



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

**Present: Thiru.V.Damodaran, B.L.M., M.L.,  
Additional District Judge, Krishnagiri**

**Thursday, this the 02nd day of April 2026**

**Appeal Suit No.51/2023  
(CNR No.TNKI01-004723-2023)**

1. K. Venkatesan
2. Kumar
3. Padmavathi (Died)
4. Elango
5. Ashwin
6. Abinav Elango

... Appellants/ Defendants  
Nos. 5, 6 and 7

(Amended as per order in IA.No.3/2025,  
dated 28.01.2025)

/ Versus /

1. Hassena
2. Ayisha

...Respondents/ Plaintiffs

3. Mumtaz
4. Jameel
5. K.H. Ameerjan
6. Mujibur Rahaman

... Respondents/ Defendants  
Nos. 1, 2, 3 and 8

This appeal is filed against the Judgment and Decree in O.S.No.22/2014 dated:  
31.07.2023 of Subordinate Judge, Uthangarai.

**Between:**

1. Hassena
2. Ayisha

... Plaintiffs

/ versus /



1. Mumtaz
2. Jameel
3. K.H. Ameerjan
4. Manimekalai (Died)
5. K. Venkatesan
6. Kumar
7. Padmavathi
8. Mujibur Rahaman

... Defendants

This appeal coming for final hearing before me on 24.03.2026 in the presence of Thiru.T.S. Kannaiyan, Advocate for the Appellants/ Defendants 5, 6 and 7 and Thiru. R. Venkatasamy, Advocate for the Respondents 1 and 2 / Plaintiffs 1 and 2 and Thiru.T.M. Gowrishankar, Advocate for the Respondents 3 to 6 / Defendants 3 to 6 and upon hearing the arguments of Appellant side counsel and Respondent side counsel and on perusal of entire case records and having stood over till this day, this court delivered the following:

### **JUDGMENT**

The present appeal has been preferred by the appellants/ defendants 5 to 7 as against the decree and judgment passed by the learned Subordinate Judge, Uthangarai. The learned Subordinate Judge Uthangarai in OS.No.22/2014 decreed the suit, thereby granting preliminary decree of partition of 7/96 shares each for the plaintiffs herein and for separate possession and further directing the defendants 5 to 7 not to make any encumbrance with respect of suit property. As against the said decree and judgment, the present appeal has been preferred.

### **2) The contents of the plaint averments is as follows:**

The suit lands fully described were allotted to late K.H. Gulab Jan and the 3<sup>rd</sup>



defendant in the partition effected between Shekh Hussain Shahib and his sons, namely K.H. Ismail Shahib, K.H. Ahmad Basha, K.H. Gulab Jan, and the 3<sup>rd</sup> defendant under a registered Partition Deed dated 02.11.1970. As per the terms of the registered Partition Deed dated 02.11.1970 common half share in the suit S.No. 185, 186 and 187 of Mookanpatti village was allotted to K.H. Gulab Jan, and the remaining half share in the same was allotted to 3<sup>rd</sup> defendant. K.H. Gulab Jan, the 3<sup>rd</sup> defendant also got some other property in the said partition, but they are not subject matter of the present suit. Thus said Gulab Jan, the 3<sup>rd</sup> defendant became the owner of the suit property by virtue of registered Partition Deed dated 02.11.1970 and each became entitled to the common half share in the suit property. The said K.H. Gulab Jan and the 3<sup>rd</sup> defendant had been in joint possession and enjoyment of suit property as co-owners thereof. The 1<sup>st</sup> defendant is the wife of K.H. Gulab Jan. The plaintiffs and the 2<sup>nd</sup> defendant are the children of K.H. Gulab Jan. The said K.H. Gulab Jan died on 24.12.1996, leaving behind his legal heirs, namely the plaintiffs and the defendants 1 and 2 to succeed to his common half share in the suit property. As per the law, the 1<sup>st</sup> defendant is entitled for 1/8th share and 2<sup>nd</sup> defendant entitled for 14/48 in the half share held by Gulab Jan in the suit properties. Thus, the 1<sup>st</sup> defendant is entitled for 1/16th share, that is 6/96 share in suit property and 1<sup>st</sup> defendant is entitled for 14/96 share. So also, the 8<sup>th</sup> defendant is entitled for 14/96 shares. Each of the plaintiffs 1 and 2 became entitled for 7/96 share in suit property. The plaintiffs together became entitled for 14/96 share in the suit property. The 3<sup>rd</sup> defendant having 48/96 share in the suit property. After death of said Gulab Jan, the



