

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

**Present: Thiru.G.Muthukumaran, B.Sc., M.L.**

**I Additional District Judge, Madurai**

On the 08<sup>th</sup> day of September 2025, Monday

**I.A.No. 4/2025 in O.S.No.173/2004**

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

//VS//

1. Mrs.Jailani (Died)
2. Mrs.Anarkali
3. Mrs.Syed Rabbaiyah
4. Mrs.Lialthul Bajaria
5. Mrs.Amsath Rani ... Respondents 1 to 5 /Plaintiffs 1 to 5
6. Abdul Sakila ... 6<sup>th</sup> Respondent / 7<sup>th</sup> Defendant

In this petition Advocate Mr.S.Rethinakumar B.A., B.L. has appeared for the Petitioners / Defendant 1 to 6 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. That on hearing both side arguments 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 Under Order 11, Rule 14 and Section 151 of CPC to directing the Respondents 2 to 6 to produce the documents mentioned in the petition.

## **2. Brief of the petition averment:**

That the 3<sup>rd</sup> petitioner is the 3<sup>rd</sup> defendant in the main suit. That the petitioners has pleaded that there was oral partition on 1<sup>st</sup> week of September 1988 between the plaintiff and 1<sup>st</sup> defendant and the respondent herein relinquished their share by means of release deed dated 16.09.1988 and the same was acted upon between the parties. That the parties to the present suit have accepted and acted upon on the oral partition. That as per oral partition the parties have dealt with the properties allotted to them respectively and some of the parties leased out and mortgaged and also sold their share. That oral partition and release deeds were mentioned in the subsequent registered deeds. That the petitioners have filed the I.A.No.3 of 2025 for marking of documents 1 and 2 mentioned in the said petition for collateral purposes and also sought for permission to mark the documents 3 and 4 mentioned in the said petition as secondary evidence. After oral partition the 1<sup>st</sup> defendant has executed a surrender deed on 16.09.1988 in favour of 1<sup>st</sup> plaintiff and on 16.09.1988 the 1<sup>st</sup> plaintiff Jailani and others executed a Release deed in favour of Syed Rabiyyath. After demise of 1<sup>st</sup> plaintiff the original of document No.1 is in custody of plaintiffs 2 to 6 and 7<sup>th</sup> defendant. That the original of the release deed dated 16.09.1988 is in custody of 3<sup>rd</sup> Respondent (Syed Rabiyyath). The xerox copies of the above said documents are produced by the petitioners along with the application for reception of documents and the same are received by this court. That on 19.07.2025 and on all subsequent dates the petitioners required the respondents 2 to 6 to produce documents mentioned in this petition which are most essential to prove the matters in issue in this suit. In the additional written statement and in I.A.No.2/2025 and I.A.3/2025 and put up questions at the time of cross of Pw-1. The said documents are relevant and vital for proving the case of the petitioners. That the documents are under the power, possession, custody and control of the respondents. The respondents cannot have any valid objection for production of documents. Hence pray to allow this petition and to direct the respondents to produce the original of the Surrender dated executed by Khaja

Kamaludeen in favour of Jailani on 16.09.1998 and the original of the Release Deed executed by Jailani and others in favour of Syed Rabiyyath on 16.09.1998.

### **3. Brief statement of the counter filed by Respondents 1 to 5**

That the 5<sup>th</sup> respondent is the 5<sup>th</sup> plaintiff in the main suit. That he files this counter 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 to 7 of the affidavit are all denied as false. That the petitioners filed I.A.No.1 of 2025 to grant leave to produce the documents mentioned in the said petition and this court was pleased to order to receive that documents subject to proof and relevancy as per order dated 17.03.2025. It is true that the petitioners filed I.A.No.3/2025 to grant permission for marking of documents 1 and 2 for collateral purposes of establishing the nature of possession and also marking the documents 3 and 4 to be exhibited as secondary evidence. The counter affidavit filed in I.A.3/2025 may be read as part of this counter affidavit. That so far as the document No.1 i.e., Surrender deed dated 16.09.1988 executed by Khaja Kamaludeen in favour of Jailani is concerned, (Pw-2) was cross examined on 20.08.2024 and this respondent in cross examination on 20.08.2024 at page 10 last but, 7 lines has deposed as follows

1-ம் பிரதிவாதியான காஜாகமாலுதீன் பாகப்பிரிவினையில் தனக்கு கிடைத்த மனை வீடுகளில் வரும் வாடகைகளை தனது தாயார் 1-ம் வாதியான ஜெய்லானி வசூல் செய்து ஜீவனம் செய்துகொள்ள அனுமதித்து 16.09.1988-ம் தேதியன்று ஒரு ஒப்பந்தம் எழுதிக்கொடுத்தார் என்று சொன்னால் சரிதான், ஆனால் அதை திரும்ப அவரே வாங்கிக்கொண்டார்”.

That the petitioners are in possession of document no.1 mentioned in the petition and regarding the document No.2 is concerned, no question was put to (Pw-2) in cross examination. That the respondents 2 to 5 are not having the original of document No.2 mentioned in the petition. That this petition has been filed simply to drag on the proceedings. That plaintiffs side evidence was closed as early as on 04.02.2025 and the

chief examination of Dw-1 is not completed for past more than 6 months. That the present petition has been filed only after the counter affidavit is filed in I.A.3/2025. As such the petition has been filed to fill up the lacuna. Hence pray to dismiss this petition.

**4. Point for consideration:**

Whether this petition is to be allowed?

