

In the Court of the I Additional District Court, Madurai.

Present: Thiru.G.Muthukumar, B.Sc., M.L.

I Additional District Judge, Madurai

On the 08th day of September 2025, Monday

IA 3/2025 in O.S.No.173/2004

1. P.N.S.S.Khaja Kamaluddin (Died)
 2. Mujiba Begam
 3. Sulaika begam
 4. Sulthan Allavudeen @ Sait
 5. Ikbal
 6. Anitha Pravin
 7. Sheik Abdullah
- ... Petitioners / Defendants 1 to 7

//VS//

1. Mrs.Jailani (Died)
 2. Mrs.Anarkali
 3. Mrs.Syed Rabbaiah
 4. Mrs.Lialthul Bajararia
 5. Mrs.Amsath Rani
- ... Respondents 1 to 5 /Plaintiffs 1 to 5
6. Abdul Sakila
- ... 6th Respondent / 8th Defendant

In this petition Advocate Mr.S.Rethinakumar B.A., B.L. has appeared for the Petitioners / Defendant 1 to 5 and Advocate Mr.R.Vigneswaran has appeared for the Respondents 1 to 5 /Plaintiffs 1 to 5. On 12.08.2025 this petition came up for final hearing before me in the presence of counsels for the petitioners and R1 to R5 Respondents. On hearing the petitioners counsels and R1 to R5 counsels and on perusing the records having stood over for consideration of this court till this date this court delivers today the following

ORDER

1. This petition is filed U/s.151 of CPC r/w Section 49 of Indian Registration Act and Section 65 of Indian Evidence Act (Section 63 of Bharathiya Sakshya Adhiniy AM (BSA) Act to grant permission for marking of documents 1 and 2 for collateral purposes

to prove possession and also marking the documents 3 and 4 mentioned in the petition to be exhibited as secondary evidence on the side of the petitioners side.

2. Brief of the petition averment:

That the 4th petitioner is the 4th defendant in the main suit. I.A.No.1/2025 was filed to receive additional documents and the same was allowed on 17.03.2015. The 4th petitioner have filed proof affidavit and 34 documents mentioned in it. At the time of marking of documents the Respondents side objected to marking of documents mentioned in the petition in the list of documents as inadmissible in evidence. That it is not correct. That the document No.1 is the original Release deed dated 16.09.1988 executed by Jailani Beevi on behalf of minor Asmath Rani in favour of Kaja Kamaludeen. The document No.2 Original Release Deed dated 16.09.1988 executed by Jailani Beevi and others in favour of Anarkali. The document No.3 is Xerox copy of Surrender deed dated 16.09.1988 executed by Kaja Kamaludeen in favour of Jailani. The document No.4 is Xerox copy of Release Deed dated 16.09.1988 executed by Jailani and other in favour of Syed Rabiyyath. That the Respondents herein as plaintiffs in the above suit have filed the suit for partition of the suit properties. That the case of the present petitioners is that there was oral partition and the respondents herein relinquished their share by means of release deed dated 16.08.1988 and same was acted upon between the parties. The parties to the present suit accepted and acted as per oral partition. As per oral partition the parties deal with the property allotted to them respectively and some of the parties leased out and mortgaged and also sold their share. That the oral partition and release deed are mentioned in the Additional Written statement and during cross examination of Pw-1 his counsel put up question in respect of the oral partition and release deed executed by the respondents. That the respondents have not raised any of their objection in their pleadings and proof affidavit about it. Thus the fact remains that there is oral partition and release deed. That the petitioners wanted

to introduce the said documents for the collateral purposes of establishing the nature and character of possession and the same was acted upon between the parties. The said oral and partition came into effect immediately. The oral partition and release deed were also mentioned in the subsequent registered deeds. That the respondents have also dealt with the property allotted in the oral partition. That under law the release deed not duly stamped and registered can be marked for the collateral purposes of establishing the nature of possession. They are admissible in evidence under section 49 of the Indian Registration Act as evidence of any collateral transaction, not required to be effected by registered instrument. Hence the documents mentioned in the accompanying petition are to be ordered to be marked as documentary evidences on the side of the petitioners. The respondents cannot have any valid objection for marking of the said documents. That the original documents in respect of Doc.No.5 and 7 are available with the Respondents and the Xerox copies alone available with the petitioners. Hence they are not able to produce the original of documents no.5 and 7. Hence the xerox copies of the said documents may be marked as secondary evidence. That it may be received subject to objection and such objections may be decided at the last stage of final judgment. Hence prayed to allow this petition.

3. Brief statement of the counter filed by Respondent to 5

That the 5th respondent is the 5th plaintiff in the main suit. This counter affidavit is filed on behalf of the respondents 2 to 4 also. That this petition is not maintainable either in law or on facts. The allegations in Paras 3 and 4 of the affidavit are all denied as false. It is true that the petitions filed I.A.No.1/25 but this court was pleased to order that documents are received subject to proof and relevancy as per order dated 17.03.2025. In Para 3 at the page 2 in last but 4 lines it is specifically admitted that there was oral partition and the respondents herein relinquished their share by means of release deed dated 16.08.1988. But in para 3 at page 3 it is stated that the petitioners

wanted to introduce the said documents for the collateral purposes of establishing the nature and character of possession which is contradictory to the earlier averment. That the submission of the petitioners that documents are admissible in evidence under section 49 of the Indian Registration Act as evidence for collateral transaction not required to be effected by registered instrument is denied as false. That the documents 1, 2 and 4 are release deeds. As per those documents the rights in immovable properties are relinquished by the parties to the document. In such circumstances it is settled position of law that if the document is sought to prove the title of the parties, then the document cannot be received in evidence even if is duly stamped U/s.35 of Indian Stamp Act. That the documents 3 and 4 are xerox copies. The petitioners are praying to mark the said documents as secondary evidence. That the petitioners have not complied with requirements of Sec.65 of the Indian Evidence Act. That this petition is filed simply to drag on the proceedings as long as possible. Hence prayed to dismiss the petition with exemplary costs.