plaintiffs and the defendants 1 and 2, representing the branch of the K.H. Gulab Jan and 3<sup>rd</sup> defendant have been in joint possession, enjoyment of suit property and they have been enjoying the suit property as co-owner thereof. The plaintiffs 1 and 2 got married in the year 1997, 2001 respectively and thereafter they used to come to the suit lands whenever time permitted and they used to get the share in the Mahasool derived from the suit lands. The 8<sup>th</sup> defendant who was then a minor had been in custody of 1<sup>st</sup> defendant. Utilizing the absence of plaintiffs 1 and 2 from the suit village and the minority of the 8<sup>th</sup> defendant, defendants 1 to 3 joined together and created a registered Sale Deed dated 26.05.2003 purporting to convey the suit lands in favour of 4<sup>th</sup> defendant. The registered Sale Deed dated 26.05.2003 was executed by defendants 1 and 2 only and the 8<sup>th</sup> defendant was shown as a minor who claimed to have been represented by his guardian mother, namely 1<sup>st</sup> defendant. Plaintiffs 1 and 2 were not parties to the Sale Deed dated 26.05.2003 executed by defendants 1 to 3. The 1<sup>st</sup> defendant has no authority or power to deal with the share of the then minor 8<sup>th</sup> defendant and to execute the Sale Deed on his behalf as a guardian in favour of 4<sup>th</sup> defendant. As per Muslim law, the 1<sup>st</sup> defendant was not a guardian for the property owned by her minor son. She could not deal with the share held by the 8<sup>th</sup> defendant in suit property and she could not convey the same in favour of any party including 4<sup>th</sup> defendant. The Sale Deed executed by 1<sup>st</sup> defendant on behalf of the minor 8<sup>th</sup> defendant claiming as a guardian is void ab initio and the share held by the 8<sup>th</sup> defendant in suit property was not at all affected by the said Sale Deed dated 26.05.2003. The 8<sup>th</sup> defendant ignores the Sale Deed dated 26.05.2003, as it is void



ab initio in respect of his share and did not affect any transfer of share of the 8<sup>th</sup> defendant in the suit properties. 8<sup>th</sup> defendant continues to be the owner of the 14/96 shares in suit property. Plaintiffs 1 and 2 were majors on 26.05.2003 were not parties to the Sale Deed dated 26.05.2003 and therefore, their 14/96 share in suit property remained unaffected. As the plaintiffs 1 and 2 were not parties to the said Sale Deed, plaintiffs 1 and 2 are not bound by the said Sale Deed, so they ignore the same. Thus, the plaintiff who are having 14/96 share in the suit property have continued to enjoy this possess the suit property along with the defendants. The plaintiff having come to know about the creation of Sale Deed dated 26.05.2003, in the name of 4<sup>th</sup> defendant only in the month of November 2012, decided that it was no more possible to remain joined with the defendants 1 to 3 and demanded the defendants to effect partition of suit property and allow separate possession of their 14/96 share in suit property. But the defendants have been giving evasive, untenable replies. Hence, the plaintiffs was constrained to file the suit for partition and for separate possession of the 14/96 share in the suit property. The plaintiffs realized and learnt that the 4<sup>th</sup> defendant has been making arrangement to alienate the suit property to other 3<sup>rd</sup> parties and defeat the relief for the shares held by the plaintiffs in the suit property. Therefore, the plaintiffs was seeking relief of restraining the 4<sup>th</sup> defendant from alienating suit property or making any encroachment of suit property. It is further submitted that originally the plaintiff and the 8<sup>th</sup> defendant filed the suit, while pending the suit, the 8<sup>th</sup> defendant not co-operated with the plaintiff, to proceed the suit and as such he was transferred as the 8<sup>th</sup> defendant in the suit. While the suit is pending, the 4<sup>th</sup> defendant died on



30.01.2013, leaving behind the defendants 5 to 7 as a legal heirs. Hence, for proper adjudication of the suit, the defendants 5 to 7 were added as parties to the suit. Since there is no amicable partition of suit property, the suit has been filed by the plaintiff herein, claiming 14/96 share in the suit property.

