

TNKK040002342023



Presented on : 21-07-2023
Registered on : 08-08-2023
Decided on : 06-04-2026
Duration : 2 years, 8 months, 16 days

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Tmt. K. Chithra, B.A.,B.L., (Hons)

I Additional District Munsif (FAC), Nagercoil

Monday, on the 06th day of April, 2026.

O.S. No. 128 of 2023

(CNR NO. TNKK04-000234-2023)

G.Thanaselvi

... Plaintiff

-vs-

1. P. Gnanapaul

2. J. Amala

... Defendants

This Suit came up before me on 27.03.2026 for a final hearing in the presence of Mr.A.Lawrence Petershaw, Advocate for the Plaintiff and Mr.C. Ashok Kumar, Advocate for the Defendants, and upon hearing the plaintiff side arguments, and defendants side arguments and upon perusing the available case records and having stood over for consideration till this day, this court delivered the following:

JUDGEMENT

1. This suit was filed for the relief of i. declaration that the sale agreement No. 3453/2021 of Joint I Sub Registrar office, Kanyakumari at Nagercoil as null and void and non-est in law; and ii. injunction restraining the 1st and 2nd defendants, their men, or their agents or anybody claiming under the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the plaint B schedule property in any manner; and along with cost of suit.

2. CRUX OF FACTS OF PLAINT:

2.1) The plaint 'A' schedule property with extent of 35 ½ cents was originally belonged to Lazer. On 21.12.1998, the 1st defendant and his brother Gnanarajan (husband of plaintiff) had jointly purchased it from Lazer by virtue of sale deed bearing No.2407/1998. They effected mutation in their names and jointly enjoying it by paying revenue tax. Thereafter, oral partition was effected between the 1st defendant and his brother.

2.2) In oral partition, the western half of 17.75 cents was allotted to the 1st defendant and the eastern half of 17.75 cents was allotted to Gnanarajan. On 17.06.2013, the 1st defendant's brother Gnanarajan executed a Settlement deed bearing No.1890/2013 in favour of his wife/plaintiff with respect to his eastern half of 17.75 cents ie. plaint 'B' schedule property. The settlement deed was acted upon. Mutation in revenue records made in name of the plaintiff and she was paying tax;

the revenue authorities issued chitta for the fasli year 1420, 1423. The plaintiff has made improvements in the plaint B schedule property by spending more than Rs.5 lakhs.

2.3) The 1st defendant is the husband of the 2nd defendant and they lived together under one roof. To create trouble and to get unlawful gain, the 1st defendant executed sale agreement bearing No. 3453/2021 dt. 21.09.2021 in favour of his wife/2nd defendant with respect to half share in the undivided, unpartitioned 35 ½ cents- plaint 'A' schedule property. The defendants are trying to interfere with the peaceful possession and enjoyment of the plaint 'B' schedule property. One such attempt was made on 02.07.2023 and it was prevented by plaintiff and her husband. Thus, this suit was filed.

3. CRUX OF WRITTEN STATEMENT FILED BY 1ST AND 2ND DEFENDANTS:

3.1) The suit is not maintainable under law and facts. All the averments in the plaint except those specifically admitted, or otherwise dealt with, are deemed to be denied. It is true that the plaintiff's husband and the 1st defendant had purchased the plaint A schedule from Lazer on 21.12.1998. But no such oral partition was taken place. The total 35 ½ cents was enjoyed jointly by both plaintiff's husband and the 1st defendant. If oral partition took place, the plaintiff would have averred the date, place of alleged oral partition. No demarcation of boundaries of plaint B schedule property

by metes and bounds from the plaint 'A' schedule property. The plaint 'B' schedule property is imaginary one.

3.2) The plaintiff and her husband were habitual in grabbing other's property and O.S.No.538/2011 of the Second Additional Munsif court, Nagercoil and O.S. No.23/2012 of the Additional District court of Nagercoil were pending against the plaintiff's husband. The defendants have no knowledge of the execution of alleged Settlement deed No.3453/2021 dt. 21.09.2021 in name of the plaintiff. Without partition, the execution of settlement deed is like without having proper title and it is void document; it was not acted upon. Void document need not be set aside.

3.3) The plaintiff is only entitled to the undivided half share over the plaint 'A' schedule property and the plaintiff has no exclusive right over the plaint 'B' schedule property. The defendant has given police complaint against some strangers who were attempting to encroach the plaint 'A' schedule property. Though the plaintiff and her husband were knowing the fact, they did not take any action. The 1st defendant is having right over half of 35 ½ cents and the sale agreement over his entitled half share, is valid. No cause of action to file this suit was taken place. No such incident took place as alleged by the plaintiff. This suit is not maintainable without the relief of title declaration and possession in respect of the alleged 'B' schedule property. Hence this suit is liable to be dismissed.

