Additional District Judge,
Dharmapuri.

Draft/Fair judgment

O.S.No.174/2022

Dt:31.01.2025