**3) The 4<sup>th</sup> defendant filed written statement is as follows:**

The 4<sup>th</sup> defendant filed written statement denying all averments contained in the plaint are false, except those that are specifically admitted by the defendant herein and asked the plaintiff to strict proof of the same. The 4<sup>th</sup> defendant submit that plaintiffs 1 and 2 and defendants 1 to 3 joined together as a plaintiffs and filed a suit as against this 4<sup>th</sup> defendant in OS No.149/2012 and the case was posted for trial on 08.04.2013 and they have engaged a single advocate for all the six plaintiffs in OS.No. 49/2012 but divided as two warring faction and filed the present suit. Hence, it is very much clear that the plaintiff and the defendants 1 to 3 are colluded together and filed the above said collusive suit. The 4<sup>th</sup> defendant submit that the plaintiffs had been excluded from possession of the property for the past ten years. Therefore, the court fee paid by the plaintiff in his suit is incorrect and suit is liable to be dismissed on this ground also. The 4<sup>th</sup> defendant submit that the 4<sup>th</sup> defendant purchased a scheduled property to an extent of 5.46 acres of land by way of registered Sale Deed dated 26.05.2003 registered as Doc.No. 584/23 with the Sub-Registrar, Pochampalli. From the date of purchase, the 4<sup>th</sup> defendant is in possession enjoyment of the suit property even to the knowledge of plaintiffs, on the day the 4<sup>th</sup> defendant purchased. The 4<sup>th</sup> defendant invested huge amounts and improved the



lands and the 4<sup>th</sup> defendant erected solar fence throughout the boundary of the entire land by investing Rs.1,50,000/- and the 4<sup>th</sup> defendant planted 600 coconut plants and provided a drip irrigation system by using PVC pipes with the help of water sources available in the adjacent land belonging to the 4<sup>th</sup> defendant's husband. The 4<sup>th</sup> defendant denies the allegation contained in the para No.4 of the plaint that as per Muslim law, the 1<sup>st</sup> defendant is entitled to 1/8th share, and the 2<sup>nd</sup> defendant is entitled for 14/48 share in the half share held by K.H. Gulab Jan in the suit property and thus 1<sup>st</sup> defendant became entitled for 1/8th into 1/2 equal to 1/6 share in the suit property and the 1<sup>st</sup> defendant entitled for 14/96 share and 3<sup>rd</sup> plaintiff entitled for 14/96 shares and each plaintiffs 1 and 2 became entitled for 7/96 shares in suit property and the plaintiff together became entitled for 28/96 share in suit property and 3<sup>rd</sup> defendant was having 48/96 share in suit property and after the death of the said Gulab Jan, the plaintiff and the defendants 1 and 2 representing the branch of K.H. Gulab Jan and 3<sup>rd</sup> defendant have been in joint possession enjoyment of suit property and they were enjoying the suit property as co-owners thereof are absolute false. The averments contained in the para No.5 of the plaint that the plaintiffs were collectively enjoying the suit property and was getting mahasool from the defendants 1 and 2 was denied as false. The 4<sup>th</sup> defendant denies all averment and allegation mentioned in the para No.5 of plaint, the plaintiffs 1 and 2 got married in the year 1997 and 2001 respectively and there afterwards they used to come to the suit land whenever time permitted and they used to get their share in the mahasool derived from the suit lands and the 3<sup>rd</sup> plaintiff who were then minor had under the custody