4. ISSUES:

Based on the pleadings and documents, this court has framed following issues on 16.11.2024.

- i. Whether there was oral partition between the plaintiff's husband and 1st defendant?
- ii. Whether the plaintiff is entitled for suit prayer A Declaration as prayed for?
- iii. Whether the plaintiff is entitled for suit prayer B permanent injunction as prayed for?
- iv. To what other reliefs the parties are entitled to? What order as to cost?

5. EVIDENCE:

On the plaintiff side, the plaintiff's husband was examined as **PW1, Ex.A1 to Ex.A5** were marked. On endorsement, the plaintiff side evidence was closed on 13.03.2024. On the defendants' side, the 1st defendant was examined as DW1, Ex.B1 was marked. On endorsement, the defendants' side evidence was closed on 17.10.2025.

6. ARGUMENTS:

6.1) The learned counsel for plaintiff had argued that the plaint 'A' schedule property of 35 ½ cents was purchased jointly by plaintiff's husband and the 1st defendant, who were brothers. It is admitted fact by both parties. The oral partition was effected between the joint purchasers by allotting the plaint 'B' schedule property to the plaintiff's husband and some Rs.30,00,000/- to Rs.40,00,000/- have paid to the

1st defendant for such partition. After intimating to the 1st defendant, the Ex.A2/settlement deed was executed in confirming the said oral partition. The bogus sale agreement/Ex.A3 was created by the defendants to create cloud over the event of oral partition. Both defendants are spouses. So, no consideration for the alleged sale agreement was paid. Thus, the plaintiff is entitled to the reliefs sought for.

6.2) The learned counsel for defendant had argued that no oral partition was happened between the joint purchasers- 1st defendant and his brother. The 1st defendant had no knowledge of the Ex.A2/settlement deed and he did not give acknowledgement for its execution. No payment was made as alleged by the plaintiff's husband. The Ex.A3/sale agreement was valid document and the Ex.A2/settlement deed is void and non-est in law. Thus, the suit is liable to be dismissed, with cost.

7. REASON FOR DETERMINATION:

ISSUE NO.i: Whether there was oral partition between the plaintiff's husband and 1st defendant?

ISSUE NO.ii: Whether the plaintiff is entitled for suit prayer A Declaration as prayed for?

ISSUE NO.iii: Whether the plaintiff is entitled for suit prayer B permanent injunction as prayed for?

7.1) The facts-in-issue and its discussions to these issues No.1 to 3 were interconnected to each other, hence they were taken together for discussion.

7.2) The **plaint A schedule property** is 35 ½ cents of agricultural land, constrained in old Survey No.1295A, 1295B, in resurvey No.E.11-8/9 of Perumapuram puravu, Nagercoil village, Kanyakumari district. Its patta No.1203. The **plaint B schedule property** is 17.75 cents of agricultural land situated at eastern half of 35 ½ cents of agricultural land, constrained in old Survey No.1295A, 1295B, in resurvey No.E.11-8/9 of Perumapuram puravu, Nagercoil village, Kanyakumari district. It is eastern half of plaint 'A' schedule property.

7.3) The plaintiff stated that her husband and 1st defendant were brothers and they purchased the plaint 'A' schedule property jointly by virtue of Ex.A1/Sale deed bearing No.2407/1998 dt.21.12.1998 from one Lazer. The defendants admitted the sale deed and purchase of plaint 'A' schedule property. The plaintiff averred that oral partition was made between them. Whereas the defendants contended that no such oral partition was happened.

7.4) Further, the plaintiff's husband explained in his cross-examination that he paid Rs.30,00,000/- to Rs.40,00,000/- to made the said oral partition. His wife did not state such fact in her plaint as well as he did not state this fact in his chief-examination. He did not produce any document to prove such payment. He did not clarify how come the said amount of Rs.30,00,000/- to Rs.40,00,000/- arrived to made oral partition.

7.5) While considering this oral partition, the plaintiff did not state on which date, in which place, in which situation, the alleged partition was made, factors took for such division of east - west and the allotment of portion with merits and demerits and who were witnessed the said oral partition. Mere statement of oral partition would not be sufficient to hold it as wholly reliable.