**5. Findings for point for consideration:**

The petitioner counsel has submitted that the original of the Surrender dated executed by Kaja Kamaludeen in favour of Jailani on 16.09.1998 and the original of the Release Deed executed by Jailani and others in favour of Syed Rabiyyath on 16.09.1998 are with the respondents and hence pray to direct them to produce the document

1. 2015- 1 – LW-134
2. 2024-4 – L.W.374
3. AIR 1998 Madras 287
4. 2020 (2) MWN Civil) 465
5. 2019 SAR (Civil) 732 SC
6. AIR 2003 SC 1905
- 7.2025 (2) TLNJ 331 (Civil)
8. 2025 (2) TLNJ 13 (Civil)
- 9.2016 -2 – LW.656
10. 2025 (1) MWN (Civil) 471

11. 2015 SAR (Civil) 1224

12. 2023 H- L.W. 685

13. 2021-1-L.W. 228

5.1 In 2015- 1 – LW-134 the Hon'ble Madras High Court has held that an unregistered unstamped document can be marked for collateral purpose and court should not sutdown the evidence at the threshold.

5.2 In 2024-4 – L.W.374 the Hon'ble High Court has held that unregistered sale deed can be marked as for collateral purpose subject to proof and relevancy.

5.3 In AIR 1998 Madras 287 the Hon'ble Madras High Court has held that unregistered lease deed may be admitted into evidence for proving character of possession of a party.

5.4 In 2020 (2) MWN Civil) 465 the Hon'ble Madras High Court has held that in a suit for declaration that unregistered sale deed was null and void if the document sought to be marked are duly stamped Sec.35 of the Registration Act not to be invoked against that is stamped document. Unregistered sale deed not marked to establish title but to mere possession held to be collateral to the main transaction

5.5 In 2019 SAR (Civil) 732 SC the Hon'ble Supreme Court has held in a partition suit family settlement though not registered would operate is a complete estopol against the parties that and such document can be looked as corroborative evidence even without registration.

5.6 In AIR 2003 SC 1905 the Hon'ble Supreme Court has held that unregistered sale deed not admissible in evidence but it can be looked into for a collateral purpose such as to see the nature of possession of a party over the suit property.

5.7 In 2025 (2) TLNJ 331 (Civil) the Hon'ble Supreme Court has held that photocopy of the document can be proved as proof of oral agreement for sale.

5.8 In 2025 (2) TLNJ 13 (Civil) the Hon'ble Madras High Court has held that even for collateral purpose the document can be received only when it is stamped.

5.9 In 2016 -2 – LW.656 the Hon'ble Supreme Court has held that in a case of relinquishment of right in respect of immovable property unregistered document not admissible for proving primary purpose of partition but it can be relied on for collateral purpose of severancy of title, nature of possession of various shares but not for primary purpose of division of joined properties by meets and bounds.

5.10 In 2025 (1) MWN (Civil) 471 the Hon'ble Madras High Court has held that unregistered partition deed cannot be received as evidence of title but it can be relied upon for proving severance of status.

5.11 In 2015 SAR (Civil) 1224 the Hon'ble Supreme Court has held that the pre condition of secondary evidence are that such original documents could not be produced by party relied upon such documents inspect of best effort, unable to produce the same which is beyond their control unless it is establish that the original is lost are destroyed are being deliberately with held by the party in respect of that document sought to be used secondary evidence cannot be accepted. It is well settled that the parties wishes to lead secondary evidence the court is obliged to examine the probating value of the

document produced in the court are their content and decide the question of admissibility of secondary evidence. Neither mere admission of a document amount through nor mere marking as Exhibit will not dispense with the proof otherwise required to be done in accordance with law. The genuine ss correctness and existence of the document shall be established during trial and the trial court shall record reasons before relying on those secondary evidence.

5.12 In 2023 H- L.W. 685 the Hon'ble Madras High Court has held that objection to the marking of the document should be adjudicated either during the course of evidence are at the end of the deposition. Unless this document is received their may not be any occasion to the court to consider the objection. Merit of the documents are admissibility of the document cannot be gone into at the threshold before receiving the same in evidence

5.13 In 2021-1-L.W. 228 the Hon'ble Supreme court has held that no requirement that an application is required to be filed in Sec.65 C before the secondary evidence is let. If the party to the suit has laid foundation for leading the secondary evidence either in the claim are in evidence the secondary evidence cannot be ousted for consideration only because an application was not filed.

6. The learned counsel appearing for the respondent has submitted that the suit is filed for partition and the respondents already handed over in the 1<sup>st</sup> document mentioned in the petition to Khaja Kamaludeen and the 2<sup>nd</sup> document mentioned in the petition is not in possession of the respondent. 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.

7. On perusal of records the main suit in O.S.173/2004 is filed for partition alleging that the 1<sup>st</sup> 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 1<sup>st</sup> 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 joined possession and enjoyment of the suit property and has claimed their share. The 1<sup>st</sup> defendant has filed written statement and he had died pending suit and defendants 2 to 7 are added as the legal representatives of the 1<sup>st</sup> defendant. That the 4<sup>th</sup> plaintiff has been transposed as 8<sup>th</sup> defendant

8. That the 1<sup>st</sup> defendant in the written statement has claimed that prior 16.09.1888 there was a oral partition between father of the 1<sup>st</sup> defendant and T.S.No.682 bearing door no.28 at East veli street, Madurai was allotted to this 1<sup>st</sup> defendant and the 1<sup>st</sup> plaintiff was permitted to reside in that till her life time. That the 2<sup>nd</sup> item of the suit property in survey no.1224 was also allotted to the 1<sup>st</sup> 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 5<sup>th</sup> 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 1<sup>st</sup> 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 in 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 08<sup>th</sup> day of September 2025.

I Additional District Judge,  
Madurai.