of 1<sup>st</sup> defendant and utilizing the absence of plaintiffs 1 and 2 from the suit place and the minor under 3<sup>rd</sup> plaintiff, defendants 1 to 3 joined together and created registered Sale Deed dated 26.05.2003 purporting to convey the suit land in favour of the 4<sup>th</sup> defendant and registered Sale Deed dated 26.05.2003 was executed by defendants 1 and 2 only and the 3<sup>rd</sup> plaintiff, who was shown as a minor, was claimed to have been represented by his guardian, namely, namely, the 1<sup>st</sup> defendant and plaintiff and the plaintiffs 1 and 2 were not parties to the Sale Deed dated 26.05.2003 executed by defendants 1 to 3 and the 1<sup>st</sup> defendant had no authority or power to deal with the same of the minor 3<sup>rd</sup> plaintiff and to execute the Sale Deed on his behalf as a guardian in favour of 4<sup>th</sup> defendant. And as per Muslim law, the 1<sup>st</sup> defendant was not guardian of the property owned by her minor son, and she could not deal with the share held by minor 3<sup>rd</sup> plaintiff in the suit property and she could not convey the same in favor of any party including 4<sup>th</sup> defendant and the Sale Deed executed by 1<sup>st</sup> defendant on behalf of the minor 3<sup>rd</sup> plaintiff claiming as a guardian is void ab initio and the share held by the 3<sup>rd</sup> plaintiff in suit property was not at all affected by the said Sale Deed dated 26.05.2003 and 3<sup>rd</sup> plaintiff ignores the Sale Deed dated 26.05.2003 as it's void ab initio in respect of a share and not affected or transfer the share of 3<sup>rd</sup> plaintiff in suit property and 3<sup>rd</sup> plaintiff continues to be owner of 14/96 share in the suit property and the plaintiffs 1 and 2 were were not be parties to the Sale Deed dated 26.05.2003 and thereafter their 14/96 share in the suit property remained unaffected as the plaintiffs 1 and 2 were not parties to the said Sale Deed are denied as false. Plaintiffs 1 and 2 are not bound by the Sale Deed, and so they



ignore the same and thus plaintiffs who are having 28/96 share in the suit property have continued to enjoy the possess the suit property along with the defendant etc., as absolute false. The 4<sup>th</sup> defendant denies all the above mentioned. Para No.6 of namely plaintiffs having came to know about the creation of Sale Deed dated 26.05.2003 in the name of 4<sup>th</sup> defendant Valli in the month of November 2012, decided that it was no more possible to remain joint with the defendants 1 to 3 and demanded defendant the effect partition of suit property and separate portion of the 28/96 share in suit property, but the defendants have giving evasive reply were denied as false. Hence, the 4<sup>th</sup> defendant prayed for dismissal of the suit.

**4) Additional written statement filed defendants 4 to 7 is as follows:**

These defendants submit the 3<sup>rd</sup> plaintiff Mujibur Rahman, was a minor at the time of executor Sale Deed dated 26.05.2003 on behalf of mother and guardian. The 1<sup>st</sup> defendant executed a Sale Deed, at the time, the 3<sup>rd</sup> plaintiff was under the care and custody of his mother. The alienation is for the minor necessary and therefore the sale on behalf of 3<sup>rd</sup> plaintiff is valid in law. Now, the 3<sup>rd</sup> plaintiff cannot question the alienation by his mother guardian. These defendants submit that the Partition Deed dated 02.11.1970, “D” schedule property was allotted to the share of the father, plaintiff K. Gulab Jan and “E” schedule property were allotted to the share of the K. H. Amir Jan. Actually, D and E schedule property were not divided by metes and bounds. All the survey number extent stated in the D and E schedule property are one and the same. Common 1/2 share were allotted to the said two brothers, K. Gulab Jan and K. Amir Jan, in D and E schedule property. Till date, they were not partitioned.



Total extent of land described in D and E schedule property is 36.08 acres. In this common 1/2 share was allotted to K. H. Gulab Jan. The remaining common 1/2 share was allotted to K. H. Amir Jan. In this D and E scheduled property, total extent of three S.Nos. 185, 186, 187 amounting to 5.4 acres was purchased by 4<sup>th</sup> defendant. In this 1/2 share, 2.73 acres belong to K.H. Gulab Jan, the remaining 2.73 acres belong to K.H. Amir Jan. The plaintiff cannot question the alienation of K.H. Amir Jan. At the most, the plaintiff may question alienation by the legal heirs of K.H. Gulab Jan, suit filed by the plaintiff for the entire extent of 5.46 acres is not maintainable. These defendants submit that apart from D and E properties, the plaintiff, father K. Gulab Jan, has also inherited from his father undivided share in the “A” property to the partition that comes under 23.94 acres of land. The father Sheikh Hussain Sahib, further owned extensive land property in Samalpatti village and coconut depot building at Puliur village. These properties are worth to several crores of rupees. Further, these defendants understand that some of the joint owners of the properties have sold some of the property to third parties and those properties were not added in the suit. More than 60 acres of land are in joint possession of plaintiffs, defendants 1 to 3 and their other relatives. All the persons who are in joint possession of properties should have added as a party to the suit. When the common properties are more than 60 acres, the plaintiffs have chosen to file suit for only for Acre 5.40 which was purchase by the 4<sup>th</sup> defendant, as such, the suit is bad for partial partition. These defendants submit that if the suit is filed for entire joint property, then the share that could be allotted to the vendors of the 4<sup>th</sup> defendant would be