7.6) The plaintiff's husband as PW1 admitted the pendency of two other suits in O.S.No.538/2011 of the Second Additional Munsif court, Nagercoil and O.S.No.23/2012 of the Additional District court of Nagercoil were pending against the plaintiff's husband. The 1st defendant as DW1 admitted that the properties in this case is not involved in the above two suits. One of the cases was pending for the relief of partition among family members of plaintiff's husband and the 1st defendant. In such scenario, the 1st defendant's permission orally to execute settlement deed by the plaintiff's husband with respect to plaint 'B' schedule property, is totally unreliable.

7.7) Beyond the oral partition, a road was made to access the plaint 'A' schedule property and other adjacent properties, with the contribution of land from each owner in the concerned area. It was admitted by PW1 in his cross-examination. The 1st defendant in his cross-examination deposed that 15% of the plaint 'A' schedule property was contributed to the road. The plaintiff's husband/PW1 deposed in his cross-examination that he did not know the extent of land contributed to road formation, the available extent of land in plaint 'A' schedule property. He deposed

that formation and sand road existing on southern side; thar road was existing on eastern side of plaint 'A' schedule property and he did not measure the property before the execution of settlement deed/Ex.A2 in favour of his wife/plaintiff. He did not file petition to obtain separate patta in name of plaintiff.

7.8) Ex.A4/Chitta dt.29.10.2013 were issued in name of plaintiff and others for Resurvey no.E.11/8-9 for 15.78 ares in patta No.6826 for the fasli year 1423. The Ex.A5/Kara receipt dt. 08.03.2023 was issued in name of plaintiff for patta No.6826 for fasli year 1432 for the Resurvey No. E.11/8-9 for 15.78.238 ares. The plaintiff did not produce the said patta No.6826. The chitta and Kara receipt cannot be taken as title deed for the plaint schedule 'B' property.

7.9) The Ex.B1/Settlement Land Register for Resurvey No.E.11/8-9 for 18 ares 26sq.m. agricultural land, stands in name of 7 persons including the names of plaintiff, 1st defendant. It mentioned the transaction date as 25.05.2023. Though the Ex.A2/Settlement deed was executed in the year 2013, the transaction date was made on 25.05.2023. Till date, the plaintiff has not taken to mutate the revenue records. The plaintiff failed to prove the alleged oral partition and the issue No.1 is answered in negative. Thus, the plaintiff's right over the plaint B schedule is found untenable and her locus standi to file this suit is totally unsustainable.

7.10) The 1st defendant has equal half share in the undivided plaint 'A' schedule property and he has right to execute sale agreement in favour of his wife. As

per S.44 of Transfer of property Act, the transfer of co-owner is valid and the 2nd defendant would be in shoes of the 1st defendant. The s.44 of transfer of property Act is given below for easy reference

7.11) 44. Transfer by one co-owner.—

Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred.

7.12) Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

7.13) Thus, this court did not find any irregularities in the execution of Ex.A3/Sale agreement executed by the 1st defendant in favour of the 2nd defendant and no injunction relief can be grant against the co-owner without separate possession of their respective shares by metes and bounds. So, the plaintiff is not

entitled to the plaint A declaration relief and the plaint B Permanent injunction relief as prayed for. Thus, this issue no.2 and 3 are answered negatively.

ISSUE NO.4: To what other relieves the parties are entitled to? What order as to cost?

7.14) The plaintiff is directed to pay the suit cost to the defendants 1 and 2. No other reliefs the parties are entitled. Thus, this issue is answered accordingly.

8. In fine, this suit is dismissed with cost of the defendants.

Dictated to Steno-Typist and typed by her directly in the Computer and corrected and pronounced by me in the Open Court on this the 06th day of April, 2026.

(Sd/-K.Chithra)

I Additional District Munsif (FAC)
Nagercoil.

Appendix:

1) Plaintiff side witnesses:

PW1 - Gnanarajan

2) Plaintiff side documents:

Ex.A1	21.12.1998	Certified copy of sale deed No.2407/1998 in the name of plaintiff and 1 st Defendant.
Ex.A2	17.06.2013	Certified copy of Settlement deed No.1890/2013 in the name of plaintiff.
Ex.A3	21.09.2021	Certified copy of Sale Agreement Deed No.3453/2021 executed by the 1st Defendant with the 2nd Defendant.

Ex.A4	29.10.2015	Original Chitta for the suit property in the name of Plaintiff's
Ex.A5	08.03.2023	Original Kara receipt for the suit property in the name of Plaintiff's

3) Defendants side witnesses:

DW1 - Gnanapaul

4) Defendants side documents:-

Ex.B1	-	Online copy of Extract from the Town survey land Register
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(Sd/-K.Chithra)

I Additional District Munsif (FAC)
Nagercoil.

I ADM Court
Draft/Fair Judgment
O.S.128 of 2023
Dated: 06.04.2026.