4. Point for consideration:

Whether this petition is to be allowed?

Findings for point for consideration:

5. The petitioner counsel has submitted that the original of the on behalf of minor Asmath Rani Jailani has executed Surrender deed in favour of Anarkali and on that date Jailani also executed a release deed in favour of Anarkali and Syed Rabiyyath and on the same day Khaja Kamaludeen also executed surrendered deed in favour of Jailani and all those documents are relevant for proving the possession of the petitioners and it all has to be received for the collateral purpose and prayed to allow this petition.

6. The learned counsel appearing for the respondent has submitted that the suit is filed for partition that unregistered unstamped document cannot be received even for

collateral purpose and xerox copies of the document cannot be received in evidence and that this petition is filed only drag on the petition. Hence prayed to dismiss this petition.

6.1 The learned Petitioner side counsel has relied on the decision reported in

1. 2009- 4- LW 438
2. 2012 – 3- LW-934
3. 2005-4-LW-527

6.2 In 2009- 4- LW 438 the Hon'ble Madras High Court in a suit filed by B.S.N.L. for recovery of telephone bill on the application of the defendant has directed the plaintiff to furnish the details of the earlier bill under order 11 Rule 14 of CPC according to the fact and circumstances of that case.

6.3 In 2012 – 3- LW-934 the Hon'ble Madras High Court has in a suit filed for partition in an application filed under order 11 Rule 4 R/w section 151 of CPC., seeking to produce document has directed the respondent to filed affidavit if the originals were not in possession of the respondent

6.4 In 2005-4-LW-527 the Hon'ble Madras High Court in a suit for dissolution of partnership in a petition filed under Order 16 Rule 21 and Order 11 rule 15 of CPC., taking into consideration section 65 and 66 of the Indian Evidence Act any party is entitled to give notice to the other party to produce the document which has been entered in any document list annexed to the pleadings are reference is made to any such document

7. On perusal of records the main suit in O.S.173/2004 is filed for partition alleging that the 1st plaintiff is the wife of P.N.S.Sulthan Alavudeen and plaintiffs 2 to 5 and the 8

defendant are the daughters of the said P.N.S.Sulthan Alavudeen and that the 1st defendant is that the only son of P.N.S.Sulthan Alavudeen. It is admitted that P.N.S.Sulthan Alavudeen died in 1975. The plaintiffs have claimed that they are the joint possession and enjoyment of the suit property and has claimed their share. The 1st defendant has filed written statement and he had died pending suit and defendants 2 to 7 are added as the legal representatives of the 1st defendant. That the 4th plaintiff has been transposed as 8th defendant

8. That the 1st defendant in the written statement has claimed that prior to 16.09.1888 there was a oral partition between father of the 1st defendant and T.S.No.682 bearing door no.28 at East veli street, Madurai was allotted to this 1st defendant and the 1st plaintiff was permitted to reside in that till her life time. That the 2nd item of the suit property in survey no.1224 was also allotted to the 1st defendant and the plaintiffs 2 to 6 were allotted with Item no.3 of the suit property in T.S.No.1214. That the oral partition was reduced into writing in on 16.09.1988. That the plaintiffs 2 to 4 sold away their shares. That the 5th defendant is in peaceful possession and enjoyment of the property allotted to her and she is paying tax to the authorities. No where in that written statement of the 1st defendant the execution of the said surrender or release were mentioned. Further surrender or release of property worth above Rs.100/- need to be compulsorily registered. Without registered documents the respondents cannot be said to have surrendered or released their rights. Hence if the proposed documents are not registered they cannot be received in evidence at all. Further regarding any registered document only certified copy of the document can be filed as a secondary evidence. Therefore if the above documents are registered then the petitioner could very well file the certified copy.

9. The respondents have alleged that they were not in possession of the document sought. Under this circumstances at the most they can be prevented to produce that document later on to support their claim

10. The petitioners has not pleaded any ouster. Under this circumstances in a partition suit without proving partition by showing mere possession the petitioner could not claim any independent title as the possession by one co sharer will be deemed to be the possession of all. Therefore the main issue to be determined in the suit is whether there was oral partition as alleged by the petitioners/defendants and the documents sought for cannot be admitted in evidence even for proving possession as it is not material to the facts and circumstances of the case.

11. Under this above this circumstances this court finds that there is no merit in the petition. Hence this court finds that this petition is not maintainable. Point for consideration is answered accordingly.

In the result, this petition is dismissed.

Dictated to Steno-Typist and typed by her direct to in the computer, printed out corrected, signed and pronounced by me in the Open court on this the 08th day of September 2025.

I Additional District Judge,
Madurai.