sufficiently more than this Acre 5.40 and thereby this Acre 5.40 can be allotted to the share of the purchaser by the equity. These defendants submit the alleged Release Deed dated 02.12.1980 filed with the plaintiff is unregistered document and no reliance can be placed on it. Apart from four sons of Sheikh Hussain Sahib, there are eight daughters to him. Those daughters did not joined in the Partition Deed dated 02.11.1970. After the death of Sheikh Hussain Sahib, all the sons and daughters are entitled to the properties left by Sheikh Hussain Sahib. Hence all of them are necessary parties to the suit. From the recitals of the plaint, as well as arraying joint owners as opposite parties to it, it is very much clear that some of the joint owners are active adverse to the interest of the other joint owners. Therefore, the entire common property should have been added in the suit. The suit is bad for non-join of necessary party and also bad for partial partition. These defendants submit that the 3<sup>rd</sup> plaintiff, defendants 1 and 2 have jointly executed a sale agreement dated 23.11.2010 in favour of one Yasim and Regina and received Rs.3,00,000/- as an advance in respect of some of the lands in the undivided property mentioned in D schedule in the Partition Deed. Neither the plaintiffs 1 and 2, nor the 3<sup>rd</sup> defendant who are joint owners, did not join as parties in the sale agreement. This is only a tip of iceberg. There are several other properties which this defendant unable to investigate. This will go to show that every one of joint owners had dealt with the property individually. None of these transactions were brought forward and none of the purchaser had been added as parties to the suit. These defendant submit the property purchased by 4<sup>th</sup> defendant may be allotted to the share of the vendors and thereby allotted to this defendant. It is



therefore that this Hon'ble court please to dismiss the suit with cost of the defendants 4 to 7.

**5) Based on the said pleadings made by the both parties, the trial court has framed the following issues:**

- (1) Whether the plaintiffs are entitled to the relief of Partition and Separate Possession as prayed for?
- (2) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?
- (3) To what other relief the plaintiffs entitled to?

**Additional Issues:**

- (1) Whether the defendants 4 to 7 stated that suit is affected by partial partition is true?
- (2) Whether the suit is bad for non-joinder of parties?
- (3) Whether the suit properties has to be allotted to the defendants 4 to 7 which they got through 4<sup>th</sup> defendant and the same to be allotted as per equity as alleged by the defendants is correct or not?
- (4) Whether the sale agreement in favour of Yasmin Regina was said to be cancelled and the same was not force as alleged by the plaintiff is true or not?

6) From the side of plaintiff, the 1<sup>st</sup> plaintiff was examined as PW1, through the said PW1, Ex.A-1 to Ex.A-4 documents were marked. From the side of the defendants, the 5<sup>th</sup> defendant Venkatesan was examined as DW1 and through him, Ex.B-1 and Ex.B-2 documents were marked. Ex.A-1 is the Partition Deed dated



02.11.1970. Ex.A-2 is the Sale Deed executed by defendants 1 to 3 in favour of the 4<sup>th</sup> defendant. Ex.A-3 is the sale agreement dated 23.11.2010 between Yasmin, Regina, Mumtaz Jamil and Mujibur. Ex.A-4 is the cancellation of the earlier sale agreement dated 10.10.2014.

7) The trial court after going through the oral and documentary evidence placed before it, has come into conclusion the plaintiffs are entitled for each 7/96 share in the suit schedule property and preliminary decree was passed on the lines and further directed the defendants 4 to 7 not to make any encumbrance with respect of the suit property. As against passed by the decree and judgment passed by the trial court, the present appeal has been preferred.

**8) The trial court decree and judgment was challenged by the appellants/defendants 5 to 7 on the following grounds:**

- (1) The judgment of the trial court is against the weight of evidence and probabilities of the case.
- (2) The trial court erred in decreeing the suit without appreciating the oral and documentary evidence let in on the side of the appellant defendant in the suit.
- (3) The trial court erred in not framing the proper and necessary issues to judge the suit.
- (4) The trial court similarly failed in not considering that the suit is bad for partial partition and as such unsustainable as per law.
- (5) The trial court ought to have seen the appellant's are exclusive possession and enjoyment of suit property as per the Ex.A-2 Sale Deed in favour of 4<sup>th</sup> defendant,



Manimegalai.

(6) The trial court failed to consider the contradiction or admission by the plaintiff's side, witness PW1, which would disentitled the plaintiff to claim partition.

(7) The trial court ought to have seen that 4<sup>th</sup> defendant, Manimegalai is a bona fide purchaser of value and Sale Deed in her favour, namely Ex.A-2 is bar to the plaintiff's claim of partition.

(8) The trial court ought to have seen the suit filed by the plaintiff at the instigation, collusion of the remaining defendant who willfully and voluntarily set exparte.

(9) The trial court erred in not considering the fact that suit is bad for non-joinder necessary parties.

(10) The trial court failed to consider the plaintiff are out of possession and should have paid advalorem of court fees and the court fee paid is incorrect.

(11) The trial court ought to have taken note the improvements and the conversion of the land made by the appellant to the suit property. The trial court ought to have dismissed the suit.

**9) Now point for determination is that,**

Whether alience can plead, partial partition in the suit for partition or not?

**POINT:**

10) The learned counsel for the appellants/ defendants 5 to 7 argued before the court that the suit property originally belong to late K.H. Gulab Jan and 3<sup>rd</sup> defendant K.H. Amir Jan who got the property in a Partition Deed dated 02.11.1970, which was



a registered one and by way of the registered Partition Deed dated 02.11.1970, late K.H. Gulab Jan and K.H. Amir Jan each has got a common half share in the property and the 3<sup>rd</sup> defendant who has got half share in the suit schedule property along with the legal heirs of the K.H. Gulab Jan has come forward to sell the property to the 4<sup>th</sup> defendant herein and 4<sup>th</sup> defendant has perused the revenue records and other documents and came into conclusion that 3<sup>rd</sup> defendant and legal heirs of Gulab Jan were absolute owner of the said property and after death of Gulab Jan, their legal heirs, namely the defendants 1 and 2 has got right over the said property and has purchased the property. While being so, these defendants 1 to 3 colluding with the plaintiffs 1 and 2 has filed the suit collusively and want to disturb the peaceful possession of the appellants/ defendants in this case. The appellants/ defendants for good and valid consideration has purchased the property on 26.05.2003 from the defendants 1 to 3 and was enjoying the said property without any hindrance and the said enjoyment is knowledge of the respondents/ plaintiffs herein and the respondents/plaintiffs knowing fully well that this respondents/ defendants 4 to 7 are enjoyment of the said property has colluded with the respondents 1 and 2 has filed a suit with a view to get unlawful enrichment and the suit is bad for partial partition and further argued that there is no proper court fee paid as per Section 37(1) of Court Fees and Suit Valuation Act and further argued that all necessary parties to the partition was not brought in the suit, as such, prayed for set aside the decree and judgment passed by the trial court.



11) On the other hand, the learned counsel for the respondents 1 and 2/ plaintiffs 1 and 2 argued before the court that the trial court after going through the oral and document evidence placed before the court has come into conclusion that the respondents 1 and 2 each has got 7/96 share in the scheduled property and the said Sale Deed dated 26.05.2003, Ex.A-2 was executed excluding the respondents 1 and 2 and in the suit schedule property, these respondents 1 and 2 has got each 7/96 share in it, as such, the trial court after coming to know about the oral and documentary evidence placed before the court and perused each and every document placed before it and come into just conclusion this case, as such, trial court decree and judgment needs no interference, as such, prayed for dismissal of the appeal.

12) At the time of argument, the learned counsel for the appellants/ defendants 5 to 7 attacked the decree and judgment passed by the trial court on two grounds. 1) that the suit is bad for non joinder of necessary parties and 2) the suit is bad for partial partition.

13) The learned counsel for the appellants/ defendants 5 to 7 argued before the court that the partition which took place on 02.11.1970, in which this Gulab Jan and the 3<sup>rd</sup> defendant Amir Khan, were jointly given 13 items of the suit schedule property. But the plaintiff has filed the suit only with respect of 3 items, excluding 10 items which were shown in the Ex.A-1 Partition Deed. Admittedly Gulab Jan and the 3<sup>rd</sup> defendant Amir Jan were given share in the Partition Deed, whereby the D and E



schedule were allotted jointly to the Gulab Jan and Amir Jan and both having common half share in the D and E schedule property. Totally there are 13 items in the D and E scheduled property, but here, the suit is filed only with respect of (i) S.No. 187, to an extent of 1.22 acres, (ii) S.No.186, to an extent of 1.76 acres, and (iii) S.No. 185, to an extent of 2.48 acres, totally 5 acres, 46 cents of land.

14) The learned counsel for the plaintiff argued before the court that the respondents 1 and 2/ plaintiffs 1 and 2 has filed a suit for partition only with respect of 3 items of the suit schedule. Whereas in Ex.A-1 document by which, K.H. Gulab Jan who is the father of the plaintiffs 1 and 2 and the 3<sup>rd</sup> defendant Amir Jan, were jointly given 13 items of scheduled property in D and E schedule of the said Partition Deed. Out of the said 13 items of suit schedule property, only 3 items of the suit schedule property alone the suit was filed. For the remaining 10 items of schedule properties nothing was whispered by the respondents/ plaintiffs in the suit, as such, the suit is bad for non-joinder of necessary property.

15) On the other hand, the learned counsel for the respondents 1 and 2 and plaintiffs 1 and 2 argued before the court only a co-sharer can agitate with respect of partial partition in the suit property and the 4<sup>th</sup> defendant who has purchaser of the property from some of the co-sharers cannot take a plea of partial partition because he is a alienee of the suit property. In this regard, learned counsel for the respondents/ plaintiffs relied upon judgment given by the Hon'ble High Court of



Madras, reported in 2014 (2) CTC, page 706, decided on 14.03.2014, in Karupiah and another /Vs/ C. Muniyappan and others, in which, Para No.23 runs as follows: In view of the foregoing decision, the contents of the alienee questioning the partial partition against the non-alienee co-owner is unsustainable, and the question of law is answered against the appellant.

16) In this connection, the judgment given by the Hon'ble High Court of Patna, reported in AIR 1963 Patna 375, in SM.A. Samad /Vs/ Shahid Hussain, it was held that, “ the ordinary rule that suit for partial partition is not maintainable does not apply to the case of co-owners who hold land as a tenants in common, as distinguished from the co-sharer holding land as a joint tenants” . So from the above said ruling given by the court, it is clear that the subsequent purchaser of the property namely 4<sup>th</sup> defendant and on the death of 4<sup>th</sup> defendant, defendants 5 to 7 happens to be the legal heirs of 4<sup>th</sup> defendant cannot question the partial partition as they are only a joint tenants of the suit property and they are not tenants in common, as such, the subsequent purchaser of suit property cannot make a plea of partial partition and it is only the co-sharer of joint family can take a plea of partial partition in a suit for partition, as such, the above said point was decided as against the appellants/ defendants 5 to 7 herein.

17) Coming to the next point for argued by learned counsel for the appellants/ defendants 5 to 7 counsel is that all the legal heirs / sharers were not joined as a party



to the proceeding. It is interesting to note that, the suit is filed for partition and all the family members were brought on record. But the appellant counsel interestingly taking a new plea before the appellate court that all the sharers of the joint family was not brought on record. On going through the written statement initially filed, nothing was stated about non-inclusion of non-joinder of necessary party in the suit. In the Additional written statement filed by defendants 5 to 7 non inclusion of necessary parties was raised. It is stated by defendants 5 to 7, that deceased Sheik Hussain Sahib has got 4 sons and 8 daughters but to prove the same is documentary evidence was let in by the appellants before the trial court. The learned counsel for the appellants/ defendants 5 to 7 argued before the court that all the legal heirs of Sheikh Hussain Shahib are not added as one of the party to the proceeding. It is true that in the partition that took place on 2/11/1970, "A" schedule property was allotted to Sheikh Hussain Shahib, who is the grandfather of plaintiffs 1 and 2 and defendants 1 to 3. In the Partition Deed dated 2/11/1970, "A" schedule properties were allotted to the said Sheikh Hussain Shahib and only "D" and "E" schedule properties were allotted to Gulab Jan and Amir Jan jointly. In the suit only "D" and "E" schedule property alone the plaintiffs are claiming relief before the trial court. If "A" schedule property would have been added in the suit schedule, then all legal heirs of the Sheikh Hussain Shahib ought to have been included in the suit. Since, the plaintiff has restricted the claim with respect of "D" and "E" schedule property, only those person who has got interest over the said property namely "D" and "E" schedule property were alone arrayed as a party to the suit in the trial proceeding in the trial



court. Since “A” schedule was not included in the suit schedule, there is no need to add the legal heirs of the deceased Sheikh Hussain Shahib in this case, as such, the non-inclusion of all the parties as alleged by the appellants/ defendants 5 to 7 is not at all required in this case, as “A” schedule property is not subject matter of the suit in OS.No.22/2014, as such, this court of the view that non-joinder of necessary party as alleged by the defendants 5 to 7 has nothing to do with the case, as the court has dealt only with respect of “D” and “E” schedule only.

18) The trial court after going through the records placed before the court has come into conclusion that the respondents 1 and 2 has got each 7/96 share in the suit schedule property. Since these respondents 1 and 2, who happens to be the female legal heirs, were excluded while executing the Sale Deed dated 26.05.2003 and they are not party to the Sale Deed dated 26.05.2003 and the said Sale Deed was brought to the knowledge only in the year 2012, and immediately the suit is filed in the year 2012 itself, as such, the suit is within the period of limitation. From the date of knowledge within three years, the suit was filed and on going through the Ex.A-2 document the Sale Deed was executed by defendants 1 to 3 in favour of the 4<sup>th</sup> defendant and these plaintiffs 1 and 2 are not a party to the said Sale Deed, as such, the chance of the respondents 1 and 2 / plaintiffs 1 and 2 has knowledge about the Sale Deed on the date of execution was very less, as such, the suit is within the time of limitation and it is on the record that on the death of Gulab Jan, he was survived by his wife, the 1<sup>st</sup> defendant and his son, the 2<sup>nd</sup> defendant and daughters plaintiffs 1 and



2 herein. While being so, without concurrence of the plaintiffs 1 and 2, the Sale Deed was obtained by the 4<sup>th</sup> defendant. But the Sale Deed was not questioned by the plaintiffs 1 and 2. Even the plaintiff has got knowledge about the Sale Deed dated 26.05.2003 at the time of filing the suit, no prayer was sought with the respondents 1 and 2 / plaintiffs 1 and 2 that the Sale Deed to be declared null and void, for the reason best known to them. But the trial court has ordered that each plaintiff is entitled for 7/96 share, totally 14/96 shares and permanent injunction was granted restraining the defendants not to make any encumbrance of property. On the death of Gulab Jan, who has got half share in the suit schedule property and 1/2 share was with the 3<sup>rd</sup> defendant, Amir Jan. On the death of Gulab Jan, the plaintiffs 1 and 2 and the defendants 1, 2 and 8 has got right over the 1/2 share in the suit schedule property. On the death of Gulab Jan, his wife Mumtaj, the 1<sup>st</sup> defendant will get 1/8th share in the suit property. The remaining 7/8th share will go to the son and daughter of Gulab Jan, namely the plaintiffs 1 and 2 and defendants 2 and 8 will jointly get 7/8 share in the property. Out of the 7/8th share of the property, 1/3rd share will go to plaintiffs 1 and 2 and 2/3rd of the share in the 7/8th will go to 2<sup>nd</sup> defendant and 8<sup>th</sup> defendant herein. Accordingly, the plaintiffs are entitled for 7/96 each in the suit schedule property and the trial court after going through the oral documentary evidence placed before the court has come into just conclusion in this case. The plea raised by the appellant counsel that the suit is bad by partial partition and suit is bad for non-joinder of necessary parties will not holds good for the reason that alienee of the suit property cannot take a plea of partial partition and with respect of non-joinder



of necessary parties is concerned, parties who has got interest in D and E schedule properties were already included in the suit, as such, this court sees no merits in this appeal, accordingly the trial court decree and judgment was upheld and the appeal stand dismissed.

In the result, the Appeal is dismissed. The decree and judgment in O.S.No.22/2014 dated: 31.07.2023 of Subordinate Judge, Uthangarai is confirmed. No cost.

Dictated to the Steno-Typist, directly typed by her, corrected and pronounced by me in Open Court, this the 02<sup>nd</sup> day of April 2026.

**List of witnesses and documents on both side: NIL**